VOLUME II of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Jan 18 2022

S.C. SUPREME COURT

Certiorari to Saluda County

Honorable Debra R. McCaslin, Circuit Court Judge

GERALD R. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000783

APPENDIX

ADAM SINCLAIR RUFFIN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

Pages 501-1000

INDEX

years.

Q Just for the purpose of instructing the jury about what that means, would you tell them what that kind of job entails?

A Firearms identification is a subscience of the larger science of tool mark identification. Firearms identification deals with the origin of fired bullets and fired cartridge cases. If we have a case where evidence is submitted to the lab and there's only cartridge cases, for instance, we can look at the cartridge cases and based on the characteristics imparted on the areas that the cartridge cases are marked by the firearm, how many firearms may have been involved, was there one gun involved, two guns involved, three guns involved, that kind of thing?

So our job is primarily to determine the source of fired ammunition components, I mean bullets and/or cartridge cases, and tying them back to a particular firearm or firearms if they're submitted.

Q All right, sir. And what qualifies you to become this kind of person who does this job for SLED?

A When I was hired at SLED in 2005. I started the firearms identification course of instruction,

which was roughly a three-and-a-half-year course of instruction studying under court-qualified firearms examiners. At first, there's a lot of reading and studying, note taking, watching them, observing them and seeing what they do, how they do what they do.

And as I progressed through the training, I got to get on the microscope, the comparison microscope rather, which is two microscopes connected by a single occular bridge and that let's us look at two different items under different magnifications or similar magnifications under different lighting sources and lighting angles. At the end of the training cycle, I was given a comprehensive final, some practical cases where my training officer created cases and I had to provide the answers.

Q The persons you're talking about are court qualified, these persons have been with SLED themselves for a period of time?

A Yes, sir.

Q Okay. Now, do you have any other education or training?

A I have a bachelor's degree from Charleston Southern. I also have a master's degree from Charleston Southern, and I completed the South Carolina Criminal Justice Academy.

Q Okay, sir.

MR. YOUNG: Your Honor, we would --

Q Well, let me ask you a couple other questions first. How many times have you been involved in the past in examination of firearms in terms of identification and analysis?

A How many times have I testified or how many --

Q How many times have you been involved in the investigation --

A For the last eight years, thousands of case.

Q Okay. And how many times have you been qualified as an expert and testified in cases in general sessions court or other courts?

A Twenty times in general sessions.

Q Have you been qualified as an expert every time?

A Yes, sir.

MR. YOUNG: Your Honor, we would offer him, at this time, as an expert in firearms identification?

THE COURT: All right. Are there questions concerning expertise?

MR. MADSEN: Judge, I just didn't hear how many times did he say he'd been qualified as an expert?

THE WITNESS: Twenty.

MR. MADSEN: I have no objection.

THE COURT: All right. Then there is no objection and thus the witness is so qualified. You may proceed.

BY MR. YOUNG:

Q Mr. Green, I'm going to start with the mundane, sir. The first mundane thing I must do is ask you, if you would please, to take a look at State's Exhibit Number 33 and also State's Exhibit Number 17 and State's Exhibit Number 16 and ask you can you identify those items?

A Ladies and gentlemen of the jury, whenever evidence is submitted to the SLED laboratory, particularly the firearms department, we mark each item, if it's large enough, with the item number, the SLED lab number, and our initials, and I did that on all of these for State's Exhibit 33. It's also still in a sealed bag, heat-sealed bag, which has my initials and my date on it. If y'all will pardon me just a minute, I'll make sure. (Pause.)

Q Would it assist you if we open the bag?

A I got it. State's Exhibit 33 is SLED item or lab item numbers 9 through 12 -- excuse me -- 9 through 22.

Q Okay. And those items that you are holding there, are those items that you examined?

A Yes, sir.

Q Sir, can you tell us the origin of those rounds in terms of how they were submitted to you?

A Yes, sir. All of these items were in this container, container A, as I received them, which was a sealed envelope.

Q And, sir, if you would, if you would, please, could you begin from the time they were -- may have left -- may have departed another department on the 27th of August until they became in your possession?

A Yes, sir. Agent Thomas Darnell, who testified earlier this morning, had custody of container A and then took it to, what we call, the latents evidence return holding, which is a secured evidence vault. Only people -- members of that department have it. And he did that on September 13th of 2012.

On September 18th of 2012, Lesa Chapman, which is administrative assistant or forensic technician for the latent print crime scene department, I retrieved container A from latents return holding and took it downstairs to evidence control or log-in and gave it to forensic technician, Patricia Crooks, who then the same day transferred it to a evidence bin. On September 18th, 2012, Patricia Crooks received container A from the bin or the shelf and

put it in firearm evidence intake storage.

Q And did, subsequently, she return it to you?

A Excuse me.

Q Did she subsequently give it to you?

A Yes, sir, she did. She gave it to me on the 18th of September 2012.

Q And these -- we're talking now, specifically again, about these shell casings indicated here as State's Exhibit 33?

A Yes, sir. State's Exhibit 33 was in a sealed container of container A when I received it on September 18, 2012.

Q Now, since you're in the business of identification, you have to have something to compare that with, correct?

A Yes, sir.

Q Okay. So did you receive other firearms in connection with this for which you may make some connection to, and I would refer specifically, did you receive State's Exhibit 17 and State's Exhibit 16?

A State's Exhibit 17 is an AA Arms model AP9, it's a 9mm Luger caliber semiautomatic pistol, which was submitted and it was SLED item 23. I did -- this is a firearm exam and the serial number

matches. The serial number is 053915. And it bears my markings as having examined it.

Q Thank you, sir. Now, would you refer also to the second item that I referred to in the firearms box?

A State's Exhibit 16 is the Smith & Wesson model SW40VE .40 Smith & Wesson caliber pistol with the serial number of DSL5282, which I examined in this case, and it was SLED item 24.

Q All right, sir. I'd like to start with that while you hold it in your hand, and again this is the SLED item number 24. Would you describe, from the date of August 27th until you received it, who handled that firearm until it came in your possession?

A On August 27th, Agent Tom Darnell transferred container J, which is this box, to the photography department for photographing. On September 12th of 2012, forensic scientist, Ben Vanadore, who works in the photography department, took custody of it, put it back -- took photographs and put it back into the studio 266.

The next day, September 13th, 2012, Agent Tom Darnell took custody of it, and on the same day, put it in latents evidence return holding. On the 18th,

it went from forensic technician, Lesa Chapman, September 18th of 2012, it went from Lesa Chapman to Patricia Crooks down at evidence control, down into firearms evidence intake storage. And later on that afternoon, Patricia Crooks got it from evidence intake storage and gave it to me on September 18th, 2012.

Q As laborious as it may sound, sir, I'm going to ask you to do exactly the same thing with the other firearm that you received. With that -- the firearm you just described was a .40 caliber?

A Yes, sir.

Q The other one is a 9mm type weapon?

A Yes, sir.

Q Would you refer to that one and give us -- from the date of August 27th?

A On August 27th, Tom Darnell took State's Exhibit 17, or SLED item number 23, to latents evidence return holding. On August 31st, 2012, Lesa Chapman, the forensic technician for latent print department, I retrieved it and took it down to Nikki Hughes in evidence control. Nikki, on the same day, put it in firearms intake storage. On September the 11th, 2012, Patricia Crooks retrieved it from the evidence room, firearms evidence intake storage.

And I took custody of it on September 11th, 2012.

Q All right, sir. So 9/11. Sir, with regard to these firearms and the cartridge casings, now that you had them all in your custody and received them, were they received in sealed containers?

A Yes, sir. Everything I received was in a sealed container.

Q Was there any indication of any damage to the seal other than might have been done in the normal course of operations within SLED?

A No, sir.

Q And you have protocols on those, by the way, don't you, that prevent you from actually looking into them and taking further steps if there's some indication of tampering, correct?

A Yes, sir. If the seal is broken, we are to notify our supervisor and then put notes or like a description in our evidence tracking system notifying that when we received it, it was unsealed.

Q There was nothing here indicating such?

A No, sir.

Q All right, sir. Now, this comparison business that you were talking about, how do you do this?

A As I described before, we have a comparison microscope. What I do personally is when I get a

case before -- I'll get the evidence from wherever I get it from, a log-in or another examiner, I'll take a photograph of the packaging as I received it. I'll open it up and I'll take a packaging {sic} from when I received it to when I open it up to the individual items. That way when I'm repackaging, I know which bag goes with each item. Once I go through all the evidence taking pictures of it, then I'll start my examinations.

If we have 9mm cartridge cases, for instance, and .45s, you can shoot a 9mm and .45 sometimes if you wrap it with enough tape, but the cartridge case is going to swell, there's going to be signs. I did not see any of those signs in this case. So I did not compare the 9mm cartridge case to any of the .40s.

I started looking at the .40 caliber cartridge cases and seeing if they were all fired by one gun or by multiple firearms. After I did that, I started filling out the firearms worksheet listing all the pertinent information. Then I retrieved the firearms, made sure they were safe to fire. We have a two-story vertical water tank that we shoot into. We do that because the water slows the bullets down, but it doesn't add to or take away from any of the

markings.

I took each firearm by itself, shot it. I retrieved the test specimens and looked at them under the microscope to see if they were marking consistently. Once I was satis -- were satisfactory markings on the cartridge cases, I looked at them versus the evidence cartridge cases. And I do that for each firearm in the case.

Q Now, I would like you to refer specifically, I believe, to items 9 through 22, which are I believe in the State's evidence bag marked as State's Exhibit 33. Would you refer specifically to that bag and tell me if items 9 through 22 bear any relationship to the test firings and comparisons that you made with regard to the 9mm and .40 cal weapons that are in the boxes on the desk next to you?

A Yes, sir. State's Exhibit 33, referring to the one 9mm Luger caliber cartridge case, was fired by State's Exhibit 17. And then I don't know if you can see it, but all the gray cartridge cases is State's Exhibit 33, they're the Tool ammo brand .40 Smith & Wesson caliber cartridge cases, items 13 through 22, the SLED item numbers, they were all fired by State's Exhibit 16.

Q All right. And those are the .40 cal rounds associated with the .40 caliber pistol that you hold there?

A Yes, sir. State's Exhibit 16 fired the steel cartridge cases in this bag, State's Exhibit 33.

Q All right, sir. Now, sir, while you have that Smith & Wesson semiautomatic pistol in your hand, are you familiar with the manufacturing of this particular type of weapon?

A Yes, sir. Manufacturing in how it's actually made or --

Q Well, in terms of the commonality of it. Is this a commonly found weapon in society?

A Smith & Wesson is one of the major firearm manufacturers in the United States. They sell a lot of firearms. I can't give you an exact number. The Sigma series, which is -- is what part of, is their lower price point series. They've got the higher custom-end shops. So these are more prevalent than the higher-end firearms. And we see these commonly in the lab, in the firearms department.

Q Is it one of the more common firearms found on the street?

A Yes, sir, it is, but we encounter them quite often. I don't know if it's common on the street,

but we encounter them quite often.

Q So within your business, it's very common?

A I've seen quite a few of these, yes, sir.

Q Okay. Now, that particular weapon and as well as this 9mm are referred to as magazine fed, are they not?

A Yes, sir.

Q What is a magazine?

A For the Smith & Wesson Sigma, this is a detachable box magazine. What you do is you take the cartridges, you load them in here and they go all the way, you know, you can load one or you can load 14, which is the capacity of this magazine. You insert the magazine into the magazine weld and you'll hear it click, and then you can either hit the slide release or the slide latch or pull the slide back a little bit and let it go. And what that'll do is the slide will strip the top cartridge from the magazine and load into the chamber and the pistol's ready to fire.

Q That type of particular weapon, is it referred to in the category of single action, double action, automatic, semiautomatic? Can you describe it in those kind of terms?

A This is a semiautomatic double action only

pistol. And what that means is when you pull the trigger -- excuse me -- remember a second ago I said you put the magazine in the pistol and you let the slide go forward. When you pull the trigger, although the hammer is cocked, it's only partially cocked. Pulling the trigger completes the cocking cycle. And a full pull of the trigger releases the hammer, lets the hammer or the firing pin go forward striking the cartridge setting off the firing sequence and the slide will recoil and the firearm will be partially cocked again. You pull the trigger, complete the cocking mechanism and go that way. So it's double action meaning -- excuse me -- double action only, meaning you can't shoot it without pulling the trigger completely.

Q Okay. And will it fire as often as you can pull the trigger until the magazine is empty?

A Yes, sir. As fast as you can pull the trigger barring any type of malfunction, the pistol will fire as long as you have ammunition in the magazine.

Q Okay. And if that one would carry 14 in the magazine, is it also possible to put one in the chamber ahead of it?

A Yes, sir. You can put one in the magazine, load the magazine, let the slide go forward, which

-- the magazine, then load 14, so that you could -- with this magazine, you could fit 15 cartridges in this pistol.

Q So it's capable of up to 15 rounds firing?

A Yes, sir.

Q As fast as you can pull the trigger?

A Yes, sir.

Q All right. With regard to the other weapon that you examined that night -- day, excuse me, would you please examine the other box? And is there a magazine associated with that particular firearm?

A Yes, sir. This is also a detachable box magazine. The primary difference on these two pistols, other than caliber, is the magazine is not in the grip, it's forward of the trigger.

Q All right, sir. And that particular magazine, what is the capacity of that magazine?

A The manufacturer's specification is listed as a nominal or an approximate 20-round magazine. However, when I tested it, I was able to fit 21 cartridges into it.

Q Okay. So the magazine is capable of up to 21 in that particular magazine?

A Yes, sir.

Q Whereas another one might not be?

A Right. The other one may hold 20 or 19, depending on how tight the spring is.

Q And then it's -- is it also possible, as with the other firearm, to possibly place one in the chamber and add to the total amount of making it 22?

A Yes, sir.

Q Does that one also work in a semiautomatic or automatic fashion or single shot fashion? How does it work?

A This is a semiautomatic single action pistol, meaning that all you have to do is pull the trigger and the hammer falls or the striker goes forward. You don't complete the firing sequence or the cocking sequence by pulling the trigger.

Q Okay. And will that fire in a semiautomatic fashion as fast as you can pull the trigger?

A Yes, sir.

Q All right. Now, is -- just, from the standpoint of malfunction, just to give an expert's opinion, what does a stovepipe mean to you? Does that mean anything to you?

A When you hear stovepipe, that commonly means failure to extract or failure to feed. When the bolt comes forward under recoil, it strips the

cartridge off the magazine and for whatever reason, it doesn't go into the chamber, it'll do what they call stovepipe. It'll stick straight up. And it's just a design, not a design flaw, but a malfunction in the gun from when it takes something off the magazine, for whatever reason, it doesn't feed in the proper origination.

Q So, in that case, basically, would it be a situation where the round has been fired from the cartridge possibly and then the actual ejection process isn't completed in some way?

A You could have a stovepipe with an empty fired cartridge case or you could have a stovepipe with a unfired cartridge.

Q Thank you. Would you return that to the box, please, sir?

A (Witness complies.)

Q And, sir, as a final question, you issued a report with these conclusions then; is that correct?

A Yes, sir.

MR. YOUNG: I don't have any further questions. Would you please answer those the defense may have for you?

THE COURT: Cross-examination.

****

CROSS-EXAMINATION

BY MR. MADSEN:

Q Agent Green, and I think the report that the Solicitor asked you about, you had issued or dated it January 15th of 2013; is that correct?

A Hang on. Let me grab my copy.

Yes, sir.

Q And besides the items of evidence that the Solicitor asked you about, you received another firearm that I believe was identified as item two, correct?

A Yes, sir.

Q And that was a Smith & Wesson model SW40VE semiautomatic pistol, correct?

A Yes, sir.

Q And that's actually -- item number two is exactly the same make and model as item number 24 that was submitted to you?

A Yes, sir.

Q And you did the same type of test firing on that gun, didn't you?

A Yes, sir.

Q And, in fact, you indicated that items 10, 11 and 12, the cartridge casings had been fired by pistol number two?

A Yes, sir.

Q And I believe you indicated that item number nine was fired by the, I'm going to call it, the Tec-9, which I think is the piece of evidence, 16, in front of you?

A State's Exhibit 17 is the AA Arms, which is what --

Q State's 17, okay.

A -- people call it Tec-9 because they look similar.

Q It's not a Tec-9, though?

A No, sir.

Q Okay. Sorry.

A They're virtually identical.

Q And so you're also provided some slugs, are you not?

A Yes, sir, some bullets, yes.

Q And when we say bullets, what you're talking about is what's been fired out of the end. So that cartridge casing is left. The bullet is basically the projectile?

A Right. A cartridge is a complete unfired piece of ammunition. And once it's fired, you have what's called the cartridge case, which the primer which designates the gunpowder inside, and you've got a

bullet or a projectile that travels down the barrel once the cartridge is fired.

Q And item number seven was a fired bullet that you received?

A Yes, sir.

Q And then item number eight you list as two fired bullets, correct?

A Yes, sir.

Q And you've got in parentheses to note that item number eight came to you as bullet taken from kitchen of residence on the evidence submission forms, didn't you?

A Yes, sir.

Q But it's not a bullet; there were two bullets in there, weren't there?

A Correct.

Q So that had passed through a bunch of people's hands prior to getting to you. It's listed as one bullet, but when you find out -- or you put on there and say, hey, that's wrong, this is actually two bullets, and then you divide it up into 8.1 and 8.2, don't you?

A Yes, sir.

Q Additionally, when you receive item number two, you also put on your report in italics that, hey,

there's some unfired cartridges that weren't listed in the evidence submission form, but I found them in there also?

A Yes, sir.

Q So that's passed through a bunch of hands and you say, whup, that's a little bit different than what I received. There's something else in there, right?

A Right. Yes, sir.

Q And the same thing for item number 23, which is the 9mm?

A Yes, sir. There were some unfired cartridges there as well.

Q And that wasn't caught by anyone prior to you?

A If it -- as with all these, if it were, it was not noted, so yes, sir.

Q And so that's why you put it in there to say, hey, that's a little bit different?

A Right. I hadn't seen any indication, so I put it on there.

Q And the slugs that you test, you can't match them to any of the firearms that are submitted to you, can you?

A Correct. I looked at them versus each other and then I looked at each one of those versus tests

from the guns.

Q And you were negative on all of that, weren't you?

A On the two Smith & Wesson pistols. On the 9mm, it was negative. On the Smith & Wesson pistols, it was inconclusive, meaning it could have been -- or they could have been fired by this gun, the other gun or the combination of those guns or some other guns that weren't submitted with the same rifling specifications.

Q You just can't tell?

A Right. There's not enough markings for me there to say yes or no.

Q But your report had also indicated that they would be consistent with bullets located into some kind of .40 Smith & Wesson or a 10mm auto caliber cartridges?

A Yes, sir. They're basically -- the 10mm cartridge is the parent cartridge of the .40 Smith & Wesson caliber cartridge. So they use the same diameter bullets.

Q Just a different -- one's in, I guess, inches and the other one's millimeters, is that --

A The .40 Smith & Wessons actually -- well, the 10mm is in millimeters, but the .40 Smith & Wesson

actually determines -- is the measurement in inches of the diameter of the base of the bullet.

Q And you had mentioned also some gun type manufacturer. Smith & Wesson's a big gun manufacturer. Everyone's heard of that.

A Yes, sir.

Q There are other ones. Glock, I think, is a pretty large gun manufacturer?

A Yes, sir.

Q H&K, which is Heckler and --

A Heckler & Koch, yes, sir. They're primarily European, but you're starting to see more of them over here, yes, sir.

Q Hi-Point?

A Yes, sir.

Q Any other big -- handgun?

A Ruger.

Q Ruger?

A Taurus.

Q Taurus is a big one. So there are a bunch of different that make .40 caliber weapons also?

A Yes, sir.

Q And in your business, there's a pretty big difference, when you receive something and it says it's a slug, to you that means a fired bullet, does

it not?

A Yes, it does. It's not the correct terminology, but we've come to expect that's what people call it.

Q Well, and in fact, I think on the SLED evidence, it'll list fired bullets as slug, doesn't it?

A Well, slugs in terms of firearms identification is a term used for shotguns where you shoot slugs out of a shotgun. It's a big piece of lead or copper-coated lead to be shot out of a shotgun, but people do commonly describe incorrectly bullets as slugs.

Q And as far as the fired bullets that you received, none can be matched to either of those two weapons or item number two that you received, can they?

A The 9mm I can definitively say did not fire those bullets.

Q Because it's a different caliber?

A Well, different caliber, difficult rifling specifications. The bullets submitted had the same rifling specifications like those on State's Exhibit 16 and on SLED item two. They both had the same number of lands and grooves, which is the rifling.

They both had the same dimension, land and groves.

When a firearm company, Glock, HK, Hi-Point, Smith & Wesson, all the ones we just spoke about design a firearm, they design it with certain class characteristics. They say, we're going to make a .40 Smith & Wesson caliber pistol. We want it to have five lands and grooves with a right-hand twist, and then we want the lands and grooves, which is the rifling in the barrel, to have a certain measurement.

The bullets submitted have the same measurements as State's Exhibit 16 and the other gun. That's not saying they were fired by those guns. They're just saying the rifling specifications were similar.

Q And that's because they're the same make and model?

A Yes, sir.

Q And if I understand correctly, if I'm going to use a gun, generally in this -- do you have to have the magazine to actually fire it?

A That pistol, no, sir. As long as there's a cartridge in the chamber, that pistol will fire without a magazine.

Q But to get the cartridge in the chamber, I

guess I would have to load the magazine first, right?

A Not necessarily, no, sir. You could always drop one in the chamber and let the slide close forward. As long as the ejector snaps over the rim, it'll fire.

Q But you can load into here --

A Yes.

Q -- and then you would place it into the bottom down here --

A Yes, sir.

Q -- and push that up and in. And then I guess they kind of call, I don't know if there's a scientific term, but they rack it back or, in other words, pull this back?

A Yeah.

Q Were you -- let me show you what's been marked as Defense Exhibit Number 1 and Number 2. Were you given any unfired bullets in packaging such as that?

A Let me check my notes, but I don't believe so. No, sir.

Q If you did, you would generally -- I mean, protocol would dictate that you have that in your report, wouldn't it?

A Yes, sir. It'd be like -- I think, that was a

Federal brand. It'd be like one Federal brand nominal 50-round capacity ammunition box containing however many unfired cartridges are in there.

MR. MADSEN: That's all the questions I have.

THE COURT: Is there redirect?

MR. YOUNG: Your Honor, the State has no further questions.

THE COURT: Any objection to releasing the witness?

MR. YOUNG: No, sir. Thank you.

THE COURT: Hearing none, sir, you are free to leave. You're not required to leave, but you're free to go.

THE WITNESS: Thank you, sir.

THE COURT: Please call your next witness.

MR. YOUNG: Thank you, Your Honor. The State calls Courtney Smith.

THE COURT: Please come forward and take the oath of a witness.

COURTNEY SMITH,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Ma'am, would you give us your complete name and tell us where you currently work?

A Courtney Smith. I currently work in Charleston, South Carolina, at the Kiawah Island Golf Resort.

Q And have you ever worked for a law enforcement agency?

A Yes.

Q Who have you worked for, ma'am?

A The South Carolina Law Enforcement Division, commonly known as SLED.

Q Were you employed in that agency as recently as this year?

A Yes.

Q When did you depart?

A September the 27th, 2013.

Q And, ma'am, when you departed, what was your job?

A I was a forensic technician in the evidence control department.

Q Did you hold any other position while you were there?

A No.

Q Okay. And, ma'am, are you familiar with the process of which these documented cases are brought in and then evidence is received? Is that part of what you have to know how to do?

A Yes.

Q All right. Did you -- are you familiar with a case numbered L12-04591?

A Yes.

Q Okay. And, ma'am, in connection with that, did you receive any evidence with that case number while you were there at SLED?

A Yes.

Q From whom did you receive such evidence?

A I received item number 35 from Marion Wilson of the Saluda County Sheriff's Office.

Q Okay. And when did you receive that?

A July 2nd, 2013, at 1:31 p.m.

Q And, ma'am, did that particular item of evidence, did it bear any description at the time you received it as to what it was?

A Yes. It was a buccal swab described as swabs obtained from Gerald Rudell Williams.

Q Ma'am, would you be able to recognize the container in which that might have been located if you saw it again?

A Sure.

Q All right. I'm going to hand you what has been admitted as State's Exhibit Number 34. Would you please examine that and tell me if you recognize it?

A I can recognize this by the lab number that's placed on the front of the bag.

Q What is that?

A It appears to be item number 35.

Q Okay. Is that the item number 35 that you received?

A Yes. Per my chain of custody, item number 35 is the item that I received for L12-4591.

Q Could you hand it back to me for a moment, please, ma'am?

A (Witness complies.)

Q Now, when this item is received at SLED, what actions are taken at your station in order to turn it in?

A First, we make sure that the evidence does not appear to be tampered with, and then I would place that evidence into that heat-sealed bag. I would seal it and have the submitting officer initial and date the heat seal at the top and fill out the front of the bag.

Q Does this particular item, State's Exhibit Number 34 and your item, I believe, 35, does that particular item bear those markings?

A I'm sorry? I couldn't hear you.

Q Does it bear those markings?

A Yes, it does.

Q Did he place those markings on it in your presence?

A Yes.

Q Ma'am, when you received that item, was it in the sealed container that it's currently in?

A Yes, it was.

Q All right. Did you make any change in that container in any way whatsoever?

A No, I did not.

Q And other than to place it inside another sealed envelope?

A I just placed this inside this bag and sealed it.

Q And sealed it. And that's the only change you made to that?

A Correct.

Q And then made a recording of that at that time?

A Yes.

Q And what action did you take after you received that?

A After I received this, I then logged the information into the computer system, and then I would have taken this and placed it on DNA intake shelf 72.

Q And why is there such a shelf?

A Our shelves are in our secure evidence room and it's just where we file all the evidence until it's ready to be picked up by the analyst.

Q Okay. All right, ma'am, do you have any record as to who may have retrieved it from that shelf at a subsequent time?

A Per my chain of custody, it would have been forensic technician, Patricia Crooks.

Q And when did she retrieve it?

A She retrieved it on July 9th, 2013, at 2:22 p.m.

Q And that was the last entry before it went to the person for testing?

A Yes.

MR. YOUNG: Okay. Would you please answer any questions the defense may have for you?

MR. MADSEN: No questions.

THE COURT: All right. Ma'am, then you are free to leave, you're not required to go, but you're free to go, if you wish.

THE WITNESS: Thank you very much.

THE COURT: Please call your next witness.

MR. YOUNG: Thank you, Your Honor. The State calls Amanda Webb.

THE COURT: Please come forward, take the oath of a witness.

AMANDA WEBB,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Ms. Webb, if you'll give us your full and complete name and tell us where you work and what you do for a living.

A My name is Amanda Webb. And I work with the South Carolina Law Enforcement Division in the DNA department and I work criminal cases that involve DNA testing.

Q Yes, ma'am. So what do you really do as a person who does the DNA testing?

A Any time there's a crime committed where they would like to try to find -- to identify a person who might have been at the crime scene, they will collect evidence items, and I can develop a DNA profile from the evidence items. And then I also get submitted known standards and that's DNA collected from a known individual. And so if a DNA profile is developed from an evidence item, I can compare that to the DNA from a known person to see if they might have perhaps left some DNA behind at

the crime scene.

Q Yes, ma'am. Now, are you familiar -- are you familiar with the process of becoming a DNA expert, so to speak, from the personal standpoint of having gone through all of the process of becoming a DNA expert?

A Yes, I have.

Q All right. And how did you come to be one?

A Well, I have a Bachelor's of Science degree in forensic chemistry and I also have a Master's of Science in forensic science. And after completing those degrees, I was hired on at SLED, and I was trained for about a year and a half. And I had to take many tests, written, practical, laboratory tests. I take tests annually from an outside laboratory that sends items that I have to correctly get the answer on. And, also, my work is reviewed by two other analysts before a report ever goes out.

Q Yes, ma'am. And so in connection with that, have you ever been qualified as an expert in the past to testify about DNA analysis?

A Yes, I have.

Q Do you have any expertise also in statistical analysis associated with that?

A Yes, I do.

Q All right. And how many times have you been qualified as an expert?

A About 20.

Q All right. And are those in courts in South Carolina?

A Yes, they all are.

MR. YOUNG: Your Honor, we would submit Ms. Amanda Webb as a qualified expert in DNA testing and statistical analysis associated with it.

THE COURT: Are there questions for the witness on expertise?

MR. MADSEN: There are no questions and no objection.

THE COURT: Very good. The witness is so admitted. You may proceed.

MR. YOUNG: Thank you, Your Honor.

BY MR. YOUNG:

Q Ms. Webb, based upon your job and what you do, did you receive, at some point, lab entries associated with lab number L12-04591?

A Yes, I did.

Q All right. How many such lab entries did you receive?

A I received eight.

Q Okay. In connection with specific items, and I

will refer to 26 -- 25.1, 26.1 and 35, did you receive those entries as part of that?

A Yes, I did.

Q Those three entries that you received, were they accompanied by a specific buccal swab submitted by M. Scott Wilson as item 35?

A Yes, there was.

Q All right. Would you be able to examine State's Exhibit Number 34 and tell me if you recognize that?

A Yes. State's Exhibit Number 34 is my item number 35 and that is a buccal swab or a DNA standard that I know is -- was collected from Gerald Williams.

Q All right. Now, Mr. Williams' standard was submitted to you how? How did you get that?

A After it was submitted to the laboratory and placed on the DNA intake shelf, I then requested that item when I was ready for my analysis. And I requested it from log-in technician, Patricia Crooks, and she got the buccal swab from the shelf. And I went to the log-in area, and she transferred it to my custody so I could perform my analysis.

Q What date did that occur on?

A That was July 9th of this year.

Q And how did it get to Ms. Crooks? Are you aware of that?

A Yes, I am. When it was submitted to the laboratory, it was received by the evidence log-in technician, Courtney Smith, on July 2nd. And then she placed it on the DNA shelf the same day.

Q Yes, ma'am. All right. Now, that particular item of evidence when you received it, you're going to then start your analysis?

A Yes, that's correct.

Q All right. You have to have something to compare it to, correct?

A Yes, that's right.

Q Now, did you also receive for comparison State's Exhibits 35 and 36, which I believe will be reflected in your SLED lab entries as 25.1 and 26.1? Would you examine those and tell me if you received those?

A Yes. State's Exhibit 35 is my item number 26.1. That's swabs from purple latex glove pieces. And State's Exhibit 36 is my item 25.1, and that is also swabs from purple latex glove pieces.

Q Thank you. Now, Your Honor -- excuse me -- ma'am, with regard to State's -- excuse me -- item 25.1, and I'll refer to your exhibit number -- your

item number is 25.1 and 26.1, how were those created to your knowledge and how did they get to you?

A Those were created by latent print analyst, Tom Darnell, and those were created on August 27th, 2012. And then those were transferred to -- he transferred those to latent evidence return holding so it could be returned to log-in. And then the latent print crime scene assistant, Lesa Chapman, removed those from the return holding and took them to the evidence log-in -- the evidence control room where evidence technician, Nikki Hughes, placed them on the DNA intake shelf because there was a DNA assignment.

Q Okay, ma'am. And what days did that occur on with regard to the actions of Lesa Chapman and -- through the DNA intake shelf, what day did that happen on?

A Lesa Chapman removed them from the latent evidence holding August 31st of 2012, and she transferred those to evidence log-in technician, Nikki Hughes, on August 31st, 2012. And evidence technician, Nikki Hughes, placed them on the DNA intake shelf August 31st of 2012. And then when I needed to get the items for analysis, I contacted evidence technician, Patricia Crooks, and she

removed the items from the DNA intake shelf on May of -- 22nd, this year, and transferred these items to my custody May 22nd, this year.

Q Okay. So, now, you have in your possession those three items that are now before you, State's Exhibit 36 and 35 and State's Exhibit Number 34. You have those three items for DNA comparison; is that correct?

A Yes, that's correct.

Q And did you make a comparative effort with regard to those items?

A Yes, I did.

Q Would you just briefly tell this jury what do you do to make that happen?

A Sure. Once I get an item of evidence with a DNA request, I try to remove the DNA from the item. In this case, it was swabs. So you cut the tip of the cotton swab, put it in the tube with some reagent solution to extract the DNA off of the swab, and then you see how much DNA you have to work with. And then the final step is to try to develop a profile, and I was able to do so in this instance.

Q Okay. If I could, please, just go back a couple steps first. Now, from the time you received those items -- at the time you received those items,

were they still in the sealed containers?

A Yes, they were.

Q All right. If they had not been in the sealed containers, would you have performed any form of analysis?

A No, I would not have. I would have halted on any analysis, and I would have made a phone call to the person who had them before me to try to see why it wasn't sealed.

Q But you took no such action?

A That's correct.

Q All right. At that time, then when you began your analysis, you received these from sealed containers and then began your analysis?

A Yes, that's correct.

Q All right. And you develop this profile. Can you tell the Court, the jury, for the purposes of just simple understanding, what DNA really is? What is that?

A Sure. Sure. DNA is, it's really a chemical found in the cells of your body. In this instance, I was looking for the DNA in skin cells since it was gloves that was being tested. When you wear an item such as gloves, your skin cells will shed off and be donated to the item. So I was testing for skin

cells in this instance. And DNA has the benefit of identifying an individual. Other than identical twins, everyone has a unique DNA profile. So if you can get a DNA profile, it can identify a person.

Q Okay. Now, this unique part of the DNA profile that you developed, did you do comparisons as to that unique profile against these items?

A Yes, I did.

Q Were you able to identify any matches between the items submitted as a known standard from Gerald Williams as opposed to the other two items which came from those gloves?

A Yes, sir, I was.

Q And what were you able to determine?

A The DNA profile from 25.1, which was swabs from the pieces of the purple latex glove, matched the DNA profile of Gerald Williams. And then we perform a statistical calculation to sort of help give weight to any evidence. And my statistic in this case is the probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in 14 quadrillion.

And to put that in perspective of quadrillion, it goes million, billion, trillion and then quadrillion. And, essentially, what that means is

it's just how rare a profile is in the population. It means that in order for someone to have DNA that would be the same as what was found on the swabs from the gloves picking someone from a population, it would have -- in order to find someone who could match, it would be out of 14 quadrillion people. So, to me, that means it's a pretty rare profile.

Q And which specific sample was this that you referred to as one in 14 quadrillion?

A 25.1.

Q 25.1?

A Uh-huh.

Q That would be State's Exhibit 36?

A State's Exhibit 36.

Q Okay. And did you develop a profile with regard to the other item?

A I'm sorry? From the other --

Q Did you develop a profile with regard to the other item?

A Yes, I did. 26.1, the swab from purple latex glove pieces, yes, that also matched the DNA profile of Gerald Williams.

Q Thank you, ma'am. Now, I think people have a -- I'm really still trying to wrap my hands and arms around the idea of quadrillion. How many people are

on the earth?

A Approximately seven billion.

Q And this is 14 quadrillion?

A Quadrillion, yes.

MR. YOUNG: Thank you, ma'am. No further questions.

THE COURT: And is there cross-examination?

MR. MADSEN: Yes, Your Honor.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. MADSEN:

Q Now, you're going to have to help me with all of the ins and the outs there. But you do these -- you do a little chart that you did in your report, like that right there, correct?

A Yes.

Q And there's 13 different areas. What are those called?

A Loci or locations.

Q And then the numbers inside them are the alleles; am I saying that correct?

A Yes, that's correct.

Q So each of us have 13 different loci and then within those loci, we'll have two different alleles; is that correct?

A There's a possibility of up to two for an individual. You could have one.

Q In other words, I guess what you're saying is, say, with Gerald Williams at THO1, his alleles would be a nine and a ten, correct?

A Yes, that's correct.

Q Of course, you have under D16S539, you just have a nine there, but that actually means he would be a nine, nine there?

A Yes, that's correct.

Q And those allele would mean that you're getting one of those from your father and one of those from your mother?

A Yes, that's correct.

Q And so besides the evidence that the Solicitor talked to you about, you analyzed some other items of DNA as compared to the buccal swab that you received from Gerald Williams, correct?

A Yes, I did.

Q And besides the buccal swab from Gerald Williams, you weren't given any buccal swab from an O.J. Charley or an Al Jerome Young, were you?

A No, I wasn't. I only received a buccal swab from Gerald Williams.

Q And one of the swabs that you got, which was

23.1 was a swab from grip of 9mm pistol, correct?

A Yes, that's correct.

Q And you developed a profile from that and you were able to exclude and say, Gerald Williams is not a contributor to the grip of the 9mm pistol, correct?

A Yes, that's correct.

Q There's DNA on there; it's not his DNA?

A Right.

Q Then on what was listed, you also test 23.2, which was the swab from the trigger of the 9mm pistol?

A Yes, I did.

Q And there's no DNA profile on there?

A Correct. There was no DNA found, meaning there might not have been DNA on it or there just wasn't enough DNA to tell anything about it.

Q And when someone's collecting DNA -- well, when someone tries to do that, how they collect it and handle it and process it and get it to you, that can be very important, can't it?

A Yes, it can.

Q Because you're doing, I guess what you said, it's called touch DNA?

A Yes.

Q You can get DNA from my blood?

A Yes.

Q From my saliva, from my ocular, from any of the fluids that I have, correct, my perspiration?

A Yes, that's correct.

Q But you were doing touch DNA here?

A Yes.

Q Which you said I guess -- I say skin cells sloughing off; you say they're --

A Shedding, sloughing, yes.

Q -- shedding. We're all shedding as we're walking around here?

A Yes.

Q And then next you get swabs from the grip, which is 24.1 of the .40 caliber -- of a .40 caliber pistol, correct?

A Yes, that's correct.

Q And then you also do it for, I guess, 27.1, which were swabs from blue latex gloves?

A Yes, that's correct.

Q And you indicate in there that you can't include or exclude Gerald Williams on either of those?

A Yes, that's correct. There just wasn't enough DNA on those items to really make a clear decision

one way or another if Gerald Williams' DNA was there.

Q And so if we go down -- if you look at your chart there, I guess, is it table one?

A Yes.

Q You look at table one there, you've got at the first identifier, which is D8S1179, Gerald Williams at that location is a 14, 14?

A Yes.

Q He got a 14 from his mother and he got a 14 from his father at that location?

A Yes.

Q But the grip of that, the 24.1, that's a 13 there and there's a 14 there?

A Yes, that's correct.

Q No way Gerald's giving that 13 over?

A No. The 13 wouldn't have come from Gerald.

Q And then if you go a little bit farther and you look at D3S1358, Gerald at that location would be a 16, 16?

A Yes.

Q And at that location, there's a 15?

A Yes, that's correct.

Q And so Gerald's not giving that part of any DNA to that grip there?

A No. He wouldn't be donating the 15.

Q And then if you go to D19S433, there's a 13, 14 on the grip. He would be a 13, 13. No way in the world that that 14 comes from him?

A Not the 14, no.

Q And then you also have 24.2. And so let me ask you a quick question: That 24.2, that basically means that that's some DNA that is given to you, I guess, on some type of cotton ball or something like that, but ultimately that's coming from item number 24?

A Yes, that's correct. When you -- this was swabbed with a cotton swab, and it was item 24 that was swabbed, which was a .40 caliber pistol, and so that's what it was coming from.

Q And that would be this here if that's item number 24?

A Yes, that's correct.

Q So that's a swab from that gun's grip?

A 24.2, I think it's the trigger, a swab from the trigger.

Q Excuse me, I misspoke. That is the swab from the trigger of that gun?

A Yes.

Q And Gerald Williams, that is not his DNA on

that trigger. He is excluded as a contributor, correct?

A That's correct, Gerald Williams was excluded.

Q So that's someone else's DNA on that trigger?

A Yes.

Q And his DNA is the only standard that was submitted to you?

A Yes, that is correct.

Q And whenever you are submitted items that have potential DNA on them, you, as a DNA expert, you can't tell if it's been on there an hour, a day, a month, a year or any point in time how that's deposited on there?

A That's correct. Unfortunately, you can't tell when a DNA was deposited on an item. There's no time stamp on DNA.

Q And you issued your report on September 20th of 2013, correct?

A Yes, I did.

MR. MADSEN: That's all the questions I have.

THE COURT: Redirect.

MR. YOUNG: The State has no further questions.

THE COURT: All right. Then, ma'am, you're free to leave. You're not required to leave, but you may if you wish. Have a good day.

550

THE WITNESS: Thank you, Your Honor.

THE COURT: Please call your next witness.

MR. MAYE: May it please the Court, Your Honor. The State rests at this time.

THE COURT: The State rests at this time.

All right. Then, ladies and gentlemen, what we will do is we'll take our afternoon break at this time. The Court will have certain matters we'll need to take up at the end of the State's case, so our break may be a little bit extended, probably about 20 minutes. If you wish to go outside, we'll give you that opportunity. And we'll remain where we are while you depart the courtroom.

(The jury retires to the jury room.)

THE COURT: All right. Ladies and gentlemen, we're going to stand down, take about a five-minute break. Court's in recess.

(Brief Recess.)

THE COURT: Are we ready, Mr. Maye?

MR. MAYE: The State's ready, Your Honor. Thank you.

THE COURT: All right. Let's begin by taking any motions that the defense may have here at the close of the State's case. Well, first of all, is there anything further with regard to the State's

551

case?

MR. MAYE: Nothing from the State, Your Honor. Thank you.

THE COURT: All right. And now from defense, are there motions or issues --

MR. CASTO: Yes, sir, Your Honor, there are. At this time, we'd like to renew all prior motions and objections made both pretrial and during the trial of this case. Specifically, Your Honor, at this time, when the evidence is viewed in a light most favorable to the State, we state that they have not carried their burden. They've fallen short. And, at this time, we move for a directed verdict, Your Honor.

Specifically, Your Honor, this is a case where there are -- is an awful lot of physical evidence. There has been no statement made by my client about anything, any knowledge or anything in his regard as to what was going on whatsoever. The evidence presented basically raised -- raises an inference of guilt in this case, one that would not survive this -- in this case, Your Honor, and basically one where the State has failed to meet their burden, Your Honor. So, at this time, we respectfully move for a directed verdict because the State has not met

552

their burden.

THE COURT: All right. Let me just briefly hear from the State as to what response you would have. Go ahead.

MR. MAYE: Your Honor, we would very respectfully submit that there is a wealth of both circumstantial and direct evidence that would create jury issues. Taking this in the light most favorable to the State, we certainly would submit that there's some evidence to go forward and would ask that the Court allow this to go to the jury.

THE COURT: All right. Mr. Casto, I'm going to respectfully deny your motion for the following reasons: First of all, it's not for the State to weigh the evidence. The State is not the judge of the facts; the jury will do that.

The question for the State -- the Court at this juncture is, is there evidence in this record properly admitted tending to prove the guilt of the accused? And I find that there is, specifically. There is -- there was -- there were weapons found after a shooting, gloves found with those weapons, your client's DNA on those gloves, those weapons fired rounds into the house, trailer house, in question. That's sufficient, in this Court's view,

553

to create a jury issue and that evidence appropriately admitted.

I'm going to respectfully deny, again, the previous motions you've made to suppress evidence, as well as to dismiss the indictments. And, finally, further deny your motion here at the end of this State's evidence to direct a verdict in the defendant's favor.

Now, is there anything further with regard to post-State's case motions at this juncture?

MR. CASTO: Not at this time, Your Honor.

THE COURT: All right. Let me speak with your client then, if I may.

MR. CASTO: Yes, sir.

THE COURT: And, Mr. Williams, I'd ask you to stand, if you would please. And would you accept the oath of a witness from our clerk?

GERALD RUDELL WILLIAMS,

having been duly sworn, testified as follows:

THE COURT: And just -- you can put your hand down now.

Let me turn to the State just one moment and ask one question: Without telling me what there are, do you believe there are convictions in the defendant's past that would be admissible if he took

554

the trial -- excuse me -- if he took the stand in the trial, Mr. Maye?

(Pause.)

MR. MAYE: I'm checking his record, Your Honor. I apologize for not doing so prior to this time.

THE COURT: Thank you.

MR. MAYE: Your Honor, within the ten years, he has, it looks like, three convictions for petit larceny, like magistrate court which would involve -- it's two convictions of petit larceny in 2005, Your Honor, that would be crimes involving dishonesty; breaking into a motor vehicle, Your Honor, in '05 --

THE COURT: That's sufficient. You've answered my question.

MR. MAYE: Yes, sir, Your Honor. And there are a few other things as we're coming forward.

THE COURT: Thank you. I really wasn't focused on what the charges are, just simply if you believe there are convictions.

So, Mr. Williams, have you had ample time to talk with your lawyers concerning your rights at this point in the trial to either testify or remain silent?

DEFENDANT: Yes, sir.

555

THE COURT: All right, sir. And, of course, you've been in the courtroom, so you realize now the State has rested, which means that we turn to the defendant, if you wish to put up a case or to contest these charges; and do you understand that?

DEFENDANT: Yes, sir.

THE COURT: All right, sir. And in the course of your -- you and your attorneys offering a case in defense, you have the right to testify; and do you understand that, sir?

DEFENDANT: Yes, sir, I do.

THE COURT: And if you take the stand and testify, which of course is your right, are you aware that that would be under oath, it would be in the presence of the jury and you would be subject not only to direct examination by your own lawyer, but then cross-examination by the State?

DEFENDANT: Yes, sir.

THE COURT: All right, sir. And, furthermore, if you have some convictions in your past that may be admissible, those convictions may come in on the question of whether you are a credible and believable witness, not whether you committed this crime for which you're charged; and do you understand that, sir?

556

DEFENDANT: Yes, sir.

THE COURT: Now, is what I just told you about your right to testify, the same thing that your lawyers told you about your right to testify?

DEFENDANT: Yes, sir.

THE COURT: All right, sir. And do you have any questions about your right to testify as I've explained it?

DEFENDANT: No.

THE COURT: All right, sir. Now, by the same token, you have the right to remain silent, which is your constitutional right as well. And if you invoke your right to remain silent, I will tell the jury that you have no burden of proof here and they should not even consider the fact that you remain silent in their deliberations because it is your right to remain silent; and do you understand that, sir?

DEFENDANT: Yes, I do.

THE COURT: And is that, what I've just told you, is that the same thing your lawyers have told you about your right to remain silent?

DEFENDANT: Yes, sir.

THE COURT: And have you fully understood what I've explained to you about your right to remain

557

silent?

DEFENDANT: Yes, I have.

THE COURT: All right. Now, let me ask counsel standing with you, Mr. Casto, is there anything further you would have me explain to Mr. Williams about his right to testify or his right to remain silent?

MR. CASTO: No, sir, Your Honor.

THE COURT: All right. Is there anything further the State would have me take up with Mr. Williams about his right to remain silent or his right to testify?

MR. MAYE: Nothing from the State, Your Honor.

THE COURT: Very good.

Mr. Williams, have you made a determination of whether or not you intend to testify?

DEFENDANT: I would like to remain silent.

THE COURT: All right, sir. And let me ask then, having made that decision, have you -- has this been your decision or someone else's?

DEFENDANT: It's been my decision, Your Honor.

THE COURT: All right. Has anyone tried to force you to do this?

DEFENDANT: No, sir, Your Honor.

THE COURT: So you're telling me this is a

558

decision that you, yourself, have made at this point in the trial?

DEFENDANT: Yes, I have.

THE COURT: All right. Very good. Thank you, sir. You may be seated.

And, Mr. Casto, let me ask, will defense be calling witnesses?

MR. CASTO: Yes, Your Honor.

THE COURT: Okay. Are you ready to proceed?

MR. CASTO: We are with our first witness. The other witness, we've requested him be brought from the jail.

THE COURT: All right. And I assume is he on the way?

OFFICER: Your Honor, I've made that request to the jail. We're having some manpower issues with transportation, but he should be here shortly.

THE COURT: All right. Well, it would be our hope that we could complete the testimony this afternoon based on the fact that you have what seems to me to be two witnesses.

MR. CASTO: That's correct, Your Honor.

THE COURT: All right. So let's -- we'll wait on that transport. And this person in custody knowingly thus will not have to be dressed in

559

civilian clothes for presentation to the jury; am I correct?

MR. CASTO: That's correct, Your Honor.

THE COURT: All right. Then let's go ahead and bring in the jury.

MR. CASTO: Your Honor, I'm sorry, if I may, since the jury's out, it might be a fitting time to speak to something else so we wouldn't have to stop when that person is transported here. It's my understanding that the person that will testify for us does have criminal history, and we'd like to just place on the record certain convictions that may or may not be asked about and perhaps for some clarification with the jury out now so we wouldn't have to stop.

THE COURT: All right. Well, have you discussed that with the State?

MR. CASTO: I have not.

THE COURT: Well, then I'll let --

MR. CASTO: I beg the Court's indulgence.

THE COURT: I'll let you do that first. Thank you.

(Pause.)

THE COURT: Have we resolved this issue, Mr. Casto?

560

MR. CASTO: I believe we have. There are some matters that we need to take up to which we cannot agree, but the bulk, yes.

There are a couple drug convictions. Let's see, the defendant, O.J. Charley, has a 2004 PWID marijuana. The defense's position -- and a 2011 public -- PWID conviction as well, Your Honor. We submit that both of those are subject to Rule 609 where they carry more than a year, but we'd submit that a balancing test must be determined by the Court. And we would submit that those aren't probative for truthfulness and they should not be asked about, Your Honor.

THE COURT: All right. Well, help me test -- I have no knowledge -- how many charges are there and what is it that you agree can come in?

MR. CASTO: We agree to the -- Mr. Charley's pled in June 11th, 2012, to attempted murder, Your Honor, and the 2005 -- I'm sorry -- the 2005 false information to law -- or to police, that comes in as well.

THE COURT: And you say, your position is 2004 and 2011 PWID charges should not be admitted?

MR. CASTO: And as well a 2005 aiding and escape, that should not be admitted.

561

THE COURT: All right. Do you want to be heard on those, Mr. Maye?

MR. MAYE: Briefly, Your Honor. We would maintain that the two counts of PWID marijuana should be admitted, respectfully. Certainly, the giving false information charge in '05, we would maintain that the aiding the escape of prisoners from custody of law enforcement should be admitted, and the 2012 attempted murder. I'll leave it to the Court's discretion on the balancing test issues or anything the Court thinks is appropriate.

THE COURT: All right. Very good. Thank you.

We'll just take that matter up and let me consider it, we'll take it up -- I will advise you here in a bench conference right before the witness testifies, all right?

MR. CASTO: Yes, sir, Your Honor. And I've also been advised that he should be here within 15 minutes.

THE COURT: All right. Very good. Are you ready to call your first witness?

MR. CASTO: Yes, sir, Your Honor.

THE COURT: All right. Please bring in the jury.

(The jury returns to the courtroom.)

THE COURT: All right. Welcome back, ladies and gentlemen. You will recall at the end of our first afternoon session, the State has rested. We're now ready to move forward to the defendant's case. The defendant informs me they will call witnesses.

So, Mr. Casto, please call your first witness.

MR. CASTO: Your Honor, we'd call Hue Tang to the stand.

THE COURT: Please come forward and take the oath of a witness, sir.

HUE TANG,

having been duly sworn, testified as follows:

THE COURT: You may proceed.

MR. CASTO: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. CASTO:

Q Hi. How are you, sir?

A Good. How are you?

Q Just fine. Would you spell your first name and your last name for the court reporter?

A First name spelled H-u-e. Last name T-a-n-g.

Q And your first name is pronounced "way"?

A That's correct.

Q Mr. Tang, where do you work?

A I'm employed by South Carolina Law Enforcement Division.

Q And did you have the chance to come across some evidence of gloves in this case?

A Yes, sir, I have.

Q All right. And what is the testing that you did on those gloves, what is it called?

A Fracture match.

Q All right. And, basically, would you describe to me what exactly fracture matching really is?

A Fracture match is to phys -- fitting the two piece of evidence together to establish if, at one time, there was one single unit.

Q Okay. And do you -- what tools do you use to consider that?

A I do obviously a visual examination and microscopic testing.

Q Okay. And you had a chance to review the evidence in this case, correct?

A Yes, sir.

Q And you had the chance to look at, I believe, item 25?

A Item 25, 26, 27 compared to item 28.

Q And what you tried to do was take these pieces and piece them together; is that correct?

A Yes, sir, general.

Q And were you able to do that in this case?

A No, sir, because --

MR. MAYE: Your Honor, at this point in time, I just ask if they're going to offer opinion testimony, if they'll qualify him as an expert. I'll be happy to stipulate to his qualifications as an expert if they're going to offer him in the form of opinion testimony.

THE COURT: Sustained.

MR. CASTO: We can do that.

BY MR. CASTO:

Q Mr. Tang, let's back up a little bit and talk about your qualifications, okay?

A Yes, sir.

Q Where did you go to school?

A I received a Bachelor of Science, major chemistry from the University of South Carolina.

Q Okay. And then did you take any course work after that?

A I take advanced courses from the University of South Carolina and I received additional training --

MR. MAYE: Your Honor, I hate to interrupt him, but I can speed this up. If they're going to offer him as an expert, I'll stipulate to his

qualifications if they'll just tell me what they're going to offer him as an expert in.

THE COURT: All right. What will be the area of expertise, Counsel?

MR. CASTO: Forensic matching, Your Honor -- I'm sorry -- fracture match identification.

MR. MAYE: Agent Tang is well-qualified. I'll absolutely stipulate to his qualification as an expert.

THE COURT: All right. So qualified. You may proceed then, Counsel. Thank you.

BY MR. CASTO:

Q And you had the chance to review the evidence in this case, right?

A That's correct.

Q And did you take these pieces of this glove and try to match them up?

A Yes, sir. I attempt to fracture match this glove from item 25, 26 to number 28.

Q And did you just do it visually?

A Perform visually and there were missing pieces that able to establish the connection of the item number 25, 26 to number 28.

Q Okay. And you're saying that -- were you able to piece these gloves together?

A No, sir. As I state, there were missing pieces for us -- for me to establish the connection of the item 25, 26 to 28.

Q And that's exactly what you stated in your report; isn't that right?

A That's correct.

Q And final question, you issued that report September 21st, 2012; is that right?

A That's correct.

MR. CASTO: No further questions.

MR. MAYE: Just briefly.

CROSS-EXAMINATION

BY MR. MAYE:

Q Agent Tang, let me see if I can get this straight. Basically, if I took this piece of paper and tore it in half --

A Yes, sir.

Q -- and gave you each half of it, if you had both halves of this, you could go down here and you could basically look at it, either through a microscope or whatever technique you would use, and you could tell me that those parting lines match up and this is the bottom piece of this paper and this is the top piece of this paper?

A That's correct.

Q Right? But if I tore this part out and you only had this much, you really can't tell me anything about the parting line? Say, I took this and I threw it away somewhere else or it fell off somewhere else --

A That's correct.

Q -- you just can't make a match, can you?

A That's correct.

Q And with those two pieces of gloves, if you'd have actually had every bit of what was there originally, you could have matched the parting lines up, right?

A That's correct.

Q Okay. But, for example, if you've just got the thumb and the forefinger of the glove, just a little bit of it here, and, for example, if somebody tore off this portion of it and threw some of it down, if any of the rest of it fell off at any other point in time, you just couldn't make a match, could you?

A That's correct.

Q And, in this case, that's exactly what you've got. You just don't have enough of a glove to make a match, right?

A That's correct.

Q Okay. So there's absolutely nothing in your

report that would indicate that the portions of that purple glove that we found out there, say, with the guns, don't match the pieces that we got off his fingers at the jail? I mean, you can't say anything one way or another about that because you don't have enough of the glove, right?

A That's correct.

Q And, for example, whatever that we found in the van there, you can't do any matching as to any other pieces because you just don't have all of it there, right?

A That's correct.

Q Okay. So, very respectfully, it just doesn't tell us anything one way or another because we don't have enough of the glove, do we?

A That's right. I'm unable to perform the examination.

MR. MAYE: Okay. Thank you. Nice to see you.

THE COURT: And now is there redirect?

MR. CASTO: Briefly.

REDIRECT EXAMINATION

BY MR. CASTO:

Q We understand what the Solicitor's saying, but the pieces you tried to match up could be from multiple different gloves, correct?

A I'm not quite understanding the question.

Q In other words, he took a piece of paper, just one sheet of paper, but your task was to match up a bunch of different gloves and pieces, correct?

A From two gloves, 25, 26 to 28.

Q Okay. And you weren't able to do that?

A That's right.

MR. CASTO: Thank you.

THE COURT: All right, sir. Then you may step down and you're free to leave.

THE WITNESS: Thank you.

THE COURT: Thank you, sir.

And has your other witness arrived, Counsel?

MR. CASTO: I beg the Court's indulgence.

(Pause.)

OFFICER: He's here, Your Honor.

THE COURT: All right. Step up just a moment, please.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, we have one matter we need to take up as a matter of law outside your presence. I'm advised, just for your own personal scheduling in your minds, this is

570

the last defense witness. We believe there will be no further witnesses for the defense. I'm not aware of any reply witnesses from the State. So it's most likely that if we take our next witness, we're going to stop for the day, come back and argue and charge in the morning and then the case given to you at some point tomorrow morning for deliberation. I just tell you that for your information.

But if you'll give us a moment wile we resolve one issue, we'll let you return to the jury room, have an extra break and we'll send for you in just a moment. Thank you.

(The jury retires to the jury room.)

MR. YOUNG: Your Honor, you don't want the co-defendant in the courtroom yet?

THE COURT: No. We'll just leave him out for a moment while we take up this issue. Thank you for asking.

(Pause.)

THE COURT: All right. Counsel, at this time, let's take up the matter of what charges, what prior convictions will be admissible for the upcoming witness. Of course, this witness is not the accused, but I wish to undertake a on-the-record balancing test as to these particular charges. And

571

what I'd like to hear is an argument from both sides, and let's begin with the defense, as to why these charges, convictions should not come in. And then if the State wishes to argue as to why they should, we'll be glad to hear from that as well.

MR. MAYE: Your Honor, if I can expedite this, we originally talked about, outside the presence of the jury or at side bar where the jury could not hear, we spoke about the two PWID convictions, and the Court had indicated a tendency not to allow those. I would relent on those and would state for the record that the State would not seek to -- we would agree with the Court's ruling on that. We would not seek to have a balancing test or any kind of factors as to those. I'll just concede those.

So the only issues then would be as to, even though this is a witness other than the accused, would be the attempted murder charge of the co-defendant, a giving false information to law enforcement and the rescuing from escape charge that we spoke about, Your Honor.

THE COURT: So those are the three the State wishes to put in?

MR. MAYE: Yes. We would seek to introduce those. We believe those would be probative of

572

truthfulness and would survive those tests. We're not even going to ask you to do -- given the fact that the Court had preliminarily indicated that you were inclined not to admit the PWID, we're just going to concede those.

THE COURT: Very good. Thank you.

And so our record will be clear, the Court felt that under Rule 403 analysis, which of course is pertinent here as well, that the totality of the additional two charges for drug distribution or possession with intent to distribute would be excessive, that was the Court's initial inclination.

Now, as to the charges that the State wishes to put in, if you wish to be heard on this matter, then I'll be glad to hear from you, Mr. Casto.

MR. CASTO: Just very briefly, Your Honor. We understand that the conviction in 2005, the false info to law enforcement, I mean, that's essentially the heart of the rule and we understand that, you know, obviously -- basically, that factors, hits on one of the Colf factors with regard to veracity and/or credibility.

And, Your Honor, we think that the attempted murder charge is relevant because ultimately Mr. O.J. Charley has pled guilty to his involvement

573

in this case. But with regard, we take issue to the 2005 aiding and escape, Your Honor. We feel that, in conducting the balancing analysis or the Colf factors, Your Honor, that that should be excluded as well, just to place on the record.

THE COURT: On what basis?

MR. CASTO: Your Honor, I don't believe that it really directly centers on the witness' credibility. I think that it's -- the 2012 attempted murder is something that is clearly relevant because he's pled involving this case, and it just doesn't seem to have that same ring of dishonesty or untruthfulness as the false information to law enforcement.

THE COURT: All right. Thank you.

And now you want to be heard on that, Mr. Maye?

MR. MAYE: Your Honor, just briefly. I know that it's not extended to witnesses other than an accused, but certainly these convictions would be within year -- within a year. The Colf factors, although the courts have not extended that to a witness other than the accused, but his -- the importance of his testimony certainly would be pretty critical in this case, he'd be a testifying co-defendant in this case, would certainly be the centrality issue -- or credibility issue, the

574

centrality of it would certainly be an issue.

But we do think that rescuing prisoners, Your Honor, we think that would be certainly a dishonest and intentional act. It's not like the drug charges that the Court spoke of earlier, and we would think that those would impact on his credibility.

I tell you what, Your Honor, if the ones that they will stipulate to are the giving false information to law enforcement and the attempted murder, that one charge, I'll concede. We're going to agree on that. I will just concede that the Court not -- would not impeach him on that. I think I can remove that. If that's the only one that they've got a point of contention about, I think we can just agree on it, and I'll just concede that we won't talk -- ask him about that.

MR. CASTO: Best thing he said all day.

THE COURT: All right. Very good. Then because it is by consent of counsel, the Court does not believe it's necessary for us to take this matter up any further.

Just one moment, please.

(Pause.)

THE COURT: All right. Then because this is by consent, I would simply say that it's not really

575

necessary for the Court to go further, but I do believe those two convictions would clearly fall within the realm of admissibility when looking at a prejudicial versus a probative value under Colf. I'm well aware that the Supreme Court -- our appellate court actually has not yet extended the Colf factors to witnesses, but I believe that it should be clear on this record that we did examine those, reviewed those, counsel's reached a consent, and thus we're ready to go forward. The Court accepts that consent and believes it's within the ambit of the Colf factor analysis.

And thus please bring in the -- let's begin by bringing in the jury. Let's bring them first.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, thank you for your patience, your courtesy. Welcome back. We've resolved the issues that were before us. Now, Mr. Casto, please call your next witness.

MR. CASTO: The defense calls O.J. Charley.

THE COURT: All right. Please bring in Mr. Charley.

Please come forward, sir, if you would, right here to take the oath of a witness.

****

ORIENTHAL JERMAINE CHARLEY,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CASTO:

Q Mr. Charley, I'd like to ask you a few questions, all right. Would you spell your first name -- or spell your full name for the court reporter, please?

A Orienthal, O-r-i-e-n-t-h-a-l, Jermaine, J-e-r-m-a-i-n-e, Charley, C-h-a-r-l-e-y.

Q Mr. Charley, were you involved in this incident, the shooting incident that took place on April 13th, 2012?

A Yes, I was.

Q All right. Before we get into that, I want to take you back to the day before all that happened, okay? Now, a couple days before this happened, did you meet up with Al Young?

MR. MAYE: Your Honor, I'm going object to the leading of this witness. These are leading questions.

THE COURT: Sustained.

Let's talk to the jury about that for a moment. We haven't had that come up previously. But when you call your own witness, you cannot ask what's

called a leading question. A leading question is a question that basically has an answer within it.

So as an example, if this was a car wreck case, which clearly it's not, and you asked -- you had your own witness on the stand and you said, what color was that car, that's appropriate. But if you said, was the car blue, that's not appropriate because you've answered the question within the question. And so you cannot call your own witness and lead the witness by basically testifying through your questions. That's the objection that's raised. The Court sustains that objection.

Please rephrase. Don't lead your witness.

MR. CASTO: Yes, sir, Your Honor.

BY MR. CASTO:

Q Before that incident, did you come to Saluda in the days prior to this incident?

A Yeah. I guess that's what they call it. Saluda's in the country.

Q And who did you come to Saluda to meet?

A J. We call him J. I guess his name Al Jerome, something like that.

Q Is that Al Jerome Young?

A Yeah.

Q But what do you call him?

A We call him J.

Q You call him J. And how did you get to Saluda?

A I drove.

Q And what car did you drive to Saluda in?

A I drove a red Expedition.

Q And when you got to Saluda, where did you go?

A I went to a trailer in the country. It was a blue trailer out in the country.

Q And who lived there?

A My understanding, J and his sister and some dude.

Q And why did you travel -- now, first and foremost, where did you come from?

A I came from -- that day, I come from Aiken that day.

Q Okay. And why did you come to see Al Young?

A Because he said -- well, he gave me some sob story about how he owed his PO $3,000.

Q Okay. And so what time did you arrive at his house?

A I'd say about, maybe about 1:30, like 1:30, 1:25, 1:30.

Q And when you got there, what did you do?

A We went -- he told me that he had to meet somebody at the washing -- at the laundry mat, and I

guess that's Ridge Spring.

Q Did you give him a ride?

A Yes.

Q And where did you give him a ride to?

A To the laundry mat in Ridge Spring. I guess that's Ridge Spring.

Q Okay. And whose idea was it to go to the laundry mat?

A His. He said he had to meet somebody there.

Q Did you know who that was?

A No.

Q Now, how long did it take you to get to the laundry mat?

A I'd say around about -- from there, about seven to ten minutes, if that. About seven to ten minutes.

Q And to be clear, what day do you think this was on?

A Tuesday.

Q Okay. Now, did something happen when you got to the laundry mat?

A Yeah.

Q And what was that?

A Well, he pulled a gun on me and told me to give him everything that I had in the truck.

Q Who pulled a gun on you?

A J.

Q And by J, you mean Al Jerome?

A Yes.

Q Okay. Did he hit you with the gun?

A No, he didn't hit me with it. He just pointed it at me.

Q Do you know what kind of gun it was?

A It looked like a .40 caliber. I know it was bigger than a nine.

Q And what color was it?

A Black.

Q And you say this was on a Tuesday?

A Yes.

Q Now, is it just you and him in the car?

A Yes.

Q And you told us that he pulls a gun on you and what did you do?

A I went to pleading with him. I tell him, Man, I got your $3,000. Why you doing this? And he was like he didn't want to hear that, just give me everything that's in here.

Q And where was your money located?

A I had $3,000 in my pocket and I had 29,000 in the console between the driver's seat and the

passenger seat.

Q And all of that money was -- whose money was that?

A Mine.

Q Was it anyone else's?

A No.

Q Was any part of that money Al Young's?

A No.

Q You had $3,000 in your pocket and you had another, you said, 29 elsewhere in the car?

A Yes, sir.

Q And how much money did he take from you?

A $32,000.

Q When he robbed you -- and now to be clear, he robbed you with a gun. He didn't ask for it?

A I don't understand what you mean by he didn't ask for it.

Q In other words, in other words, he pointed a gun at you and did you give it to him?

A Yeah. I gave him the 3,000, then he went in the console -- well, he started searching and he went in the glove compartment, then he went in the console, then he took it out the console.

Q And once he took all your money, where did he go?

A He went across the street. Well, he ran across the street, I guess, behind the store. It's like a store in front of the laundry mat. He ran behind the store.

Q And did you follow him?

A I got out to try to see where he ran, but he disappeared. So I got back in the truck and drove around the corner and see if he was back there, but I didn't see him.

Q Did you see him anymore that day?

A No.

Q Did you get your money back that day?

A No.

Q And did you have a weapon during that incident at all?

A No.

Q Did you try and stop by his house at some point after?

A Yeah. I went by there after I had picked my daughter up from school. I had to go pick my daughter up from school.

Q Where is she in school?

A At that time, she was in Head Start in Aiken.

Q In Aiken. So you -- just so I'm clear, you left and you went to Aiken; is that right?

A Yes.

Q Did you try to make contact with Al Young?

A Yes.

Q Okay. And, at some point, did you ever make contact with him about this money?

A Yes, I did.

Q Okay. And based on the nature of that conversation, if you were to try come and collect it, what did you think was going to happen to you?

A Well, he told me that he would shoot -- he would shoot me, shoot up the truck and anybody else who came and tried to get it.

Q And, in fact, you had already seen him with a gun, right?

A Yes.

MR. MAYE: Object to the leading.

THE COURT: Counsel, that's twice now.

MR. CASTO: Yes, sir.

THE COURT: If we have a third time, we're going to have to stop with the questioning.

MR. CASTO: Yes, sir.

THE COURT: Thank you. Go ahead.

BY MR. CASTO:

Q And did you eventually travel back to Saluda to get your money?

A Yes, sir.

Q And what day was that?

A Thursday night coming into Friday morning, about midnight -- close to midnight.

Q Okay. And did you talk anyone into going with you?

A I talked -- I asked Gerald if he would drive for me.

Q Did you talk with anyone else?

A Yeah, I talked to Rico.

Q Who is Rico?

A Rico's the dude with the guns.

Q Okay. And how do you know Rico?

A I met him pulling some watermelons at the watermelon market.

Q Does Rico have a last name?

A He told me it was Riverez.

Q And you know him from the watermelon field. Is that the type of work that you all were involved in?

A Yes, sir.

Q And let me ask you this: Why take Gerald?

A I needed a driver.

Q Okay. Well, can you drive?

A Yes, I can drive, but I don't have a license.

Q Okay. Now, does Gerald have a license?

A I don't know.

Q But you needed a driver and so that's why you asked Gerald to go?

A Yes.

Q And let me ask you this: Why does Gerald even want to go?

A Because I told him I would pay him for going.

Q I'm sorry?

A I told him I would pay him for going.

Q Pay him with what?

A I'd pay him some money.

Q Now, let me ask you this: What vehicle did y'all take to go down there?

A We went in a van.

Q Okay. And who owns that van?

A At that time, my wife was the owner.

Q And in order to take her van, what did you tell the wife?

A Well, I told her that I had to go to the store and get some things and that I'll be back.

Q And, and that wasn't true, was it?

A Not all true, no.

Q Okay. And what did you tell Gerald that you were going to do that night?

A I told him I was going to see some girls.

Q Okay. Did you ever mention anything about getting money back?

A No.

Q Did you ever mention anything about being robbed before?

A No.

Q You ever mention anything about Al Young?

A No.

Q Did you ever mention anything about guns?

A No.

Q Did you ever mention anything about doing a shooting?

A No.

Q Did Gerald have any idea about what you were up to or what you were going to do?

A No. Not to my knowledge, no.

Q Okay. Was there anything on you or in the van that would give him an idea?

A Not -- I mean, not if he -- I don't know. I don't think so. I didn't have no guns or nothing in there.

Q And so before this incident, did Gerald have any idea what was going on?

A No.

Q And during this incident when it was going on,

did he have any idea what was really happening?

A No.

Q And let's stop here. You -- do you have a conviction for giving false information to the police in 2005?

A Yes.

Q Okay. And do you have a conviction for attempted murder in 2012?

A No.

Q Did you --

A Yes, yes. I'm sorry. I apologize. Yes.

Q Did you plead guilty in this case to attempted murder?

A Yes.

Q And when did that take place?

A June the 11th.

Q Of what year?

A 2012.

Q So you've already pled guilty?

A Yes.

Q All right. And you've told us all this, but it's in the first time -- let me ask you this: Did -- so you have Gerald and he's driving. Did someone else follow you down there?

A Yes.

Q Okay. And did Gerald ever know about that other person following you all down there that night?

A No.

Q And who was that other person?

A Rico and somebody, whoever was driving for him.

Q So how did Rico get there?

A He was in a, looked like a box Chevy Caprice.

Q Did -- so his ride -- did his ride stay?

A No, not -- no, not to my knowledge. I didn't see him. They kept going.

Q Okay. Now, let's talk about what's in the van at this point. Were there any guns in that van?

A No.

Q Were there any gloves in that van?

A I had blue gloves in there.

Q Okay. Where did you get those from?

A The hospital, Aiken.

Q Why were you at the hospital in Aiken?

A Because my -- well, my son and my daughter have, I think, they have epilepsy and they have seizures or fiber {sic} seizures, and my son had a recent one. You know, they was sitting there, so I just took them and said I can take them for cleaning up or whatever if we needed them.

Q Were those in the van that night?

A Yes.

Q And about -- what time did y'all leave?

A Probably about 11:30, between 11:30 -- about 11:30, 11:45, somewhere up in there.

Q Was there anything in that van that would communicate to Gerald what was really going on?

A No.

Q Let me ask you this: How did Gerald know where to go?

A I told him.

Q One question, when you arrived, why did you park so far away?

A I didn't want the van to be there at -- well, I didn't want the van to be there.

Q And why not?

A Because I didn't want -- I didn't want them to see -- I didn't want J to see me coming.

Q What did you tell Gerald about parking so far away?

A I told him just to sit here. I was going to the girl house to see what they was talking about and I'll come back.

Q And once you arrive, when is Rico dropped off?

A Rico is dropped off, like, when we was riding,

I told Gerald to hit the brakes right quick and then Rico was dropped off wherever he hit the brakes at.

Q And once you arrive and you get out of the van, what are your instructions to Gerald?

A I told him to wait till I come back. I'd be right back.

Q And does he sit in the van?

A He was there when I left.

Q And do you leave Gerald at the van and -- and once you leave Gerald at the van, where do you walk to?

A I walked down the road to the trailer.

Q At what point -- where did you meet up with Rico?

A Before I got to the trailer.

Q Okay. Now, does Rico have anything with him?

A Yes.

Q And what does he have?

A He gave me a Tec-9 and he had another hand -- he had a handgun.

Q And before this point, did you have a gun?

A No.

Q What gun did Rico have?

A It looked like a .40 caliber. I don't know exactly.

Q Do you know what color it was?

A It was like -- it look like silver. We call that chrome, that's what we call it.

Q And once you meet up with Rico, where do y'all walk towards?

A Walked up the dirt road and down -- up the dirt road and down by the trailer.

Q And as you get to the house, were there any lights on?

A There's TV on, wasn't no lights. It was a TV on.

Q No lights. Is the TV on?

A There's a TV on.

Q Could you hear anything from inside the home as you got close?

A The TV was on in the den. I heard J shout, Where the MF is that.

Q How do you know it was him?

A I know his voice.

Q How long have you known Al Jerome or J?

A Roughly three to four years.

Q And so you hear that. And did the people inside that house, did they open up that door?

A No.

Q They didn't?

A No.

Q Okay. Did they -- throughout this incident, did anyone ever open up their door?

A Yeah, J did.

Q What did he do when he opened it?

A He came out and fired two shots in the air.

Q Did he shoot first?

A Yes.

Q And after he shoots, what did you do?

A I shot one shot in the air.

Q And so you fired -- is it the 9mm?

A Yes, sir.

Q Okay. Now, how many shots did you fire?

A One.

Q Okay. And in what direction did you fire it?

A In the air.

Q Okay. And what about Rico; did he shoot?

A He had to shoot.

Q Okay. Now, after you shoot, did you have any problems with the 9mm?

A It jammed.

Q Okay. Were you able to shoot it anymore?

A No.

Q And so what did you do?

A I ran.

Q Why?

A Because the gun jammed.

Q Okay. Did you have another weapon?

A No.

Q Do you know where or what direction Rico shot?

A I'm guessing he was shooting at the house. I don't know because I didn't stay to see.

Q As you ran, did you hear other shots?

A Yeah, there were shots. I wasn't counting them, though.

Q And based on that incident, do you know how Rico got out of there?

A No, I really don't.

Q Do you know if Rico ever got arrested?

A No, I don't.

Q And so when you make it back to the van, is Gerald, is he still in the van?

A Yes, he was in the van when I got back.

Q Okay. Now, almost immediately did you see law enforcement lights?

A When I got in the van, they pulled up within, within five seconds, saying, within five seconds, they pull up behind us.

Q And, at that point, does Gerald Williams, does he ask you what happened?

THE COURT: Counselor, hang on. Don't lead your witness, all right. So let's talk about that. You just said, Did the defendant ask you what happened? The appropriate question is what happened then, not whether someone asked him something or what they did. Just let him tell the story, not you.

MR. CASTO: Yes, sir.

THE COURT: So be careful because this is a witness that you've called and it's not appropriate for you to testify for him.

MR. CASTO: Yes, sir.

THE COURT: So let's strike that question and move to your next issue.

MR. CASTO: Yes, sir.

BY MR. CASTO:

Q When you got back into the van, did Gerald say anything?

A Yeah. He asked me, he said, What happened?

Q Did he look shocked?

THE COURT: Counsel, move to the next issue. I'm going to preclude the remainder of that issue because that's an inappropriate question.

Ladies and gentlemen, please disregard that. This is not for the lawyer to testify as to what was

the -- what was anyone's reaction. It's for this witness.

So no more about that question. Move to another issue. Go ahead.

MR. CASTO: Yes, sir.

BY MR. CASTO:

Q Where is Gerald seated in the car?

A The driver's seat.

Q Where were you seated?

A Passenger.

Q And when you make it back into the van, what happened next?

A We sat there for, like, two to three minutes. The police, they didn't come to the van, so I told him to ease off.

Q And what happened next?

A He eased off. Once he eased off, they pulled in front -- they pulled -- yeah, on the left side. Then they pulled in the front of us and they said, Stop. We stopped.

Q Was Gerald driving fast or slow?

A No. He drove slow.

Q And once the van is stopped, does Gerald try to run?

A No.

Q Do you try to run?

A No. They tell us to shut the van off. He cut the van off and said -- either they said throw the keys out the window or stick his hands out the window. He stick his hands out the window, open the driver door from outside the car.

Q Okay. And, at that point, did he get out?

A Yes.

Q And what did law enforcement instruct him to do?

A Put his hands above his head and to take steps back and --

Q Like walk backward?

A Yes. Said walk backwards and then place your hands, like, cross them on the back of your head, lay down. And then when he did that, they instructed me to do the same thing.

Q And is it at that point y'all were taken into custody by law enforcement?

A Yes.

Q At any point, did Gerald Williams have any idea what your true plans were that night?

A No.

Q And you pled guilty, it was in June; is that right?

A Yes.

MR. MAYE: Your Honor, I'm going to object to the leading again and ask him...

THE COURT: Again, that's a preliminary matter, but he's pled guilty. Go ahead. Don't lead your witness, Counsel.

BY MR. CASTO:

Q And you've communicated and wrote this --

MR. MAYE: Your Honor, I'm going to object to this. He's trying to talk about some prior statement other than his statement here, some sort of prior consistent statement. I'm going to object to that.

MR. CASTO: Your Honor, may we approach?

THE COURT: First of all, that sounded leading, Counsel, to begin with, but come on up to the bench for a moment, please.

MR. CASTO: Yes, sir.

THE COURT: Just one moment, ladies and gentlemen.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, excuse us for a moment there. Thank you for your

patience. An issue about admissibility of certain evidence the Court -- that has resolved here at the bench.

And now you may proceed with your questions, Mr. Casto.

BY MR. CASTO:

Q To pick up where we left off, you said you pled guilty June 11th of 2012, to attempted murder in this case; is that right?

A Yes.

Q And the next day you wrote a letter to Judge William P. Keesley; isn't that right?

A Yes.

Q And in your letter, you outlined --

THE COURT: What was in the letter would be what you'd ask him, Counsel, rather than lead him as to the contents of the letter would be to ask him what was the content.

MR. CASTO: Yes, sir.

THE COURT: Thank you.

BY MR. CASTO:

Q And do you recall the letter I'm speaking about?

A I think I wrote two of them, if I'm not mistaken.

Q And if you had a copy of the letter, would that refresh your memory?

A Yeah.

THE COURT: Well, Counsel, actually, first of all, he's not said he doesn't have a recollection. He simply said he wrote two letters. So question him about the contents before you refresh his memory. It may not be necessary.

MR. CASTO: Yes, sir.

THE COURT: Go ahead and, if you wish, ask him what was the content of the letter.

BY MR. CASTO:

Q Do you remember the contents -- or what was the contents of the letter to Judge Keesley?

A One of them was that Gerald didn't know -- he didn't know about the shooting. And one of them was about that I had apologized, I guess, because I had -- it appeared that I had made some type of mistake who was in there, and I just said I wanted to resolve the case and get it back in court.

Q When you were in where?

A In McCormick, court in McCormick.

Q What were you doing in court in McCormick?

A Pleading guilty to attempted murder.

Q Okay. What kind of mistake would you have

made?

A They had -- I guess it was the judge had asked me was anything promised to me. And I asked my lawyer what to say and he was, like, well, just tell him --

MR. MAYE: Your Honor, I'm going to object to anything that he's saying. That's hearsay. He's trying to claim his lawyer put --

THE COURT: Just a moment. That's not necessary to explain further.

Ladies and gentlemen, that's clearly hearsay. It is what someone else outside of this court said. The best evidence of that is to bring that person in here. The Court's going to decline to allow that impermissible testimony in this proceeding.

Please move to your next question.

MR. CASTO: Yes, sir, Your Honor.

BY MR. CASTO:

Q And in that letter to Judge Keesley, do you remember the contents of that letter?

A The main thing was that Gerald didn't know about the shooting and I had -- he thought we was going to see some girls.

Q Okay. And you mention that you wrote another letter; is that right?

A Yes.

Q And who did you write that other letter to?

A Keesley.

Q Okay. And do you remember the contents of the other letter to Judge Keesley?

A The one when I was apologizing about what happened in court.

Q Okay. And Mr. Williams, did he ever have any earthly idea what was really going on?

A No.

MR. CASTO: Nothing further. Please answer any questions the State has.

THE COURT: Now, ladies and gentlemen, on cross-examination, you can ask leading questions, and the purpose of that is to see whether the witness holds to what they testified to on direct. Leading questions are permissible.

You may proceed.

CROSS-EXAMINATION

BY MR. MAYE:

Q Mr. Charley, you went down and pleaded guilty to one count of attempted murder in front of Judge Keesley on June the 11th of 2012, right?

A Yes, sir.

Q But you got two of the other counts against the

other victims, Mr. Wrighton -- you pleaded guilty to the count involving Al Young, but the State, we dropped the charges against Mr. Wrighton and Ycedra; isn't that right?

A Yes, sir.

Q Okay. Because you had agreed to cooperate with law enforcement and then talked to Investigator Shorter at length about this incident, didn't you?

A No, I never agreed to cooperate.

Q So you didn't stand up there in McCormick where it was placed on the record in that guilty plea that you had agreed to testify truthfully and that the versions of facts that we, the State, have in this case is truthful and that you intend to testify in accordance with that should we need you to testify against the co-defendant. And the co-defendant is Gerald Williams; isn't that right?

A Yes.

Q Were you not there at that plea?

A Yes, I was there.

Q Okay. And you stood and heard every word that the State put on the record, didn't you?

A That must have been when we was in -- when we had the thing about the -- when I had a misinterpretation about I had done messed up, that's

why I was apologizing.

Q You stood there in a courtroom just like this one?

A Yes, sir.

Q In front of a judge and pleaded guilty and got a deal, right?

A Yes, sir.

Q You remember that?

A Yes, sir.

Q And you remember all of the words that were put on the record during that plea, don't you?

A Most of them, yeah.

Q You remember Investigator Shorter getting up and giving the full version of the facts in this case about how this was money over drugs and all of the details in this case?

A I remember that.

Q And you concede you talked to Investigator Shorter and told him all about how this went down beforehand, didn't you?

A Yes, but I never told him it was about no drugs.

Q You stood right there in that courtroom and heard it talked about a dispute over whether or not it was drug money, Mr. Young had taken $32,000 from

you, talking about the pistol being jammed, Mr. Williams being involved. All of that was placed on the record at the time of that plea, wasn't it?

A To my understanding, both of us had agreed -- you had agreed to eight years for both of us. He didn't take it and I took it.

Q You didn't get eight years. You hadn't even been sentenced yet. You don't have any idea what you're going to get, do you?

A No, not now obviously.

Q The bottom line is your sentence was deferred until after you were supposed to cooperate against Mr. Williams; isn't that right?

A I'm guessing that's how it's turning out to be.

Q And you're double-crossing the State now after agreeing to testify and providing all the information about this crime to the State; isn't that right?

A Yes, I guess that's how it's looking.

Q That's exactly how it's looking because that's exactly how it is, isn't it?

A Yeah, but I don't remember agreeing to testify against him.

Q Were you standing in the courtroom when we put all of that on the record --

A Yes, sir.

Q -- as a reason for the judge about why we were dismissing those other two charges against you?

A Yes, sir, I was there.

Q Do you think the State just out of the goodness of its heart, would have just thrown out two charges on you?

A I don't know.

Q It was because you had given information on your co-defendant and implicating him completely in this case, isn't it?

A Yes, sir.

Q And now you want to try to pull his fat out of the fire after you got a deal and come up here and lie to this jury to help him; isn't that right?

A Yes, sir.

Q So you concede what you -- all this tale that you've told the jury up here is just a lie to try to pull his fat out of the fire?

A Yes, sir.

Q All of it's a lie because Gerald Williams was with you, wasn't he?

A Yes, sir.

Q You'd previously told Zeb that this was about drugs and you got ripped off and you were mad; isn't

that correct?

A No.

Q You're still maintaining that he robbed you?

A Yes, he did.

Q But Zeb went through and talked with you about that and you gave him a version of the story where you had been robbed, but then you backed up after Zeb said, well, you know there's a camera out there at the laundry mat that's going to make a liar out of you; isn't that right?

A Yeah.

Q And you started telling a different tale when Zeb was smart enough to tell you there was a camera out at the laundry mat?

A No. I still said I got robbed.

Q When did you go to the police, O.J., if you got robbed?

A I didn't go.

Q You're telling this jury up here -- you've already admitted that you're a liar and you got up here and just told a whole passel of lies in front of them trying to pull his fat out of the fire, you're still maintaining that he robbed you there?

A Yeah.

Q But you didn't go to the police. You want them

to believe that somebody took $32,000 because you were a good samaritan and wanted to help somebody out, but you wouldn't go to the police over a 32,000 dollar armed robbery?

A No. I mean, they wasn't going to give me back my money.

Q So you were going to go get your money back one way or another; isn't that right?

A Yeah, I was going to get it back.

Q You went with five guys out there to this trailer to, didn't you, the day before?

A No.

Q You deny doing that. You didn't go out there with five people?

A No, I didn't go out there with five people.

Q You called Al Young and told him, I'm here with your family, threatening his family wanting him to give you the money back to let him know that you had found his family, threatening them in hopes he'd give you the money back?

A No.

Q You didn't talk to Ycedra out there and ask for his cell phone number and ask where he was?

A I asked her where he was at.

Q And you called him and said, I'm here with your

family. Because you knew if there was any hope of you getting that money back, you'd have to let him know that you were going to kill his family; isn't that right?

A No.

Q Well, what was the purpose of going there with five thugs from Williston if it wasn't to intimidate him into trying to give you the money back?

A I didn't go there with five thugs from Williston.

Q Who did you go there with?

A I went there by myself.

Q You went there right by yourself?

A Yeah.

Q And you're as sure about that as everything else you've told this jury under oath?

A Yes.

Q The truth of the matter is you threatened him because you wanted that 32 grand back; isn't that right?

A No.

Q You never threatened him?

A No.

Q You just asked him politely, now, you've committed an armed robbery on me. And you just

stood around there at that house politely and asked where he was?

A Yeah.

Q Okay. And in the conversations that you had with Al Young, you just politely said, Mr. Young, you know, you've robbed me of 32 -- you say it's $32,000, and I'd please like my money back?

A No. I didn't tell him I'd please like my money back. I told him I need it back. I told him I need at least 20 of it. You can keep 10 or 12. I just need 20. I got a family. I need to take care of my family. I can't take care of my family if I don't have no money. And he said --

Q You were just going to -- this guy that committed an armed robbery on you, you were just going to let ten slide?

A Yeah, he could have got 12. As long as I would have had 20, I would've had enough. I would've had enough to get by for a little while at least.

Q But you didn't get your money back that day because he wasn't there in spite of your threats towards his family, did you?

A I didn't threaten his family.

Q Did you get your money back that day?

A No, sir.

Q So you came back with Gerald Williams to kill him, didn't you?

A No. I came back to get my money. If killing was in the process, I mean, I don't -- I can't say what would have happened, but I did come back to get my money.

Q With Gerald Williams and he knew full well what was going on; isn't that right?

A He knew.

Q He knew. Of course, he knew. And you took up this ugly looking -- which pistol did you have now? You already told one version of this to Zeb about who had which gun. Which one did you have and which one did Gerald have?

A Gerald didn't have any of the guns. He knew, but he didn't have no gun.

Q He went down there to this trailer without a gun?

A He didn't have a gun.

Q You took both guns?

A I had the Tec.

Q How did this other one get out there shooting up that trailer?

A Rico had that one.

Q You're still going to try to tell the jury that

there's some unknown dude out there named Rico Riverez that shadowed you without Gerald Williams knowing it. You're going to still try to tell them that?

A Yeah.

Q You realize you can get charged with perjury for lying over and over again up here? Have you talked with Mr. Screen about that?

A Yes, sir.

Q Do you need time to talk to him again?

A Nah.

Q So you're going to sit here and try to convince 12 intelligent people that Gerald Williams and you rode up here and he's still -- are you going to try to tell them that he stayed in the car still?

A No.

Q He went with you to the scene, didn't he?

A Yeah.

Q Are you sure you want to stick with the part about this unknown dude, Rico Riverez?

A No.

Q Do what?

A No.

Q Because that's a lie, isn't it?

A Yeah.

Q The bottom line is you went out there to the trailer to get your money back and y'all shot this trailer up, didn't you?

A Yeah.

Q And you ran?

A Yeah.

Q And y'all ditched some gloves?

A Yes, sir.

Q Because you weren't going to put on rubber gloves to come down there and visit somebody if you didn't have evil intent. You had rubber gloves to cover your tracks; isn't that right?

A Yes, sir.

Q Which gun did you have and which one did Gerald have?

A I had the Tec.

Q The Tec?

A Yes, sir.

Q How many rounds did you get off in the Tec before it jammed?

A One.

Q Just one?

A Yes, sir.

Q Well, it's got a 20-round magazine. You're telling the truth now. It's got a 20-round

magazine.

A Yes.

Q How many rounds did you have loaded in it?

A I really don't know. I know it wasn't full. To my knowledge, I think it -- you said it was 20?

Q It holds 20.

A I thought it held 30. I got off one round.

Q They make a 30-round for it, but this one's only a 20.

A Yeah.

Q Do you remember how many rounds you had in it?

A No. I know I didn't -- it didn't get but one round off because when I shot it, it jammed.

Q Why would you have gone down there with this big 'ol ugly thing, this assault-style pistol, with a 20-round magazine and not fully loaded it?

A I don't know. I didn't check.

Q You didn't even check to see if it was loaded?

A No, I didn't check to see if it was fully loaded.

Q But Gerald's was fully loaded, wasn't it?

A I don't know. I didn't check.

Q But it was empty when the police found it and it got empty, didn't it?

A Yeah.

Q Okay. Gerald wasn't very smart, though. After y'all had gone to all of the trouble to put rubber gloves on to not leave fingerprints and to not leave evidence behind in this case, he tore off part of that glove and left his DNA there in that pile, didn't he?

A To my knowledge, that's what you say. I didn't see it, but that's what you say.

Q And, in fact, when Investigator Shorter informed you, when they brought Gerald up here to the jail and he still had two pieces of those blue -- purple rubber gloves stuck to his fingers, that's when you knew it was all over; isn't that true?

A Yes, sir.

Q Because y'all were caught at that point in time and you told Investigator Shorter the truth, didn't you?

A Yes, sir.

Q It's hard to keep up with what you say when you start telling lies, isn't it?

A Well, I tried to help him. I mean, yeah, you're right.

Q Because the bottom line is he didn't have -- Gerald Williams did not have any involvement in the beef that you had with Al over the money, right?

A No, he didn't.

Q How were you able to persuade him to come up here and help you?

A I get the money back, I'd pay him some.

Q And so he was going to come up here and do whatever had to be done just for money?

A I guess.

Q Was he -- were you not concerned about the fact that there might have been those little kids in the house when y'all opened fire on it?

A I know they wasn't in there.

Q How did you know the little kids weren't in there?

A Because the girl, Ycedra, she had looked so scared, like she -- when I came -- when I went and asked was her brother there, she looked like she was scared, like she had knew what had happened, but I didn't never threaten her. I don't quarrel with women, that's not my thing.

Q But when the two of you opened up on the house --

A It wasn't -- the van that they drive -- the Explorer that they drive wasn't in the yard.

Q Yeah, but Ycedra was in there. Ycedra is a cousin of Gerald's. You didn't have any beef with

Ycedra?

A No.

Q And you didn't have any beef with Joseph, did you?

A No.

Q Why in the world would you have shot the whole house up not caring about whether they lived or died?

A I can't say I was not caring about whether they lived or died. He shot, so I shot in the air, that's how it happened.

Q Y'all blew this trailer apart, man. Look at that door. Isn't that right?

A It's not a 9mm bullet in that door.

Q So Gerald Williams had to be the one that shot this trailer all up?

A I guess. I don't know. I know I didn't.

Q Well, if you didn't do it, he had to then, didn't he?

A Yeah.

Q About how many bullets do you think you had loaded in this .40?

A I don't know. I didn't check.

Q Who loaded the .40?

A It was already loaded when I bought it.

Q And you didn't even look at it?

A No.

Q Y'all were going to go down there and shoot it out with a man that y'all knew had a gun, you knew Al had a gun from -- if you're still going to stick to this story about the armed robbery, you already knew this guy had robbed you at gunpoint?

A Yes, sir.

Q And you -- did you supply this to Gerald or did he bring it himself?

A I gave it to him.

Q You gave it to him, but you didn't even look in the magazine to see how many were in there?

A No.

Q You took the time to get rubber gloves to cover your track, y'all got stocking masks, you got the bandanna, all of that stuff?

A The stocking -- the hats, those are my kids' hats. Those are always in the van. The glove --

Q Y'all just went down there without anything covering your identity?

A I had on something.

Q What did you have on to cover your identity?

A I had a bandana.

Q You had the bandanna on?

A Yes, sir.

Q What did Gerald have? Did he just go down there for all the world to see?

A Yes, sir.

Q Now, you're telling the ladies and gentlemen of the jury that you only got -- managed to get one shot off before your nine jammed, right?

A Correct.

Q How many more shots did you hear Gerald fire at the house afterwards?

A I don't know if he fired shots. I don't know which way they was going. I know he shot, but I don't know which way they were going.

Q Well, y'all ran right back there together?

A Actually, I left him.

Q How did the guns end up in the same pile together? For goodness' sakes, tell the truth at this point in time.

A I'm telling you the truth. I left him, but he caught up with me. I'm telling you the truth.

Q Okay. And so the guns end up in a -- because the police have got the pictures -- the guns end up in a big pile right there together. The purple glove that Gerald tore off his hand, for goodness' sakes, it's laying on top of the gun.

A I know.

Q Why didn't y'all throw them up further in the woods? Were y'all just not thinking?

A Just wanted to get away. I heard the police cars coming. They was coming. They were responding to the call. They didn't see us, so we just --

Q Did you see them come by the first go-round?

A I seen them come every time.

Q Where were y'all hiding at that point in time?

A We wasn't hiding. We was walking.

Q Did they just blow by you on the road?

A They blew by us.

Q How were y'all dressed? All in black?

A This is what I had on, what I got on right now.

Q And they just didn't see you?

A Couldn't.

Q But there was nobody in the van. The van was empty because the cops had already checked it?

A Well, I didn't see them stop. When I seen them coming, they just kept coming. I didn't see no cops stop and check no van. They kept coming. They went on the dirt road. When we made it to the van, then they came back. That's when they pull up behind us.

Q He got in the driver's side, right?

A Correct.

Q Okay. When Long pulled up, where were you? Were you still laying in the ditch when Long pulled up and made the circle to get behind you?

A No. Long didn't never pull up and make a circle.

Q How did he get around behind you then to get in, because he had come from up at the church?

A No. This is how it happened: The law, I guess they was responding to the call, they come from, like, say from that way, if -- that window right there {indicating}.

Q Okay.

A They come this way. They go past. They turn and go right there. Then I guess somebody must have radioed and said something about it's a van up the road. So he comes back --

Q Who came back?

A The law. He came back. When he came back, he was going back up that way, then he pulled behind us like that.

Q Do you remember getting up out of the ditch when the officer got behind you with the lights on; do you remember that?

A No. I was in the van.

Q Are you saying that you beat all the officers

back up there getting in the van?

A Yes.

Q Okay.

A I did.

Q Do what now?

A I did.

Q You beat them back up there?

A Yes.

Q Okay. So you're sure that you weren't laying in the ditch or anything when the officer got back up there?

A No, I wasn't laying in the ditch. I was in the van sitting down.

Q All right. What were y'all going to do when you kept pulling up and stopping and starting and opening the doors? Were y'all going to jump out and run or what were you doing?

A We never pulled up, start and stopped. We sat there for, like, two or three minutes. They never approached the van.

Q Well, the officer was screaming and yelling at you with his gun drawn, wasn't he?

A No. They -- they started screaming and yelling after the police pulled aside of us and told us to pull over. When we pull over, then it was red dots

all over the place.

Q Red dots all over the place?

A Yeah, there was red dots all over the place. Said, Driver, shut off the engine, stick your hands out the window.

Q Uh-huh.

A Open the door from the outside. Then he did that. After he did that, said, Passenger, do the same. And I did that.

Q And you got caught and took you into custody, right?

A Yeah.

Q And you knew the game was up when they got the gloves off of him and he wasn't even smart enough to get rid of the guns?

A Yes, sir.

Q I guess, you should have brought somebody smarter with you to do this?

A I should have never did it at all.

Q And Gerald should have never agreed to come with you to potentially murder someone for money either, should he?

A No.

Q Well, I guess, I need to ask you some of this. Now, we did agree to drop the two charges against

the other two people; that's correct?

A Correct.

Q And ask you to come and testify against Gerald since he wanted a trial, correct?

A Yes.

Q And you did agree to do that; isn't that correct?

A According to the document -- according to the record in McCormick, yes.

Q Well, there's been nothing misleading about what I read you here --

A That's what I said. According to the record in McCormick, yes, sir, that is correct.

Q And you remember all of that, don't you?

A Yes, sir.

Q And Investigator Shorter treated you with courtesy when you were cooperating once you realized that the game was up, did he not?

A No.

Q He did not treat you with courtesy?

A No. His words were, Whatever's going to happen to you is going to happen to you; I can't say nothing about a man that's defending his house. That's what he told me.

Q Well, you know -- you don't disagree with Al

Young shooting back out when y'all are shooting up this house?

A He shot first.

Q You're saying he came outside and shot?

A Yes, sir.

Q But you're saying he shot up in the air?

A Yes, sir.

Q So y'all are going to blister this house from one end to another with three people inside of it in retaliation for him shooting up in the air?

A I didn't shoot at the house.

Q Well, if you didn't shoot, then Gerald Williams tore that house up from one end to the other with his .40 and emptied it; isn't that right?

A I don't know. I guess. I don't know. I wasn't there for all of that.

Q Well, you don't think he stopped along the way and ditched out some rounds? I mean, when the police found his gun, it's completely and totally empty?

A I didn't stay to see -- I didn't stay to see the gunfight.

Q You didn't empty it, did you? You're saying you didn't fire this .40. So if you didn't have to, who had to have emptied this gun into that trailer?

A I mean, if it was emptied into the trailer, I guess it was him.

Q It had to be him, didn't it, if what you're telling them is true, if you didn't really have 20 rounds in there and you didn't get off a boatload of them before it jammed?

A No, that jammed trust me.

Q Well, then he ended up having a lot more nerve than you did because he stuck around in spite of the fact that you say somebody had shot up in the air. Now, he wasn't shooting up in the air because the bullets were coming out of this door. They were coming from both ways. You know there are bullet holes in this door both directions. You still want to stick to that stuff about how he was shooting in the air in spite of that?

A The man came out the door, he shot in the air, closed the door.

Q When do the bullets come back out?

A I guess he was in the house shooting. I guess when the gunfight happened, he didn't come back out. He must have been shooting from inside the house to shoot back out.

Q Well, if he didn't point the gun at you and he only shot in the air, why did you take off running?

A Why did I take off running?

Q Why did you take off running if he was only shooting in the air and he wasn't shooting at you?

A Because I shot in the air and my gun jammed.

Q So you had a jammed gun, so you --

A I wasn't going to stay to no gunfight with a jammed gun, I can't shoot it.

Q But obviously Gerald Williams didn't have a jammed gun because he poked that trailer full of holes. You would tell them -- isn't that right?

A If it's coming from both directions, I guess that has to be correct. I can't --

Q Well, only a few came from the inside, but a boatload came from the outside in; isn't that right?

A I don't know because I didn't stay to see it.

Q You couldn't hear it?

A I could hear the shots, but I didn't stay to see it. Just because I hear the shots don't mean I could tell you which way it was coming from.

Q But you know you heard a lot of shots, right?

A I heard a few.

Q It was more than a few?

A It all depends on what you call a few. Between two guns...

Q A lot of shots got fired, didn't they?

A About ten probably, might be ten, I don't know. I don't know. I didn't count them, but I'm just saying a lot of shots to me would be like 50.

Q You would have shot that house up 50 times with three people inside of it?

A I didn't say I would have shot it up. I told you what a lot of shots to me is. A lot of shots, a lot is 50.

Q This trailer is eaten up with bullet holes, isn't it?

A (Witness reviewing document.)

Q Looks pretty bad, doesn't it? That door looks pretty rough, doesn't it?

A It all depends on -- I mean, you said look rough, but there's holes -- there's holes in that door that come from inside. So I don't know which holes come from inside and which holes go in the door. It might be just as many holes that go from the inside as it go on the outside. So it could -- I mean, it could be either way, either way the door took the damage. It just took the damage both ways.

Q Whatever bullet holes are in that trailer from the outside in had to have been fired by Gerald Williams because you're saying they weren't fired by you?

A No, they weren't fired by the Tec.

THE COURT: Anything further?

MR. MAYE: I think that's about it.

THE COURT: All right. Thank you.

Is there redirect?

MR. CASTO: Yes, sir, Your Honor.

THE COURT: You may proceed.

MR. CASTO: Briefly.

REDIRECT EXAMINATION

BY MR. CASTO:

Q Did Al Jerome shoot first?

A Yes.

THE COURT: Counsel, excuse me, that's a leading question. Again, this is your witness you called. And there's been no declaration of hostility, thus you cannot lead your witness.

MR. CASTO: Yes, sir.

BY MR. CASTO:

Q Who shot first?

A Al Jerome.

Q And where did you come up with the eight years?

A They told me that -- they told me that --

Q Who told you?

A It was agreed between my lawyer and the Solicitor that eight years would be what the

sentence would be. When we got to McCormick, we was offered eight years a piece. He didn't take it and I took it. And I guess between -- somewhere in between there, it switched, I guess because he didn't take it, that the only way that I could have got it or something like that was that if I testify. I'm guessing that's -- that's how it's looking now. But to my understanding that -- what I was thinking, that I had pled to eight years, which was an agreed -- was an agreed negotiation sentence between my lawyer and the Solicitor.

Q And when did you find out that was gone?

A Just now.

Q Is that when your story changed?

A I can't really say that it is.

MR. CASTO: Thank you.

THE COURT: Redirect.

MR. MAYE: Just one or two.

RECROSS-EXAMINATION

BY MR. MAYE:

Q Mr. Charley, you agree that when you plead guilty, everything gets put on the record so there are no misconceptions about what's going on; isn't that right?

A Yes, sir.

Q And you actually just pleaded to one count and nobody told you anything about what sentence you were going to get, did they?

A You and my lawyer had negotiated a deal of eight years.

Q It's right on the record here. There's no deal in this and you are pleading straight up and your sentence was going to be deferred, and it's right here in the transcript; isn't that right?

A Yeah, it's in the transcript, but I would have never plead to no open plea to attempted murder.

Q So you're now going to try to claim that we had some outside deal that's contrary to what's written down here?

A Yes, sir.

Q You know the judge told you if anything wasn't placed on the record, that you lose it. Do you remember the judge telling you that?

A No, I don't. But it's a possibility that he did state it, but I don't remember him saying that.

Q Would you agree the judge said, Any plea bargains the State might have made with you, any agreement about dropping charges, reducing charges, recommending sentences, anything like that, they have to say it on the record in open court here or

you're going to lose it; you understand? Remember the judge saying that?

A No, I don't remember him saying that, but he might have did say that.

Q He certainly said that, didn't he?

A If it's on the record, I guess he had to say it.

Q And you said that you agreed with it, okay, all right.

Are you trying now to hedge your bet and work yourself out some deal on the back side of this now and say you got some deal in hopes it'll get you a lighter sentence?

A No, sir. I'm just -- I'm telling the truth. I mean, I tried to help -- tried to help him out. And this -- I mean, the right thing to do is just tell the truth.

Q And you tried to help your co-defendant by getting up here and lying, bald-faced lying, to 12 people, didn't you? More than 12, but 12 actual jurors?

A Yes, sir, I did. It's wrong. I'm wrong. I'm sorry. I mean, that's just -- it is what it is, a lie. I apologize and it's not right.

THE COURT: Anything further?

632

MR. MAYE: No. Thanks.

THE COURT: Very good.

All right, sir. You may -- please watch your step as you're stepping down. And we will return you now to the detention center.

Are there any further witnesses for the defense?

MR. CASTO: The defense rests, Your Honor.

THE COURT: The defense rests.

Is there further testimony or reply testimony from the State?

MR. MAYE: Your Honor, no, sir, no reply. Thanks.

THE COURT: All right. Then very good, ladies and gentlemen, that means the testimonial phase of this case has ended. Let me just, while it's fresh on our minds, I want to make one comment about sentences and sentencing.

First of all, you heard some testimony earlier about what potential sentences or allegedly agreed sentences may have occurred, but just so we'll have an understanding that it's typically not within the purview of the jury what a particular sentence is for a particular charge, and that's because our roles are divided. The jury are the judges of the

633

facts. You listen to the testimony and you determine whether or not the facts put forward meet the crime and whether or not the State has proved beyond a reasonable doubt a particular defendant's involvement in a crime.

Once the jury makes a decision of guilt or innocence, then the judge makes the decision of what is the appropriate sentence. The reason for that is that judges, of course, are more knowledgeable about sentence ranges, the statutory requirements of sentencing, averages and norms, and other things that impact sentencing that the jurors just simply wouldn't know in a day-to-day -- actually, one week, five-day service as a juror.

And so in your deliberations, you should not consider what a potential sentence may be or even what an appropriate sentence may be. You simply make the decision of whether or not the State meets the burden of proof to prove beyond a reasonable doubt guilt, or fails to do so, which would be not guilty. And then the court, as the judge of the law, makes the determination about sentencing.

I'll also tell you that in the event there's some discussion between parties about a particular sentence, that is not necessarily binding upon the

634

court which has the authority to impose the sentence at whatever range is permitted by the general assembly, the legislature, which sets the minimums and the maximums for particular charges and the sentences that go with those charges under South Carolina law. I just simply give you that as an explanation so you'll have an understanding and can put in perspective some of the testimony that you've heard here today.

Now, we're going to end this -- today's proceeding and come back tomorrow for argument and charge, as I mentioned to you earlier, and then the case will go to you for deliberation. I suspect, I'm not certain, but if we go into the lunch hour tomorrow, I will tell you that the county will provide lunch for you. I just tell you that in advance because I don't want you worrying that someone is supposed to meet you somewhere for lunch at a particular time. So just, please, leave that open, if you would, and we'll see how -- what type of time or how long it takes in the morning for arguments, charge on the law, deliberation and all the various things that we will do tomorrow.

What I'm going to ask you to do is to be here at 9:30 tomorrow morning. I'll tell you the lawyers

635

and the Court will be here a little bit earlier than that as we prepare for closing arguments to make sure that we're ready to go at 9:30, but we would ask that you be here at 9:30.

Now, the last thing I want to say to you, and then I'm going to hush so you can go on about your business, that please keep an open mind because, first of all, you have not heard the law that affects the charges that are alleged here against the defendant from the Court. You haven't heard the charge on the law. You haven't heard the arguments of counsel. And so, please, keep an open mind. Just get a good night's rest and come back tomorrow morning at 9:30.

Any questions now about scheduling from anyone?

All right. Then we'll see all 14 of you tomorrow at 9:30. And out of respect for you, we'll sit where we are while you leave the courtroom. Have a good day, ladies and gentlemen.

(The jury was excused for the day.)

THE COURT: All right. Counsel, now here at the close of all evidence, but before we take up any motions, is there an objection to the contemporaneous charge that the Court gave so that I would still have an opportunity to correct any error

636

in that charge tomorrow morning, from either side, about the discussions of sentencing, the sentencing prerogatives, the sentencing parameters? What says the State?

MR. MAYE: Your Honor, I don't have any objection. Really, it's almost a matter of first impression. It's filled, if ever -- my tenure came up with a most unusual case, but I don't have any objection.

THE COURT: What says the defense?

MR. CASTO: No objection, Your Honor.

THE COURT: All right. Now, are there motions here at the close of all the evidence from either party? First, the defense.

MR. CASTO: Yes, sir, Your Honor. At this time, we renew all prior motions and objections raised at pretrial, during the trial. We'd also renew our motion for a directed verdict at this time.

THE COURT: All right. Based upon the Court's previous rulings on your pretrial motions, again, I will deny those motions. And, of course, the Court will deny any directed verdict request at this juncture as there was additional evidence against the defendant put in during the testimony of the

637

last witness. For those reasons, the Court denies the motions.

And, Counsel, we will -- we are printing and going to give to you the -- what we believe will be the appropriate charge. You can take it home with you and study it tonight. I'd ask you to be back at nine o'clock tomorrow morning here. We'll have a charge conference at 9:00 after you've had a chance to review it. Then at 9:30 promptly with the jury, we will proceed.

Anything else for the record before we close for the day from the State?

MR. MAYE: None from the State, Your Honor.

THE COURT: From the defense?

MR. CASTO: No, sir, Your Honor.

THE COURT: Then this court is adjourned until 9:30 tomorrow morning.

(The proceedings were concluded for October 16, 2013.)

(The following proceedings were held on October 17, 2013.)

THE COURT: All right. Ladies and gentlemen, we are advised that all of the jurors are here. We've given you a copy of the verdict form. We'll have an opportunity to talk about it before we

638

actually go to the jury because we'll certainly take a break before that time, but we wanted you to have the opportunity to review it.

My intention would be now to call the jury in. I am going to appoint juror number 198, Mr. Brandon J. Warren, as Foreperson. So we'll seat him in the foreperson's seat. And is there anything else before we bring in the jury from the State?

MR. MAYE: Nothing from the State, Your Honor. Thank you. The verdict form seems appropriate and nothing from the State.

THE COURT: And from the defense?

MR. CASTO: No, sir, Your Honor.

THE COURT: All right. So just to make sure we're all on the same page, the defense will argue first, the State will argue last and then the Court will charge. Any objection to that procedure?

MR. MAYE: None from the State, Your Honor. Thank you.

MR. CASTO: None from the defense, Your Honor.

THE COURT: Then hearing none, please bring in the jury and let's seat Mr. Warren in the foreperson's seat.

(The jury enters the courtroom at 9:32 a.m.)

THE COURT: Good morning, ladies and gentlemen.

639

Welcome back to the courtroom. I trust you had a good evening yesterday. And let me ask before we begin today's proceedings, is there any member of the jury panel who's had a discussion of the facts concerning this case with any third person or with anyone; if so, please raise your hand?

Let's let the record reflect no one has raised their hand.

Thank you again for complying with our request in that regard. You will recall that at the end of the day, we had reached the close of the testimonial phase of the case. And now this morning we're going to begin with closing arguments and then the charge on the law, and you'll retire to deliberate.

Now, Mr. Warren, didn't mean to make you nervous, but I asked that you be seated in the foreperson's seat and I'd ask you to serve as Foreperson of the jury. Just a comment or two about that, if I may, and I'll talk with you a little bit further at the close of the charge that I'll give you on the law about your role as foreperson. But, in advance, I want to say to you thank you for your willingness to serve and to assist the jury and lead the jury as a decision is made in this case. Thank you, sir.

640

FOREPERSON: Yes, sir.

THE COURT: Now, you may recall at the beginning of the case when I was discussing the procedures, I mentioned to you that at the end of the case, we'd have closing arguments from both sides, the charge on the law, you would retire to deliberate. And the way we're going to proceed is the defense will argue first, the State has the burden of proof so they're given final argument, and then I will give you the charge on the law.

Is there any objection to that procedure from either the State or the defense?

MR. MAYE: None from the State, Your Honor. Thank you.

MR. CASTO: None from the defense, Your Honor.

THE COURT: All right. Very good. Counsel prepared to argue? Both sides are prepared to argue at this time?

MR. MAYE: The State's prepared.

MR. CASTO: Yes, sir, Your Honor.

THE COURT: All right. Very good.

Now, let's go back and you will recall at the -- also at the beginning of the case, I mentioned to you that what the lawyer's argument to you will be, whatever it may be here at the close of the case, is

641

not evidence. It's the lawyers' positions on what the evidence is. The evidence in the case is what the witnesses have said and what the exhibits, which you'll have back in the jury room with you when you retire to deliberate, what they show.

So with that understanding, at this time, the Court recognizes defense counsel for closing argument.

MR. CASTO: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir, Mr. Casto.

CLOSING ARGUMENT

MR. CASTO: In certain places in the world, well, they have manual labor and they have manual labor in its worst form, its most raw form. And in certain places in undeveloped countries, they have people whose job it is to break these boulders. And they don't do it with machinery, they do it with their bare hands. And they're watching work -- what they do is they have these huge boulders and they feel all around with them -- with their hands, and what they're doing in that instance is they're looking for that soft spot. And they take the sledge hammer and they hit it as hard as they can so that boulder will break, and those people have done

642

it for years and they're very good at it, and that's the breaking point of that boulder.

Well, people also have their own breaking point, their own place where the pressure around them rises so much that it changes everything that they do, and it's no exception with the witnesses in this case. You know, we stood right here when the trial started and we said this, we said, If you're going to lie about the small things, you're surely going to lie about the big things, and that's what we saw from several witnesses in the trial of this case. What do these witnesses do when the pressure's on, what do they do when they feel threatened, scared, when they want to save themself? They lie. And it happened over and over throughout the trial this week.

We'll take each one in turn. We've heard from all of these witnesses that testified, but specifically the ones that were in the house, including O.J. Charley. And we submit to you that reasonable doubt does, in fact, exist in this case. And reasonable doubt, to begin with, is that it's that type of doubt that will cause a reasonable person to pause or to hesitate before they act, to pause or to hesitate before they act. And so ask

643

yourself this, do you have a doubt and do you have a reason for that doubt?

Enter the witnesses. Case in point, the first one, where are their breaking points with each one? O.J. Charley, he came in and what did he say? We asked him on direct and he fleshed out everything, but then we saw exactly where his breaking point was. Did -- when did you find out that you no longer had a deal? Because his testimony was that he thought he did. He says, Just now. And in that instance, everything he said changed.

What did he say before? It was orchestrated by him, that ultimately this was his money, that this was his issue with Al Young inside that house, $32,000 had been taken from him in an instance and he was just left without his money. None of that money was Gerald's whatsoever and so this was his issue. And remember he stepped up to the plate and he had already pled guilty in this case to attempted murder, already pled guilty. And he comes before you and we see the dramatic change in his testimony when he realizes he hadn't been sentenced yet, that was brought out, there was no more deal, and, in that instance, he changes everything.

But what does he say before that? It was set

644

up by him, that him and O.J. -- that O.J. and Gerald had nothing in this world going on and he didn't know what was going on when he took him down there, basically used Gerald as somebody that's a pawn to be thrown away just like he threw him away yesterday. And he took him out there and Gerald drives. Did he know anything at all about what was going on whatsoever? No, he didn't. Could he have known by what was in the car? No, he didn't. And step-by-step, they get there, he stays with the van, O.J. gets out, meets up with another person who's not arrested, and goes out and commits this act, runs back.

Could everything that O.J. said on cross-examination be believed? And the answer's no. Why? Because Brett Long, that officer that was sitting right behind that van, sees one person emerge and get in the passenger seat. He doesn't say two people. He says one person. Get in the driver's seat? No. But get in the passenger seat.

Does O.J. Charley, where is his breaking point? Well, for him, it's this: He's trying to save himself and we saw it the exact second that that happened yesterday afternoon when he knew that he was in trouble and we get a radically different

645

story. That's where his breaking point was. And what does he do with that? He begins to lie.

And we go on through the other testimony of Al Young, the person inside. Is what he says, is what he says believable? The State calls him -- the State calls him, Joseph Wrighton, Ycedra Williams. How much of their testimony can be believed and is it colored with deception? And the answer to that question is yes.

Do we get the truth from Al Jerome Young? His ammunition is found inside that home. If we didn't mention it, the State would not have even talked about it or what have you. His ammunition is found right inside his room. And his shell casings are also found from his gun outside that residence and they're scattered about with the other bullets contained in this bag, and they're all found at the same place. And what's the reason that he gives for that? He comes in and he says, Target practice.

Does he say where his target practice takes place? Yes, he does. And notice it's different from where Ycedra said his target practice took place. Is he lying about this instance -- or this incident? Yes. Is he lying about the very heart of what happened that night? Absolutely.

646

It gets even more interesting than that, that this $32,000 O.J. just handed it over to him and then he just disappears and then O.J.'s ripped off with $32,000, but he had contributed $6,000 of his own money. Well, that's clearly not what O.J. says. Is he lying about that? Absolutely. Absolutely.

It gets really interesting when we ask Al Jerome, Well, did you think O.J. was going to be mad or going to retaliate against you? And, basically, what his answer is, no. So why did you get the gun? Well, he stutters and he doesn't know what to say. Better question for him, Where did you get the gun? Some dude. Where did you get the ammunition? Well, you know, someone else got it for him.

But the best story that he told, as he slowly gets into other areas, well, you know, that substance that we found that wasn't drugs, but -- that it was roach powder, doesn't that color everything that he says? And can he be believed as we wade through, if he's going to even lie about that, can we trust him with the larger issues?

He shot his weapon first that night. And he's also going to come in and tell you that he needed roach powder so bad that he just had not sandwich bags, postage stamp -- I mean, imagine what that

647

even looks like to put roach powder in each individual one and then not to transfer it to anything else. He's lied to his core so much so that even his drugs are a lie. They're fake. They're a counterfeit substance and they're made to look like something else much like him and much like his testimony and you can't believe that in order to convict Gerald. Do you have a doubt and do you have a reason for that doubt when you consider O.J.'s testimony, when you consider Al Young's testimony?

The other two folks inside, Ycedra Williams and Joseph Wrighton, basically testified to similar things. It's Ycedra that tells us that that target practice that Al Young had was in a different spot than when they found the casings. How do you -- we're going to let the State come up here and explain how in the world that happened.

But one thing that we have to keep our eye on is what they say. You see, at first, they would have us believe that they told one lie when law enforcement showed up, Did you know that Al Young was on probation? No, I didn't. Ycedra said it. Joseph Wrighton said it. And you would think that all of their deception would be left back on April 13th of 2012.

648

But then when we -- why didn't they say yes when we asked, did you know he was on probation? No, I didn't. Followed it up with, Well, why did you have to lie? Well, he saved us, or something like that. Well, no. I mean, if you ask Ycedra that or what have you, she says, Well, he saved us. But you didn't lie about Joseph Wrighton, did you? He was there. Why is it all right to say that about that Joseph Wrighton's there and Al Young's not? They knew that he was on probation. And they're lying then and they're still going to lie now. They cannot be believed and their testimony falls short for what is required to convict Gerald. Do you have a doubt and do you have a reason for that doubt?

The State's argument has to look like this: It has to be this piecemeal of going down the aisle at a store and picking these items on this aisle and then moving on, I don't want this, I don't want that, I don't -- but this, this is a good deal, I'm going take this and piece it together. But once you have that slow, that deception, doesn't it seep into everything? It gets confused by people's motives or their pressure points, their breaking point, and what do they do? In this case, they lie.

And shifting gears somewhat, a little bit of an

649

illustration, in the Middle East, there is a town that's built over top of a river. It's been like that for more than a thousand years. And if you show up midday, cars, sound, noise, traffic, hustle and bustle, horns from cars, you cannot hear the water below. But if you show up to that same exact town and you get there at dawn and you get there at 6:00 a.m. and you walk the street and there's nobody out there, you can hear the sound beneath, you can hear that water beneath you.

Now, why did I tell that story? Well, in this case, that water is kind of like all of the physical evidence that's been paraded before you. And if that was allowed to speak, if we pause and we show up and we don't let the static of everything that we hear from other people, don't let their bias, their reasons to lie, anything like that interfere with that, if we look solely at that and allow it to speak, what does it tell us? What does it tell us?

Well, the first thing in this case involving a shooting, we look at the guns. And much has been made with prints and DNA and whatnot, but step-by-step, it's hard to pick out, but they look at the DNA lifted from each gun, and they got DNA from each gun. They got it from the grip on one of

650

those guns found outside. It doesn't come back as Gerald. Gerald is excluded from that. They got DNA from the trigger of the other gun and Gerald is excluded from that sample. The State would have you focus on these gloves, but when it hits head on with the actual weapons in a shooting incident, it doesn't make sense.

The other thing, the other thing I would consider is that there are all of these bullets flying around, and, you know, there's testimony that these holes, their -- each and every one of them's bullet holes and there are so many bullets flying around. Well, what did the bullet expert from SLED, what did he say? There's been no bullets, the actual bullets, not the casings, but bullets entered into evidence. They're found inside the residence, and they said that they are most consistent with ammunition from a Smith & Wesson ammunition.

Who did we find that ammunition, whose room do we find that in? Al Young's room. We also found casings from Al Young's gun inside that home. Hard to explain that, and it looks like something more happened. Do you have a doubt and do you have a reason for that doubt?

Finally, the gloves, much has been made about

651

these gloves. And, in fact, we had Hue Tang or "way" Tang come in and talk that he couldn't mix and match these gloves. And there was one subtle point in what he said and it's not -- and it's not, well, they couldn't be pieced together, so, oh, these gloves were ripped up. He couldn't even put -- everybody, in some point in their life, has tried to put together a puzzle and they're missing pieces, they're missing vital pieces. But I don't know that anybody's ever been bad off enough that none of the pieces that come out of that box match up with any of the other pieces, and he can't match any of them up.

Well, what does that tell you? These gloves were shredded up and yet they get DNA off a gun that excludes Gerald. But the State would have you focus on the gloves. We want to go one step further than that, focus on the guns that are collected, focus on the guns.

Think about what evidence we're without. There are these pictures that law enforcement and a couple of their witnesses say enable -- alluded to that, yes, you know, there were a lot of pictures presented in the trial, but they were taken a couple weeks ago. But back when all this happened, well,

652

we took several pictures, several pictures of, you know, various items. Well, where are they? Well, we don't know. Did you take those pictures? No, it wasn't me, but, you know, that's our policy. Where are those? We're wholly without that.

But even bigger than that, and this is a case of a shooting, we are without gunshot residue evidence, we're without that. And the State would have you believe, we all go home and we walk out that door and DNA is sufficient and everything like that. Or is it? Remember, look at the guns, it excludes him.

The other thing is we could have had more. SLED does gunshot residue testing every day and obviously the officers are familiar with it. They all testified, both the folks from SLED and the local law enforcement officers, testified that they know what it is. That basically once a gun is fired, there are these microscopic gases, particles and they can go on the hands, they can go on the clothing.

But, also, guess what? There's this window of hours, six, seven hours, where we need to get that. Law enforcement was right there when this happened. In the case of a shooting, they were right there.

653

This isn't something that, you know, went on for weeks or days or whatever and they matched back up. They had them, their hands, these gloves laying there. They had the clothing that they were wearing, because we know that they were booked into the jail that night, they had to remove it. They have all of that.

Did you submit it for gunshot residue testing? No. Wouldn't you want to have it? And there was some explanation as to, well, why isn't that? Well, you know, they're damp, it might wash off.

Isn't this one of the things, in a case where there's a shooting, and let's say they did that, they had the clothing, let's say those are damp, but they also had the gloves and they also had their hands and they didn't do it. And let's go as far as to say, let's say they did it and didn't come back with anything, at least we know that they tested it. But did they do it in the case of a shooting? No, they did not. They didn't do it. And we're without vital evidence. Do you have a doubt and do you have a reason for that doubt?

Now, with all of these tests and especially with gunshot residue testing, you know, we wouldn't really need these tests if the witnesses always came

654

to court and always told the truth 100 percent of the time, we wouldn't even need these tests. But we know that's not the case. And we know that's certainly not the case when we consider the testimony of O.J., of Al Young, of Ycedra Williams and Joseph Wrighton. Do you have a doubt and do you have a reason for that doubt?

Reasonable doubt in this case, again, as it's been defined, it's the type of doubt that would cause an ordinary person to pause or hesitate before they act. And so do you have a doubt and do you have a reason for that doubt?

And reasonable doubt is, in fact, alive and well in this case. Doubt exists. And it says that these witnesses' testimony falls far short to convict Gerald.

You see, back in Lexington, there's a courthouse and it has four stories. Now, in each floor basically, kind of on some level, has its own type of case that's handled there. First floor, generally probate court.

But once you get up to the second floor, they have a certain standard of proof that has to be met and it's much lower than in criminal court. But in family court, perhaps many of you or somebody you've

655

heard of have been in that involvement, there's not -- the standard of proof in that case is much less, but it comes with a tremendous price. They do important things on that floor. They can take folk's kids away, order alimony payments, child support, custody issues. It's not as high as the standard here in this world of a criminal trial.

In civil court, the burden of proof's a little bit higher, but not much, and it's certainly not as high as this court. In civil court, the stakes are very high as well. They can take your money away. They can take hundreds and millions and millions of dollars away.

But in criminal court, the standard is even higher, and that's our standard that we have in this case. Is it based on a hunch, a whim? No, it is not. Reasonable doubt is the highest standard out there. And do you have a doubt and do you have a reason for that doubt? Reasons for that doubt exist and they are alive and well in this case, in light of the fact that this is the highest burden to bear in any type of court in our state and our country is reasonable doubt.

Finally, and I'll close with this thought, you know, we hear stories back of King Arthur and his

656

Knights of the Round Table. For centuries, they believed that King Arthur was largely made up, that he was a fictional character, that he didn't exist. But only within the last hundred years, there's been some evidence he may have actually lived.

Doesn't mean all the stories are true, but the main story that comes out of that time, amongst the other adventures with knights and dragons and damsels in distress, is the idea of the Round Table. And the idea is this, it's incredibly forward thinking for hundreds and hundreds of years ago, but the idea is this, that the folks in leadership they sit at this table and each person to their left and to their right, well, their power or their vote is just as big as their neighbors. Even the king sat at that table and his vote was no greater than anyone else's, everyone had the same. That's what's going on here.

You're allowed to take into account your life experiences, what you heard and you saw and factor that into this case. Your vote is just as important as your neighbor's when you wade through and you consider the evidence in this case. Do you have a doubt and do you have a reason for that doubt? And hold on to your gut feelings, don't let anyone take

657

it from you. And we'd ask, at the conclusion of this trial, that you find Gerald not guilty of these offenses alleged. Thank you very listening to me.

THE COURT: The Court recognizes the prosecution for closing statement.

MR. MAYE: May it please the Court, Your Honor.

THE COURT: Yes, sir, Mr. Maye.

MR. MAYE: It's now ten o'clock on Thursday. The State's certainly mindful and cognizant of the fact, as we talked about at the beginning of this week, that you've been taken away from what you would normally have been doing to come up here and sit as judges of the facts in this case. You've been up here a long time. You've been put back there in that room. You sat a long time waiting on us. You've sat in here waiting, I submit to you, through a lot of very tedious evidence, too.

Everyone is mindful that you've been taken away from what you would have normally been doing, but this is vitally important for everybody here in Saluda County because, as the State talked about at the beginning of this, this is as serious of a matter as has ever been up in this courthouse. This is serious business because when we boil this thing down, what we're talking about is the attempted

658

murder of three people.

And the Judge is going to charge you, when I get through speaking to you in closing argument, he's going to charge you with what the law is in this case and he's going to talk with you about attempted murder. Because as we clear away all the smoke and the dust that's attempting to be stomped up in front of you to conceal the simple facts in this case, the State submits to you that all of the evidence in this case points to the fact that Gerald Williams came up here from Williston, South Carolina, with an intent to kill. No question.

They may have just come up here initially with the intent to kill Al Young, but they fired indiscriminately into that mobile home with absolutely no idea who was in there, absolutely none. And you can forget anything O.J. Charley said, Oh, there weren't any other cars. They had no idea if there were children in there. They had no idea who was inside that house, and they absolutely and they completely did not care.

They riddled that trailer with bullets. You can look at these bullet holes in this door. You can look at those photos. They stitched and riddled that trailer from top to bottom with bullet holes

659

with no regard for who was inside.

Now, the Judge is going to -- in his charge, he's going to talk with you about transferred intent. There's no question that as these two men came up here from Williston to Saluda County, they had the intent to kill Al Jerome Young. There's absolutely no question about that. He was going to have to die because O.J. had been ripped off of his money.

And whatever the deal was, and as implausible and ridiculous it is, that he was a victim of an armed robbery, whatever the reason was, he was unable to get back however much money it was that was in play, whether it was $32,000 or minus six or whatever it was, couldn't get his money back, he came up with this cast of thugs. He tried to intimidate him. Basically that trip was just to let him know, when they couldn't find him, I know where your family is. Something bad's going to happen to them. I know where they are. Where is my money? And when that didn't happen, they were going to kill him.

And you can bet when they loaded up in Williston, Mr. Williams, with his motive, which is probably even worse because when it all boils down,

660

when all of the dust settles in this case, Gerald Williams, the defendant in this case, his motive is money. He's going to come up here and kill Al Young just because he's going to get to share in some of the money. He's not slighted in any regard by Al Jerome Young. He's going to come up here just purely out of greed and murder somebody absolute -- just to get some money, going to stick himself in this -- insert himself in just as an assassin for hire.

Probably even worse than O.J., at least he had something to be mad about. Now, whatever honor that there's supposed to be in between people that are dealing with nearly 30 grand to buy drugs with, whatever honor there is among thieves, outlaws, he's at least got some sense of indignity.

Tell you that he was the victim of an armed robbery, which is absolutely ridiculous. Anybody's a victim of an armed robbery go to the police, but you can't go to the police when, at the core of the deal you get ripped off on, you're talking about a drug deal. Who do you go to then? There's nothing left but self-help.

And I submit to you it's just like all the movies that you see with the bandits, when the

661

people are doing these big huge drug deals, you know when you're talking about that, the only thing is threat, intimidation, death because you sure can't go to the police. Not like 'ol O.J. could go cruising down here to Investigator Shorter or Quattlebaum and say, you know, I gave this 'ol Al Jerome Young 30 grand to buy a key from some people up here and he ripped me off. Where do I sign a warrant on him? It just doesn't happen that way. There's nothing left but self-help. He tried intimidation, that didn't work. Nothing left.

I submit to you you see a big undercurrent in here and you see a lot of things around the periphery, but one thing that's clear in this case, a lot of savvy police officers around down in Williston, up here. Might be in kind of a folksy, country kind of manner, but there's some savvy people that have been around and know what's going on. You got to appreciate the fact that officers from Williston knew enough to tip off the authorities in Saluda that somebody was getting ready to get killed. Word was out on the street. He knew it. Investigator Shorter got the word.

And you've got to commend the sheriff's office because even though this is the attempted murder of

662

one dope dealer and another over a failed dope dealer {sic}, you know, the bottom line is everybody's entitled to protection of the law. And the sheriff's office didn't sit around and do nothing. And they didn't say, oh, this is just one less dope dealer. If he gets whacked and he gets killed, who cares. They did something about it, because everybody's entitled to protection of the law. Because ultimately crimes are against the state, they're not against the individual.

Crime -- this is the State of South Carolina versus Gerald Williams. That's what he's charged with, an indictment by the people, the State. It's not against Al Jerome Young, who's probably the least of us in this situation, but it's a crime against everyone, because it is a slippery, slippery slope when you decide that you're going to start weighing who is entitled to protection of law, that is a slippery, slippery slope, and law enforcement didn't do that.

Even though it was Al Young that was going to get killed and he, himself, was wanted, law enforcement still helped take those steps that were necessary to try to keep somebody from getting murdered. Because, as I said, when we talked about

663

that slippery slope, if you're going to say somebody like Al Jerome Young, who we told you from the outset in this case and have never tried to hide, he's a thug, a man who came here in an orange jumpsuit from prison, if you're going to say that he is not entitled to protection of law, what a slippery slope because then you allow the likes of Gerald Williams and O.J. Charley to become judge, jury and executioner and decide who lives and dies, and we just don't do that. We don't operate that way, the least of us, because the crime is against the State.

So law enforcement, you've already heard, they went out there and they helped the family that lived in the trailer get out of there and they fled. They abandoned this. Now, this is brewing. It is stewing. It is brewing. Law enforcement knows it is coming like a storm. They get that family out of there. But they have no idea of that, they didn't know.

When Gerald Williams and O.J. loaded up and made their plans to come up here to murder somebody in Saluda County, when they got their rubber gloves together, when they got these nasty weapons together, when they got these big semiautomatic

664

pistols, that's a nice looking piece there, that's a really classy weapon there, that is nothing but a tool to kill people with with a big 'ol stick magazine, 20 rounds, so you've got more bullets than the next person you come up against. And O.J. Charley tried to convince you with all the planning that went into this, they're going to come up here under the cover of darkness, they're going to park their car way off down the road here and walk up through the woods to assault and try to kill Al Jerome Young. They're going to bring these big 'ol guns with them. They're going to put rubber gloves on.

What are the rubber gloves for? It's to hide their tracks for a day just like today, covering those tracks. We're smarter than everybody else. We've got this figured out. We're going to cover up. We're going to hide everything in this case because we're going to put rubber gloves on and we're not going to leave any fingerprints behind, so even if things go wrong in a day like today when they sit in a courtroom occurs, we will have covered our tracks, we will have concealed it, hid it because we're going to put gloves on in this case so we won't leave any fingerprints behind, so we won't

665

leave any DNA.

And all they can tell you in this case, oh, but they didn't get any DNA off the trigger and they didn't get any fingerprints of 'ol Gerald Williams over here off this. Well, of course not, of course not. They wore gloves. Do you think they would have been boneheaded enough to go to all of the trouble to put hospital-style latex gloves on and have already put their grubby fingers all over these weapons and left fingerprints behind and DNA on the trigger?

We submit to you, in all likelihood, there is DNA, whoever pulled the trigger on this thing before, whoever from law enforcement touched it, whoever at any stage of this process touched this weapon, anybody's DNA, anybody's fingerprint could be on it, but Gerald Williams and O.J. Charley because they had gone to great lengths to ensure that they were not going to leave that behind. They were thinking, being smart. We're going to outsmart everybody.

And that's the problem. That's the arrogance that comes with trying to commit a crime and thinking, you know, I am smart enough to outthink everybody. I'm slick enough that I'm going to get

666

by with this, going to cover this up, going to get away, just slide up here to Saluda County, kill somebody, slide off home. I've got gloves on, I'm not going to leave any prints behind, I'm planning, I'm scheming.

Well, no one or two people, their collective wisdom does not outstrip the collective wisdom of 12 reasonable people who bring into this courtroom the sum total of all of their life experiences as to who's got motive to lie and what's truth, what's fact, what's fiction. Because Gerald Williams, he's had his trial. They put the State -- we said we've got the burden of proof and we welcome it. And one witness at a time, one piece of evidence at the time, that cloak of innocence that he came in here shrouded in has been stripped away and he sits naked over there with his guilt displayed for the 12 of you that are going to go back in that jury room and deliberate.

Because they weren't able to use those rubber gloves to hide and conceal and not leave any fingerprints and not leave anything else behind in this case because they weren't thinking. They were a little behind the times. They got panicked in this case and they left behind their DNA inside

667

those gloves right as they abandoned those weapons right along the path where the bloodhounds led the officers back. One in 14 quadrillion, seven billion people on the planet and there's absolutely no question that his DNA was on the inside of those purple gloves. And the purple gloves were laying right there where they abandoned those weapons.

And there was no other -- there were no other people involved. We'll get into the absolute ridiculous fallacy about this Rico Riverez or whoever this is and all of that, just fiction and pure fantasy up there with the tooth fairy. Left his DNA behind.

And I submit, just like the defense was talking about in this case, forget this because you are smart people and you can tell one great thing about the way this whole trial unfolded is you have a clear picture of everything that happened. You know that O.J. and Al had a beef over this money, over him getting ripped off. He couldn't intimidate it out of him. There was nothing left to do but come to murder him. So they came up here under the cover of darkness after midnight on over into dark and slipped up on this house. They drove that van up here and got out and they left it pointed in a way

668

where they can get away, walked back down through the woods so that van won't be seen at the house and slip up on this trailer.

And, oh, they'd tell you, oh, he came outside and started shooting. Do you think these assassins armed with these weapons with gloves on, skulking through the woods in the cover of darkness are going to give Al Young a chance to come out and defend himself, a man that O.J. already knew was armed? Do you think they're going to give him that kind of chance, the kind of cowards that'd stand and spray a trailer from top to bottom with nobody in there? Absolutely not. When Wrighton came to the door when the window was on {sic} and they saw anybody, you look at this door, it's peppered from top to bottom, they blasted that door.

Even if he had come outside, it didn't make a nickle's worth of difference. Even O.J. is trying to say, oh, what did he do? Well, he came outside and he shot in the air. Do you believe that? This guy that's gotten a gun, who's ripped off 30 grand from a drug dealer, do you think he's going to come out and shoot up in the air, expose himself under the cover of light? That did not happen. They saw somebody at the door and they opened fire.

669

And I started talking with you a little bit about the intent, and the Judge is going to charge you with it, but they certainly intended to kill Al Young. Gerald Williams' own cousin is up there inside this trailer. Did he know? Probably not. Did he care? Absolutely not.

Joseph Wrighton was up in there, a very, kind of odd, apparently very thirsty young man who testified up here. Do you think he's a mastermind drug dealer going to work every day at Amicks? Does he seem like the kind of hardened thug that Al Jerome Young is? And you can tell, when O.J. Charley got up here and Al Jerome Young got up here, you're talking about a different breed there. They're hardened thugs. I mean, you can just tell. You can tell by their demeanor. These are mean spirited, mean people.

We told you from the outset Al Young is not a good guy, certainly not. He's the kind of guy with the nerve and moxie to rip off a dope dealer, but he just didn't think O.J. had the nerve. He described it in a different term as to what he didn't think he had in this case. He just really didn't believe he'd come up there and do it, but he was bad, bad wrong. He underestimated how mean O.J. was, and he

670

underestimated how greedy a man like Gerald Williams would be that just for money, that he would come up to help kill him. They certainly intended to kill Al when they came up here.

The crime of murder is described as the killing of another with malice aforethought. What's malice? The old cases used to say malice is a depraved heart bent on wickedness. Malice is meanness, malice. There's another old saying that malice follows the bullet when you start shooting. Malice follows the bullet.

Didn't make any difference who they were shooting at in that trailer. They were intending to kill Al Young and they certainly were. They sprayed that trailer from top to bottom, even anybody laying in the floor. You can look all down the skirting in that trailer, they were firing up and down on it, tried to get anybody, whether they were standing up or laying down, in that trailer.

They certainly intended to kill him, but malice follows the bullet. Anybody else that had been in there, a child in a crib, somebody asleep in a back bedroom, somebody in another trailer in the trailer park asleep in their house completely in another trailer, transferred intent. Malice follows the

671

bullet.

If you're mean enough to come and murder somebody because they've ripped you off of your dope money and you take up a gun and skulk through the night and put gloves on and sneak up here to Saluda County and start firing into a building, that kind of malice that is generated when you start pulling the trigger and set that bullet in flight, it follows the bullet. If you hit Al Young, you've attempted to murder him. If you hit someone like Ycedra Williams who just happens to be in the trailer, it's murder. If you hit someone like Joseph Wrighton that happened to be in that trailer that happened to go to the door, it's murder.

Attempted murder is exactly the same thing with the only exception that they weren't able to carry it out, they didn't hit anybody. Miraculously, with all of these shots fired, they did not hit anybody. That's attempted murder. And when you boil it down, that's exactly what we have in this case.

The Judge is going to also talk with you about the hand of one is the hand of all. You're going to hear some language about that. Spoke with you just a little bit about that, but it's the same thing.

If you've got a group of people that decide

672

they're going to get together and they're going to come up here to Saluda and they're going to rob the bank, two guys, and they decide, you know, I'm going to go in there and I'm going to get the money out of the bank, and if one guy didn't do anything, but he knows they're going to come down here and rob and he just gives his buddy a ride and he parks out here on the street and he let's his buddy out and his buddy goes inside and things go horribly awry when he gets in there and he shoots and he kills and he murders the poor teller in the bank and he comes out, well, in South Carolina, the hand of one is the hand of all. And with knowledge that this was going to go on, just the driver drove somebody up here and he went in, he's just as guilty of that felony murder as the person that went in and pulled the trigger because the hand of one is the hand of all.

Let's talk about the only possible scenario in which Gerald Williams can be not guilty in this case. Had to be that tooth fairy fantasy story that he just came up here, you know, to give somebody a ride, suddenly O.J. Charley needed a ride up here to Saluda in the middle of the night to come see some girl and he got Gerald Williams loaded up to drive him all the way up here. He suddenly -- now, never

673

mind he drove up here a couple days before and, as he said, was the victim of an armed robbery or he drove up here and came up here to intimidate O.J. {sic} who was in a van load of people. Now, he didn't have any problems driving then.

But this particular time on over after midnight, he needs a ride from Gerald Williams. So he gets 'ol Gerald and he says, Gerald, you know, just come on with me, I want to go see a girl up in Saluda, so load me up in the van and you drive and take us on up here to Saluda. And, you know, we'll just park the car down here on the side of the road and you sit here and mind your own business in the car. And I'm not going to tell you anything about what's going on, but you just sit tight right here and I'll be back. And 'ol Gerald didn't know a thing about what's going on, has no idea why O.J.'s coming up here.

There's your innocent man. There's your scenario in this case where Gerald Williams is an innocent man, doesn't know anything about anything. Is that reasonable? Use your common sense on that. And like I said, the collective wisdom of the 12 of you outstrip that of any one person.

And that's the fantasy and the fairytale story

674

that was the defense in this case before it imploded and it fell apart. That's what they're going to come up here, that's the bill of goods that is going to try to be sold to you as the defense in this case. What arrogance to think that they could weave together that tale of fiction and put it up here as a valid defense in this case. That's what the intent was in this case till it absolutely imploded and it fell apart. Never been a better example in any courtroom of it just getting derailed and coming off the tracks.

Because even O.J. couldn't look y'all in the face and tell you that pack of lies that he got Gerald to come up here who didn't know anything about it, and then somehow, some way some dude that nobody's ever heard of, Rico Riverez, who must be the cousin of, who was it, what did Al Young say, Maurice and Q, like I said, he's a hardened thug. When Mr. Madsen tried to pin him down, Who did you buy the gun from, well, he's not going to rat out any of his friends, Maurice, some dude named Maurice, some dude named Q. I guess Rico Riverez and Maurice and Q are all related. Just pure fiction and fantasy, absolute nonsense.

This dude named Rico Riverez somehow is going

675

to come up here to Saluda in the dark of night and meet up with him and provide the guns and this poor 'ol Rico manages to sneak off. Bloodhounds didn't track a single soul out of there. Law enforcement told you they swept. Two shooters, two people in custody, O.J. Charley and Gerald Williams.

Rico Riverez is a fantasy, a fiction, a lie woven and pulled out of thin air to try to be sold with the hopes that it's going to be bought by 12 intelligent people that he's going to meet 'ol Rico Riverez out there who's going to provide the guns. He didn't bring any guns because 'ol Gerald, I can't have him knowing or see anything about guns or rubber gloves or anything of that. What nonsense and utter fiction. And even he could not sit up here on the stand and complete telling that pack of absolute fiction, lies. Just absolutely imploded and fell apart because it just doesn't make any sense. He had absolutely no answers.

Well, you know, how does the DNA of Gerald Williams in those torn up purple gloves get laying right there on top of the guns where y'all abandon them right where the bloodhounds track back, right where the officers went and put that trail back to that van? How does his DNA get there piled up right

676

there on top of those guns? You've got all the -- you've got a wealth of evidence in this case. How does it get there? There's just no explanation. One in, what, 14 quadrillion.

Because his DNA's on those pieces of purple gloves there, his DNA is back in the van and this genius didn't even take the pieces of the gloves off of his fingers when he gets booked into the jail. When they book him in the jail, boom, thumb and forefinger still got pieces of purple gloves on them.

Now, he tries to hide them and stick them in his pockets, but as it comes out, as the officers start unravelling this twisted tale, start doing their work, they find the gloves. Investigator Shorter is savvy. He knows what's going on. He immediately calls up to the jail and starts asking about gloves. And low and behold, an astute jailer says, yeah, this guy had gloves on his fingers when he came in.

That was what broke O.J. Charley when Investigator Shorter was leaning on him to begin with, that's why he broke to begin with. He realized 'ol Gerald's not smart enough to even get the glove fragments off his fingers and the game is

677

up and he cooperates.

Like I said, now, the great thing about it, you've got the whole tale. Nothing's being hidden from you behind closed doors. You've got the entire tale.

When O.J. Charley's confronted with the fact that Gerald's got the purple gloves on, he knows they found the guns, he knows it's up, he cooperates and he implicates Gerald Williams. And he went down to McCormick County and he pleaded guilty. And there's no hiding that in this case. Going to testify against Gerald in this case. Goes down pleads guilty to one out of three counts, sentence is deferred. He had to be reminded in this case, he knew it from the outset, didn't have any plea deal, sentence is deferred, he's going to testify and then he's going to get sentenced later and it's going to be up to the judge to decide his fate.

But he no more than got home good from that than he's already scheming, thinking about how to pull Gerald Williams' fat out of the fire, to start telling lies, to start weaving this fiction tale, Rico Riverez, some dude coming up and how Gerald Williams didn't know a thing about it. Never mind what he's told the law enforcement officers, never

678

mind what he's agreed to at that plea that he's going to testify to, he's going to try to figure out some way to weave this -- he's so smart, he's going to think his way out of this. He's going to help 'ol Gerald out.

Now, I guess you can say it was an honor among criminals. Gerald came up here with him and it wasn't his beef, so he's going to figure out some way that he can help 'ol Gerald out of this jam. So he's going to start writing letters, getting up here, telling this twisted tale. They're so smart that they're going to weave this twisted story about how 'ol Gerald could have just not been involved and not known anything at all about this thing between the two of them. That's the bill of goods they're going to sell or try to sell, and it just came off the rails. It doesn't take a genius to figure out.

Law enforcement's got a backup at that point in time. And like I said -- let's go back through it a little bit. I told you -- I just touched on it a little bit to begin with about some good, savvy police work, the kind of police work, detective with his ear to the ground that knows that a murder is getting ready to take place; Investigator Shorter, a detective that's smart enough to put his officers to

679

being on the lookout for a green van, O.J. Charley, start checking the area, saturating it.

It was no accident that all of those cops were coordinated in and around that area. It's no accident that it was a Town police officer up there on backup right at the city limits, Brett Long. Those officers were steady patrolling the area, looking. And when they got the call, they were on it, and that's what messed them up because they thought that they were going to come up here under cover of darkness and kill him and be out of here and gone, but the cops were on them too quick. 9-1-1 got called and they were on them.

And you got to give Grenier and Morelli credit because even in their headlong rush, and you know they were getting with it when they went down there to this call of shots fired, they see that green van on the side of the road and they're smart enough to know that that is the method of escape from the people that are carrying this out. So they stop. They go around it. Nobody's in it. Right there. It's all a lie. Gerald Williams was not sitting there twiddling his thumbs waiting on his good buddy, O.J. Charley, to come back from visiting this girl here in Saluda. There was not one soul in that

680

van. It was empty.

Grenier said they went all around it. They checked it. It was locked. It was sitting there. I guess they didn't want anybody to steal their getaway vehicle. They done locked it up on the side of the road there and not one soul in it. Not one word of truth to the fact or the fiction that Gerald Williams sat there in that vehicle because there was nobody in it. It was empty.

And in just a minute, they left, but Brett Long was up on it. And he told you he circled around, saw a guy stand up, O.J., from out of the ditch. You got more of the tale then because O.J. told you, when he finally broke down and at least told part of the truth, yeah, we saw the cops coming and going. And, you know, they went up there, they thought they were still -- when the first group of cops left, they thought they'd have a chance to go and jump in the van and still make their escape.

You know, they've worn gloves, and, you know, we're not going to leave behind anything on the guns. We're not going to leave behind any fingerprints or anything. We've taken all this trouble with it. You know, we ditched the guns. We took off the gloves. You know, we're covering our

681

tracks. We're going to make our escape. But they weren't counting on Brett Long coming up and jumping them at that point in time because Long testified that he circled right in behind them, turned on his lights, up pops O.J.

And O.J. tried to tell you, oh, we didn't stop and start. It didn't happen that way. Well, he's just going to lie when he thinks he can. He's trying, at this point in time, to minimize his own involvement. Oh, I didn't know whether or not those guns were loaded or not, fully loaded. Oh, my gun just jammed. What fiction. Do you think anybody would come down here with these assassin-grade weapons?

The Smith .40, whoever was firing it, emptied it. The Tec-9 with the big 'ol 20-round magazine jammed at some point in time, but you can bet law enforcement didn't find all the slugs there, and there was talk about that. You know good and well that thing had 21 or 20 or whatever was in it and he fired it until it jammed and that was what was left. You got all the unspent cartridges there because it did misfire. But you can bet he pulled the trigger till it misfired. He wants to sell it, oh, I just fired one time and I ran. What fiction. It's

682

ridiculous. He's minimizing it.

And the .40, we know what happened to it, it was stone empty. There was the malice and the meanness of whoever was wielding it that they shot every shot into that trailer. And the yard and all those spent shell casings bear that out. No question. That kind of malice and meanness and, as we said before, the kind of malice that follows the bullet.

They stop. They start. The doors are open because you know there's just some hope somehow we're going to get out from under this, maybe we can run, stop, start, stop, start. And they finally box them in and take them into custody and that's when it all unravels, and it has all unraveled.

But, you know, law enforcement had a cooperating co-defendant, O.J. Charley, they had Gerald Williams who still had the purple glove pieces on his hands, had two shooters, two people in custody. Yeah, that was it, until O.J. flipped.

And you know from the time, and you can look on all these documents, you can look at the swabs, the DNA testing, law enforcement backed up, they were smart, they were prudent. They had documented where they got all these items from, the fungible

683

evidence. And you heard talk about fungible and nonfungible and chain of custody. You heard a lot of talk about that. But fungible evidence, that's stuff that rots. It's like blood, it's like fluids, it's things that degrade and rot. Nonfungible evidence, hard things like a gun, something that you can pick up and get the serial number off of and write down, that's nonfungible because it doesn't rot or change or degrade.

Now, if you get blood evidence, something like that, it can rot and change and decay so you've got to have a chain of custody. And what you saw in this case, I submit to you, is just an attempt to stomp and do anything they could to keep that DNA evidence out, keep anything out.

And the defense was doing their job in this case, doing anything they could to exclude that because so y'all sat up here through, what, nearly a full day of just one witness after another, oh, yeah, I got this item and I didn't change it, I didn't alter it, I had it and on this day, I handled it, I handed it to this person and I didn't alter it and I didn't change it, because that's when you put the State to the burden of proof. We've got to prove it, that they got it, that they got it from

684

where they said they got it from, and the same thing they picked up there is the same thing that gets tested when it gets to the lab.

And we told you from the outset that the State has the burden of proof in this case and we welcomed it and you can bet it's been tested. Because the attempt to cloud this case and to kick up a cloud of dust and conceal the simple fact that you're sitting about 40 feet away from someone that would come to Saluda County and attempt to murder three people, it's nothing but an attempt to kick up a cloud of dust. And, oh, the police, you know, they didn't take those photographs that they should have took. They didn't do this chain of custody right. Oh, it was a sloppy investigation. Even though they started out in this case with having a cooperating co-defendant.

When he flip-flopped, they were immediately able to change gears and go into a forensic mode. Because a forensic -- a pure forensic investigation is when you pull up on a scene and you don't have anybody in custody and you didn't have any eyewitnesses, so you bring the crime scene people in and you put up flags and you pull the tape measures and you try to get any minutia of evidence that you

685

can and you work that case differently.

But this case changed gears. It went from one where you had a cooperating co-defendant to one that flip-flopped, but law enforcement was undeterred. They swabbed his mouth. They got the DNA evidence. They had preserved it to the point, from the start of this case, that they were able to do that and change gears. Absolute police work, the kind of savvy police work two guys responding to a call on a high-speed chase still takes time to respond and sit on a suspicious vehicle and crack this case and catch these guys in the act, the same kind of savvy police work.

They knew where they got these items from. They got an order. They swabbed his mouth. They took those purple glove pieces that are absolutely inexorably wound up in this crime.

You know good and well that the person that did this shooting and laid those gloves down there is the person that was wielding it and got DNA testing and brought that in here before you. One in 14 quadrillion. You can bet that Gerald Williams was not sitting in that car, that he was wielding one of those two guns and spraying this trailer, and the DNA does not lie.

686

Because you can bet O.J. Charley would have been a State's witness to start with, but you saw him come up here as a defense witness trying to weave his web of lies to pull his good buddy Gerald Williams' fat out of the fire. And you saw that fall apart through good police work and forensic science and absolutely insurmountable evidence of guilt that even O.J. Charley couldn't sit up here and look you in the eye and try to sell it to you, even he couldn't do it.

If there's anything good to be said about him is when, finally, lies just don't work. And he did apologize. And as it fell apart and as it unravelled, he did tell you, yes, I lied and this is it.

And the truth's not completely in him. He's still going to minimize, Oh, the guns weren't fully loaded; you know, I don't think that thing was right about how Brett Long said it; and, you know, ultimately, I'm just not going to come off the fact that I got robbed; it wasn't over a dope deal. He gave me a -- he just can't bring himself to tell it all, worried about how that's going to blow back on him if he admits to some drug conspiracy, that's all that's about, covering tracks, scheming,

687

manipulative.

The State's got the burden of proof in this case and we've met it the State submits to you. The 12 of you that go back in that jury room, I told you now for the third, fourth time, the collective wisdom of the 12 of you outstrip that of any one person. And the likes of O.J. Charley and Gerald Williams, their feeble efforts to conceal their tracks and to hide from the light of day have been exposed up here through this trial.

I submit to you Gerald Williams came up here to kill someone. He fired on that trailer and he didn't care if he killed anyone else. And under the law, the State submits to you he's certainly guilty of three counts of attempted murder, that kind of malice that was following those bullets, the kind of malice that was set into motion by somebody who was so greedy that they would come up here to commit murder for money, arrived here in Saluda County already scheming, already planning for that day when I might get caught, how am I going to cover my tracks, how am I going to fool the people, but it just doesn't work. You're sure you'll be found out, and he has been and he's had his day in court.

The State's been put to the burden of proof.

688

We submit to you there are only three appropriate verdicts. You'll get the verdict form in this case. He's got three counts of attempted murder for Wrighton, for Ycedra Williams and for, one of the least of all, Al Jerome Young. We submit to you that it's certainly not appropriate to slide down that slippery slope of judging who's entitled to the protection of the law, and that certainly Gerald Williams shouldn't be judge, jury and executioner.

THE COURT: All right. Ladies and gentlemen, we're going take our morning break now, and we'll give you an opportunity to step outside if you wish to take a break. And we'll reconvene in 15 to 20 minutes for the charge on the law. Please don't discuss the case. Enjoy your break. And we'll remain where we are as you depart the courtroom.

(The jury retires to the jury room.)

THE COURT: All right. Ladies and gentlemen, we'll be in recess now approximately 15 minutes.

(Brief recess.)

THE COURT: All right. Ladies and gentlemen, we are back from our break. And let me ask before we bring the jury out, have you had an opportunity to review the verdict form and is there an objection to the form from the State?

689

MR. MAYE: Not from the State. Thank you.

THE COURT: And from the defense?

MR. CASTO: Yes, sir, Your Honor. Our objection is as follows, just to -- I'll place this on the record: There are three counts on there, it's, As to the charge of attempted murder of Al Jerome Young, we, the jury, unanimously find the defendant, Gerald R. Williams, beyond a reasonable doubt, and in their two choices listed, Not guilty or guilty. You know, they only need to find him beyond a reasonable doubt guilty with regard to that language. I don't think they need to find him not guilty beyond a reasonable doubt.

THE COURT: All right. Counsel, how would you propose to change the form?

MR. CASTO: If we could just remove the beyond a reasonable doubt phrase.

THE COURT: Very good.

What says the State?

MR. MAYE: Your Honor, I'll leave it to the Court's discretion with no argument.

THE COURT: Very good. The first time I've had that raised in probably several hundred trials, but we'll concede to your request and remove the term beyond a reasonable doubt. So the questions one

690

through three just simply will not have the term at the end, the phrase, beyond a reasonable doubt. It still has for guilt or innocence, all right.

MR. CASTO: Yes, sir.

THE COURT: Very good.

Then let's bring in the jury.

(The jury returns to the courtroom.)

CHARGE OF THE COURT

THE COURT: All right. Ladies and gentlemen, welcome back to the courtroom. As you are aware, this is the time at the point at which I give you the charge on the law. And let me first ask are you able to hear me, ladies and gentlemen, on the back, can you hear me?

All right. Very good. And let me begin these comments by saying to you, you may recall Monday when we first talked and we were qualifying you even before you were chosen for this jury, I mentioned to the entire panel that we knew you had a busy life before you were summoned for jury duty and that jury duty was imposed on what is already a busy life with many demands. But I want to thank you for the level of commitment that you've given to this case.

Because throughout the last three days, now working on the fourth day, I have continued to

691

observe you throughout the trial. I do that to make sure you're comfortable that -- gauge you for level of focus as well. And every time I've done that, just as you're doing now, I've looked up and you'll be sitting there with, what I call, wrapped attention, close focus.

I'm grateful that you would put aside your busy lives, give this case, which is these parties, both parties, their one day in court, their one trial in court, to give them of your best, of your close focus. Because I know now that when you retire to deliberate, you're going to be in a position to decide what the facts are simply because you've set aside your busy life and you've engaged with us closely here in the justice system. Ladies and gentlemen, thank you for that.

Now, as you know, Mr. Foreman, ladies and gentlemen of the jury, the State has charged the defendant, Gerald R. Williams, with three counts of attempted murder. The State is sitting at the table closest to you. The defendant is sitting at the table furthest from you. Please remember that the defendant has denied these charges by entering a plea of not guilty.

The indictments in this case, which were

692

explained to you at the very beginning, are merely a set of accusations against the defendant. They're not evidence. The evidence which you should consider is the evidence you've already heard, which is the testimony of various witnesses who've testified right here from this seat along with such exhibits as may have been introduced into the record of this case during the course of the trial.

The defendant comes into this courtroom clothed with a presumption of innocence. And I will tell you that that presumption of innocence continues with the defendant throughout this case and entitles him to a verdict of not guilty unless and until that presumption of innocence is dispelled by evidence that satisfies you, the jury, beyond a reasonable doubt that the defendant is guilty of the offense or the offenses charged and the State has proved each and every element of those alleged crimes beyond a reasonable doubt.

Now, as I mentioned to you at the beginning of the trial, that under the Constitution of South Carolina, you are the judges of the facts. And you may remember we talked about the fact that in the event there should be testimony in this case from witnesses that seem either inconsistent or mutually

693

exclusive, that you would have to gauge the credibility and the believability of the witnesses to determine and pass upon their credibility, and I suggest some -- suggested some criteria for you which you may want to look to. But please remember that my primary comment was to you that this was something we do every day all the time and you should use those common sense factors you employ every day in deciding credibility and believability.

I will tell you that when you decide the facts of this case, you, the jury, can believe as much or as little of any one witness' testimony you think proper. You can believe one witness against a whole group of witnesses or you can do just the opposite, you can believe part of what a witness says and completely disbelieve the rest.

The fact that certain testimony is not directly controverted doesn't mean you have to accept it as true because you must first still gauge the credibility of the witness to determine the believability of the truth or the facts asserted by that witness.

Keep in mind throughout this process you have one objective and that is to seek the truth regardless of the source from which the truth --

694

from which that truth may come, which side of the case that truth may come.

Now, there are two types of evidence which are generally presented during a trial and those are direct evidence and then circumstantial evidence. I want to comment on those for a moment.

Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eyewitness who will come in and testify about what they say or heard or did. That is direct evidence. Circumstantial evidence, on the other hand, is proof of a set of chain of facts that then indicate the existence of yet another fact.

I tell you that the law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is there a greater degree of one required over the other.

I will tell you that you should weigh all the evidence in this case, both direct and circumstantial. And after you weigh all the evidence, if you're not convinced of the guilt of the defendant beyond a reasonable doubt as to the particular charge you're considering, you must find the defendant not guilty of that charge.

695

Now, I just talked to you about weighing the evidence. And I've been back in your jury room before, not while you've been back there, but you probably noticed there's not a set of scales to go back there and weigh the evidence on. Well, that's obvious because it is entirely a mental process. But on that point, I would say that evidence that weighs with you is evidence that convinces you of its truth, again, regardless of which source or which side the case that evidence may come.

Now, just to comment about expert witnesses, you will remember we had certain witnesses who come in and were qualified as experts in a particular area. The rules of evidence ordinarily don't permit witnesses to give opinions or conclusions. An exception to this rule is what we call the expert witness rule: A witness who, by education or experience, training perhaps, has become an expert in some art or science or profession may come in and state an opinion as relevant and material to some issue that is before you in which the witness claims to be an expert and can give you the reasons or the basis for that opinion.

You should consider an expert opinion that you receive in evidence in this case like any other

696

evidence, give it the weight that you deem that it deserves. If you decide the opinion of the expert is not based on sufficient education or experience or if you conclude the reasons given to support that expert's opinion are not valid or not sound, then you should disregard the opinion. You can disregard it in its entirety.

An expert witness' testimony is not to be given any greater weight than that of any other witness simply because a witness is deemed to be an expert. Furthermore, you're not required to accept or follow the expert's opinion even though it is not contradicted. This is for you to determine what weight to give any evidence.

Again, the expert's opinion is not given for the purpose of controlling your judgment, but for assisting you in finding matters of fact that may be before you if you find that it does assist you.

Now, the same constitution that makes you the judge of the facts makes me, as the presiding officer, the judge of the law. And I will tell you from living in a small county like all of us do, that there's a lot of bad information out on the street about the law no matter what particular area of the law you may be talking about. And so I'm

697

going to ask you to please accept the law as I give it to you, because I've reviewed it with counsel and I've reviewed it as well with staff and reviewed it with the statutes under analysis, and accept the law as I give it to you, apply it to the facts as you find it and if you do that, then you're going to reach a verdict.

I'm going to ask you to disregard any preconceived notions you may have about the law or what you or I think might be a better idea under the circumstances to disregard those things and just simply accept the law as I give it to you here.

Now, in a criminal prosecution of this type, as we've already discussed, the State has the burden of proof, seated at the table closest to you. The defendant has no burden of proof. The defendant is presumed innocent.

And in this state, according to the constitution, the prosecution must prove its case to the standard of proof we call beyond a reasonable doubt before a finding of guilt may occur. If the State fails to meet this high burden, then the defendant is entitled to an acquittal.

So then you say, okay, well, then what is a reasonable doubt? All right. Well, I'm going to

698

start by telling you what it's not. It's not an imaginary or a fanciful or a weak doubt. It's a substantial doubt. It's a doubt that the words imply, a doubt for which you can give or assign a reason based on the testimony and evidence in the case.

A reasonable doubt is not any sort of a doubt. You and I know from everyday life experiences that we may have a doubt about any matter no matter what -- how trivial it may be, such as what pair of shoes to wear to an event or what tie to wear to some event, that's not a reasonable doubt.

A reasonable doubt is a doubt that makes an honest, sincere, conscientious juror in search of the truth hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. If you have a doubt for which you can give or assign a reason as to the guilt of the defendant based on the evidence in this case, then the defendant is entitled to a verdict of not guilty on that particular charge.

Reasonable doubt may arise from evidence that's in the case or it may arise from the lack or absence of evidence in the case. You, the jury, must make the determination of whether or not reasonable doubt

699

exists as to the guilt of the defendant in these cases.

I will tell you the very fact that the jury goes back, though, in the jury room and engages in a full and free discussion of the issue of guilt or nonguilt in this case with a conversational ebb and flow on those issues, doesn't automatically mean that reasonable doubt exists in this case or in any other case for that matter.

Now, under South Carolina law, criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There's -- you and I know there's no way we can prove intent to some mathematical certainty. Medical science won't let us open someone's brain and look in and determine what they had in mind at a particular time. And so the law states that criminal intent may be inferred from the circumstances shown to have existed both before and after the fact.

Now, this is how you, the jury, make a determination of whether or not the element requiring intent, criminal intent, was present and

700

has been proved by the State.

Criminal intent is a state of mind that operates jointly with an act or an omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. So it's up to you, the jury, to determine whether the State has proved the element of criminal intent based on the circumstances shown to have existed against this defendant. I tell you that the State must prove criminal intent beyond a reasonable doubt just as the State must prove every element beyond a reasonable doubt as I previously explained.

Now, on the issue of intent, I further charge you that under South Carolina law, intent may be transferred in the commission of a crime. Stated differently and using the charge of robbery as an example, if an individual intends to rob a particular person, but somehow by mistake actually robs a different person, the defendant still has the intent to commit robbery. The criminal intent is merely transferred from the original person the defendant desired to rob to the individual the defendant actually robbed. In other words, it is not a defense to the crime that the wrong person was robbed.

701

Now, I further instruct you and emphasize that the fact the defendant did not testify in this case is not a factor to be considered by you in any way in your deliberation and in your consideration of the question of the guilt or the innocence of the defendant. It should not be and must not be considered by you in any manner whatsoever. The defendant has the constitutional right to remain silent and the assertion of this right should not be considered by you in your deliberations.

And I repeat, under the oath you took when we began this case, you were to draw no conclusion whatsoever from the fact that the defendant in this case did not testify, that the fact that the defendant did not testify shouldn't even be discussed in the jury room. That's because the burden of proof, as I've stated to you, is always on the State. It never shifts to the defendant. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, let's talk about the specific criminal charges in this case. The defendant's charged with three counts of attempted murder. In order to prove these charges, the State must first prove the

702

defendant attempted to kill another person with malice aforethought, either expressed or implied.

Malice is hatred or ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that the malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act itself.

Malice aforethought may be expressed or it may be inferred. The terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist, that's either by direct evidence or by inference from the facts and circumstances which are proved.

Expressed malice is shown when a person speaks words that express hatred or ill will for another or when the person prepares beforehand to do the act which was later accomplished. For example, lying in

703

wait for a person or any other act of preparation going to show that the deed was within the defendant's mind, well that would be expressed malice.

Malice may be inferred, however, from conduct that shows a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. Under South Carolina law, I charge you that a firearm may be considered a deadly weapon even if it is not operating.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with the other evidence in the case and you may give it the weight you decide it should receive.

A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result that actually occurs, not

704

accidentally or involuntarily. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished and the resulting damage or injuries may be considered in determining the intent with which an act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

All right. Now, let's talk about what we call the hand of one is the hand of all. If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the

705

two fired the shot that caused the death. If two or more people are acting together in concert assisting each other in committing an offense, the act of one is the act of all or, as is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime as a principal. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

Now, you've also heard the defendant has three charges against him for attempted murder. I charge you that these indictments are actually separate and distinct and must be considered individually, and your verdict on one does not necessarily control

706

your verdict on the other.

And then further I charge you that mere presence at some scene of a crime is not sufficient to prove a person guilty of that crime. A defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make, automatically, a defendant an accomplice or an aider and abettor of the person who commits the crime.

The burden's on the State to prove every element of the crime charged. If you find, after reviewing all of the evidence, the State has proved that the defendant was only present at the scene of a crime and that the State has not proved beyond a reasonable doubt any other participation in that crime, then you must find the defendant not guilty. The law is that proof of mere presence at the scene is not sufficient to find someone guilty.

All right. Now, Mr. Foreman and ladies and gentlemen of the jury, in just a moment you're going to retire to begin your deliberations and as you do that, I want to express to you the hope that you are mindful of the importance of your responsibility, and I know that you are.

You may recall that we discussed on Monday when

707

we first came in that you cannot be required to serve as a juror in the same court more than one time in three calendar years, and there's a reason for that, it's because it's a difficult task. It's a job that requires you and I to reach the height of freeing our minds of all outside and improper influences because we are acting for the community in seeing to it that every trial here is fair and every verdict is just.

You've probably observed that the presiding officer of the court, which in this case is me, is referred to as Your Honor, and I know you know that's not some title given to me individually. It's a title that's assigned to the position that I'm privileged of and that's because this Court is entrusted with the honor of this community, this county, this state and indeed this nation in seeing to it that every trial here is fair and every verdict is just.

Now, in a few moments, you're going to take into your care the honor of this community, county, state and nation as you decide this case.

Now, please understand when I tell you that, I'm not trying to tell you how to decide the case, that is not my point at all, that would be

708

inappropriate. What I am trying to say to you is that, as the presiding officer, it is of vital importance to me that whatever verdict you reach will be the result of your going into the jury room, confining your consideration to the evidence put forth in this courtroom, weighing that evidence fairly and impartially, applying to it the law that I have given you in this charge and reaching a verdict which is fair and impartial and just. I have every confidence that's what you'll do.

Everyone in this case is entitled to justice, ladies and gentlemen, nothing more and nothing less. We owe no support to any side. We owe no sympathy to any side. And I am of the confirmed opinion that whatever verdict you reach will represent truth and justice for all the parties.

Now, Mr. Foreman and ladies and gentlemen, please remember your verdict in this case must be unanimous, that is, it cannot be a split decision. Some of the jurors may be standing over by the wall, some seated at the table, some elsewhere in the room, if someone wants to be heard on a particular issue, please give them that opportunity, Mr. Foreman, so that not only will your verdict be a consensus verdict, but it will indeed be a unanimous

709

verdict.

Now, I have in my hand the verdict form and the verdict form has three questions on it because there are three charges here. And you can't read it from here, but you'll have it with you in the jury room. And what it says with regard to each charge is as follows:

The first question: As to the charge of attempted murder of Al Jerome Young, we, the jury, unanimously find the defendant, Gerald R. Williams -- and then I've got two choices, ladies and gentlemen. And when I've got two choices on a piece of paper, I can't give them to you at the same place, one's got to be in front of the other, but there's no priority, there's just simply one listed in front of the other. The first choice is not guilty. The second choice is guilty. Whichever is the unanimous decision of the jury, please mark that and proceed to the next question.

And then after you've gone through all three, at the bottom, there's a signature block for you, Mr. Foreman. And under that -- that signature block is under these words, I certify that this verdict is the unanimous decision of the jury. So when you sign the form, you're certifying to the Court that

710

this indeed is a unanimous verdict.

Now, here's what we're going to do: We're going to let you go back in the jury room for just a moment while we make sure the evidence is in order and then we're going to send it in to you and you can begin your deliberations. But before we do that, I want to speak to our two alternates, and that's Ms. McKinney and Ms. Miles.

Ladies, I want to say this to you: First of all, I'm going to let you go back and say your goodbyes to your colleagues and then we'll bring you out at the time deliberations begin. But I want to say this in the presence of your colleagues: A lot of times alternate jurors get to this point and say, you know, I have wasted my time. I am not even going to deliberate in this case.

But I want to say to you, you have not, because, and I've had this happen before, if we got to some point of the case or even now as the case is getting ready to be decided by the jury and one of the jurors got sick, had an emergency and had to leave, we'd be down to 11. If I did not have an alternate, we would have to declare a mistrial and this case would be tried again. Your presence here has prevented that and I'm grateful for your

711

presence here. Thank you for your service. Again, I'll let you say goodbye to your colleagues. Please don't discuss the case among yourselves, just speak to your colleagues.

And then when we send in the verdict form along with the evidence, then you may begin the deliberations. If you need us during the course of those deliberations, if you have a question, then you may write that question down, send it out, knock on the door, someone will be there to receive that written piece of paper and we will respond to it accordingly.

Now, just like you've been sitting here the last three days waiting on us, now we wait on you. We're in no rush. We're in no hurry. You take the time you believe necessary.

Thank you again for your service. We will remain where we are as all of our jurors depart to the jury room.

(The jury retires to the jury room.)

THE COURT: Counsel, while our jury departs, please come up to the bench and look at the evidence with our Clerk and with our court reporter and make sure it's in order so we can send it in to the jury. And then, Gentlemen, look at the newly amended

712

verdict form, please.

(Pause.)

THE COURT: All right. Now, do you wish for our two male bailiffs to take the door into the room? They probably should just take it and stand it up in there for whatever purpose it may be.

MR. MAYE: I can have law enforcement take it as well.

THE COURT: Well, we'll just let our bailiffs do that, if they will.

MR. MAYE: That'll be fine. I didn't know if they needed any assistance.

THE COURT: All right. Ladies and gentlemen, let's remain in session because we're going to bring our alternates back out, take in the evidence, including the door, and we'll be ready for the jury to proceed.

(The alternates enter the courtroom.)

THE COURT: Ms. Miles and Ms. McKinney, I want to thank you for your service.

JUROR: Thank you.

THE COURT: And I want to tell you that we, of course, do not know how long the jury will be deliberating. You're welcome to remain with us and just be seated or you're welcome to go.

713

In a few days, you're going to receive a check from our Clerk for the per diem and for your service, that's the county's expression of gratitude. But I'm going to come down and shake your hand for a job well done and I'm grateful for your service.

Have a good day. And as you probably already know, you're done with jury duty for the week. We're not going to summon anymore jurors. Thank you.

(The alternates were excused.)

(The jury commences its deliberations at 11:29 a.m.)

THE COURT: All right. Now, we're outside the presence of the jury. Are there exceptions or objections to the charge as given by the Court? Let's go first to the defense.

MR. CASTO: Yes, sir, Your Honor. If we can place on the record our objections to the charge that we mentioned during our pretrial con -- or at side bar this morning, Your Honor, with regard to the charges.

The first objection is this: We object to the transfer intent charge. Generally speaking, transferred intent is, is -- I understand it is

714

shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice just because there is a shooting. And we would respectfully object to the transfer intent charge, Your Honor.

THE COURT: Very good. And let me respond to your objection with the following: This is a situation where the defendant is accused of shooting into a house where individuals may have been, that he did not know were there, that is giving him the benefit of the facts of the case. And the Court was concerned that the jury may believe, after charging that intent is necessary, that the defendant had no intent to harm those individuals.

The State requested and -- a transferred intent charge and the Court thought it was appropriate to give it to avoid confusion. And for that reason, I'm going to decline to alter or amend the charge that I've already given the jury on that point.

MR. CASTO: Our second objection, Your Honor, is we had requested a spoilage charge. Specifically, two officers testified that there were photos at the residence that were taken and they

715

were on a hard drive. This was never turned over during discovery. Our position is that those are either destroyed and/or lost. And they would have documented the scene that night. And so we had requested a spoilage charge, Your Honor. We object that the charge didn't have a spoilage charge.

THE COURT: All right. I'm as well going to respectfully deny that request for the following reason: Spoliation generally occurs when a party either damages or destroys, intentionally or negligently loses evidence, and particularly evidence that might be assistive to the adverse party. In this case, what was claimed by officers in their testimony was that there were certain photographs taken that night; however, those photographs were never produced.

The charge on reasonable doubt tells the jury that they may base their decision on the existence of evidence or the lack of evidence in the case. And, thus, the Court believes that in that particular part of the charge, it covered the issue of whether or not there may be evidence which is lacking in the case or missing.

But the Court has no evidence here that the State has intentionally taken steps to conceal or to

716

subvert or otherwise alter evidence to the detriment of the defendant. And I simply would, at this juncture, decline to bring the jury back out and give the spoliation charge for those reasons.

MR. CASTO: Our third objection, Your Honor, on the issue that we raised is we had requested lesser included charges to include assault and battery of a high and aggravated nature, assault and battery first degree and assault and battery second degree.

Specifically, there's been no testimony of any injuries with any of the people inside this home. There is no physical evidence of any of these bullets or slugs that has been entered into evidence. In fact, the testimony was that these slugs are not even matched to these guns outside.

THE COURT: All right. And what says the State with regard to the lesser included offenses?

MR. MAYE: Your Honor, I think in a review of the record, there's absolutely no evidence of anything other than up or down or guilty or not guilty on the three indicted offenses. The two theories that were posited were either that he was totally not present and unaware of this and had absolutely no involvement, criminal involvement at all or he was completely involved in it. And I

717

think there's no way that the evidence can reflect anything other than either guilty or not guilty on these charges. There is just no middle ground.

There's never been posited that there was any other acts on the part of the defendant other than the ones for which he is charged. And we just do not think there's any evidence in the record to submit lesser included offenses.

This charge is based on shooting into an occupied dwelling with a firearm, and we would submit that that would not be either assault and battery of a high and aggravated nature or any of the other degrees of assault. It would only be the attempted murder or not guilty.

THE COURT: All right. Mr. Casto, as you are aware, the Court can only charge a lesser included offense if there's some evidentiary basis for it. All the evidence in this case, both direct and circumstantial, goes to the alleged crime where the defendant, I'll use the State's term, shot up a mobile home with the intent to kill an individual who was within the home and there happened to be two other individuals in there as well.

Your client chose not to take the stand, that is absolutely his right. He's not required to

718

testify. Perhaps he could have given testimony had he chosen to do so that would have provided an evidentiary basis for some lesser included offense, but that was not the case.

The evidence is devoid of any lesser included offense indicia. And for that reason, the Court would decline to charge a lesser included offense and decline to bring the jury back out to alter the charge in any way in that regard.

Anything further now from the defense?

MR. CASTO: Yes, sir, Your Honor. We would object to the Court's hand of one charge. We submit that it's prejudicial because it uses a shooting example. We submit to the Court that that is a comment on the facts.

THE COURT: Very good. And that charge actually is -- while it is a shooting, it is a killing. The reference is to the murder of an individual and not actually to attempted murder, which is the specific charge here.

This is a charge that is provided in our standard charge book. It is one that I've used hundreds -- well, dozens of times in the charging of various juries around the State. I don't find it to be a comment on the facts, although there are some

719

similarities, and I will decline to alter that charge at this point that I've given to the jury.

MR. CASTO: Yes, sir, Your Honor. And our fifth objection is the Court's charge, the inference of malice from the use of a deadly weapon. We'd object to this under State versus Belcher.

There was testimony presented that Al Jerome Young shot first. Specifically, O.J. also testified Al Jerome had threatened to shoot him beforehand and anyone that even tried to return this money, including shooting up not only him, his possessions, his car and the like. And we would hold that just because there's a deadly weapon present, doesn't automatically mean malice is involved, and we'd object to that under State versus Belcher.

THE COURT: All right. Thank you. And in reply without hearing from the State, I would tell you that it is the Court's understanding of the Belcher decision that when the use of a deadly weapon is the only indicia, the only fact from which malice can be inferred, then that is inappropriate.

But in this case, the Court finds there are multiple other evidentiary inferences of malice, including the State's allegations that the defendant -- a co-defendant of the defendant went and posed

720

what may be a threat to the family the day before this shooting incident occurred, that certain family members left as a result of that, that there was a common scheme and plan with the intent to go out and kill the individual, that the defendant's co -- defendant along with the co-defendant put in operation that plan and used a deadly weapon in doing so.

The Court finds that's just one of multiple indicators here that would infer malice. And for that reason, I would respectfully decline to alter the charge in light of the Belcher decision.

Anything further now from the defense?

MR. CASTO: Respectfully, Your Honor, our initial objection is references to seek the truth or to specifically take into the care or the preservation the honor of the community, the state and of the country. And we object to this because it's -- under the burden of proof, the jury is to hold the State to the burden of proof to find whether there's guilt that exists beyond a reasonable doubt under the facts and solely the facts in the world of this trial under these facts and to not include or consider anything outside of that, Your Honor.

721

THE COURT: All right. And the Court understands the argument that you make, but I would respectfully respond to you by saying that the operation of this court continues within the greater operation of society, that what happens in this court should not only be fair and just, but also comport with the protection and preservation of the honor of the community, county, state and nation.

I have used this language in, I'm certain, well over a hundred cases. It is the standard language that I use to impress upon the jurors the importance of their responsibility. In no way does the Court believe that it adds a component of either retribution or some other directive to the jury because I clearly explain to the jury, in other parts of the charge, that the State bears the burden of proof and what the State must do to meet that proof. And for that reason, respectfully, I would decline to alter the charge as given to them.

Anything further?

MR. CASTO: Nothing further, Your Honor.

THE COURT: All right. Then, Gentlemen, we will stand down this matter and await the call of the jury, the response of the jury. This court, for this case, is now in recess. We're going to stand

722

down probably about ten minutes while other matters are prepared. And we'll begin administrative business while we await the jury decision. This case is in recess.

MR. YOUNG: Thank you, Your Honor.

(A recess transpired.)

THE COURT: Please bring in the jury.

(The jury returns to open court to report its verdict at 12:19 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back to the courtroom.

Mr. Foreman, I'm advised that you have reached a verdict; is that correct?

MR. FOREMAN: Yes, sir.

THE COURT: All right. Would you please give your verdict form to our bailiff? Thank you.

(The Clerk hands the verdict to the Judge.)

THE COURT: Let's let the record reflect that the verdict form is appropriately filled out and it is signed by the Foreperson. The defendant will please rise.

And, Madame Clerk, please, publish the verdict.

THE CLERK: State of South Carolina versus Gerald R. Williams, indictment number 2013-GS-41-257, 2013-GS-41-258 and 2013-GS-41-259.

723

As to the charge of attempted murder of Al Jerome Young, we, the jury, unanimously find the defendant, Gerald R. Williams, guilty.

As to the charge of attempted murder of Ycedra Nicole Williams, we, the jury, unanimously find the defendant, Gerald R. Williams, guilty.

As to the charge of attempted murder of Joseph Christopher Wrighton, we, the jury, unanimously find the defendant, Gerald R. Williams, guilty. Signed by the Foreman with today's date.

THE COURT: All right. Ladies and gentlemen of the jury, if this is your verdict, please raise your hand. Please raise your right hand if the verdict is as was published by the Clerk.

And let's let the record reflect that all of the jurors have raised their hands. You may place your hands down.

Now, while we're still in the presence of the jury, are there further motions or issues for which a jury response may be necessary from the defense?

MR. CASTO: No, sir, Your Honor.

THE COURT: And from the State?

MR. MAYE: Not from the State, Your Honor. Thank you.

THE COURT: Then just one moment, ladies and

724

gentlemen.

(Whereupon, a bench conference was held with the Clerk off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right. Then, ladies and gentlemen -- you may be seated, Mr. Casto and Mr. Williams -- what's going to happen now is we're going to have a sentencing proceeding, but I don't require you to stay for that, but you're welcome to stay for it if you wish. The decision will be yours.

But what I'd like to do is rather than you remain in the box as you are now so that you'll have the ability to leave at any point during the proceeding, which may take 15 minutes I suppose, then you can get up and go. So what I'm going to do is I'm going to come down and speak to you, let you, if you wish, exit the door and be gone or if you wish to be seated in the audience and we will proceed from there.

I'm pleased to tell you that we don't have any further jury draws this week and thus you are finished with jury duty for the week. And I want to thank you for a job well done. Your verdict was true and just based on the facts put forth in the

725

case.

And in a few days, the county is going to send you a check, which is the county's expression of gratitude for your service. That check's not going to be enough to retire on, but it will be the county's expression of gratitude. But I'm going to come down as you leave the jury box and shake your hand as my expression of thank you and gratitude for a job well done. All right, just one moment, please.

If you have some things in the jury room and you want to go first in the jury room and pick those up and then come back in that door and be seated, you can. If you want to go in the jury room and exit the building, you can. It's your choice. Thank you for your service. Y'all are free to leave.

(The jury was excused.)

THE COURT: All right. It appears that some of our jurors have remained with us. Thank you for your interest in the case.

At this point, what I'd like to do is hear from the State, as well as hear from the defense on the issue of sentencing.

MR. MAYE: May it please the Court, Your Honor.

726

I'm going to pass up the sentence sheets that are stapled to the duplicate indictments to which he's been convicted.

THE COURT: Thank you.

MR. MAYE: Your Honor, there's little else I could say after the completion of all of these days of trial. You've got a clear factual scenario here. The State certainly is aware of the facts.

His prior criminal history consists of a 1988 burglary second and grand larceny, which he got a YOA, an indeterminant YOA; a '90 resisting arrest and disorderly conduct; a threatening the life of a public official and resisting arrest, Your Honor, it looks like '92, '93. It looks like he got probation, a lengthy period of probation on that. The probation actually got revoked on the threatening the life of a public official about three years later. He got five years probation. Three years later they revoked him and he went in on those charges and was revoked.

He's got a possession of cocaine charge out of 2000 where he got two years of probation. His probation was subsequently revoked on that in 2001. He's got a breaking into a motor vehicle charge, got two years on in conjunction with a number of other

727

charges, possession of tools or implements used in a crime, petit larceny, petit larceny, another count of breaking into vehicles. They consolidated multiple charges. He got two years on that in 2005. A possession of Schedule I to IV, second offense or more, he got a year in 2006 on that. And I believe that takes us to his current convictions, Your Honor.

The way it was described, I guess, to Investigator Shorter, I guess kind of aptly sums it up. O.J. Charley certainly needed somebody to come here that was willing to assist him with carrying out this -- what the detective asserted firmly to Investigator Shorter was they were coming here not to intimidate him, but the time that they were returning, they were coming here to murder him. And he brought with him Gerald Williams, who he described as a person with a pretty serious drug problem and someone that was going to do it for money and/or drugs. And that's the best description I think that has been given that would provide information as to why Gerald Williams came along with O.J. Charley for the purposes of carrying out the murder of Al Young.

I just leave it to the wise discretion of the

728

Court. The jury's spoken and certainly the Court has an adequate sentencing range to deal with the severity of this offense.

THE COURT: And, Mr. Maye, so our record will be clear, tell us what does this charge carry, each one carry in South Carolina?

And while you're looking at that information, tell us also, there was testimony in this record that there had been an eight-year deal offered to a co-defendant. What is the State's position on whether that testimony was accurate?

MR. MAYE: Your Honor, I never offered eight years to him. I know that Mr. Screen had asked me about that sentence. We clearly had no plea agreements at the time that the co-defendant pleaded. The only offer I've ever extended in this case in my involvement in it was to plead to -- I offered each of the two co-defendants to feed them out of the same spoon and let them to just plead to the attempted murder of Al Young, consolidated it. That's the only thing that I've ever offered. I don't know anything about an eight-year deal.

Certainly, at the time that we pleaded O.J. Charley, we had no plea agreement with him or anything else at that time, Your Honor. He did turn

729

over and forfeit the money that was seized to law enforcement in this case, but beyond that and the reduction with him from pleading to three charges to one, I don't have any plea deals with anybody else and did not have any plea deals or offers to the defendant in this case with the exception, my understanding, my only involvement was, told him he could plead to one count if he wanted to plea.

THE COURT: And do you have any evidence or have you been able to determine whether this defendant was involved in the flip of the witness who was to testify against him as part of that plea arrangement, but then recanted while at the jail?

MR. MAYE: Your Honor, I honestly think if I had to make an assessment of that, I think that O.J. just thought he would double-cross us and help out Williams because he got Williams into this. I don't know that he engineered it. I don't think he's a mastermind that would have engineered it. I think that he certainly hoped to benefit from it.

He was a prolific -- this defendant was certainly a prolific writer to Judge Keesley. He wrote to him repeatedly. All of these things were generated and sent out of the jail.

I think it was O.J. Charley's misguided attempt

730

to try to pull his fat out of the fire given the fact that he brought him here or he came to help him commit this murder. That's my assessment.

THE COURT: While you look up sentencing information, let me speak to the jury a moment about what you just heard in this courtroom.

You heard that the defendant has what is really a lengthy criminal history. And the first thing a juror thinks is, why didn't I know that when I was asked to make the decision in this case? And the reason for that is this: If the defendant takes the stand and testifies, some of those charges may come in on the issue of credibility and believability whether or not the defendant is a truthful or honest person, but the defendant did not take the stand and thus those are not admissible on that issue.

To simply put that criminal history into the record of a trial would prejudice the defendant and make the jury perceive that, well, surely the defendant committed this crime if he committed all those others. When the real question for this trial was, did the defendant commit the crime he was charged with and did the State prove it beyond a reasonable doubt? That is why you are unaware of the prior record of the defendant when you

731

deliberated on this case.

The other thing I would mention to you that may cause a question in your mind, you heard that the $32,000 was forfeited, and what that meant was that the arrestee relinquished his right to those funds. And those funds were divided up between the Solicitor's office, between the law enforcement agency that made the arrest and certain other law enforcement entities, so that all of that money is returned to be used in law enforcement in some capacity either in this county or in this state. That's what happens when money is forfeited in a criminal enterprise.

Now, what say you about the length of sentence for each of these charges?

MR. MAYE: For each count, not more than 30 years, no suspended sentence, no probation. My understanding, it's violent and most serious. That's the State's information is the current status of that attempted murder charge, which I think supplanted the old assault and battery with intent to kill.

THE COURT: Very good.

Now, Mr. Casto, what do you have to say for your client? And if your client wishes to speak,

732

we'll give him that opportunity.

MR. CASTO: Yes, sir, Your Honor. If we may come --

THE COURT: Yes, sir. You may come to the bench. Just please speak up so that everyone in the courtroom can hear you.

MR. CASTO: Yes, sir.

Thank you, Your Honor. May it please the Court. Gerald is 42 years of age. He has predominantly lived in Williston for much of his life. And his life basically looks like this:

He resides, well, at this point, with his mother. Due to, you know, lengthy incarceration here, he has lost basically everything or the things that he had. You know, he is indigent. He does qualify for our services here at the public defender's office. So, very respectfully, the little that he had had been stripped of him. He resides with his mother who is both -- she's sick and she's elderly and he does take care of her. At the present time, he is separated from his wife.

I asked Gerald when we spoke about the type of work that he does and he's basically done carpentry type work for much of his adult life. And, you know, he is hoping, you know, maybe potentially one

733

day to go back to residential renovation and go back to doing that.

You know, Judge, just a word to -- that's, you know, a little background, but speaking to, you know, myself kind of in his paths crossing so to speak. Well, that happened back in February of last year. You know, I first met Gerald and took over the case and we met and we spoke out in -- out west in McCormick County and I listened to his story. And I think that, you know, we got our discovery and he wanted his day in court.

And I just wanted to place on the record just as a matter of just respect and decorum for everyone's role in the walls of the courthouse, that I know that Gerald is disappointed in the verdict. But in the same breath, let me say this, that the jury's spoken and we certainly -- there's a certain amount of respect and understanding that accompanies that.

THE COURT: Well, Counsel, tell me this, how could he be disappointed? The evidence was absolutely overwhelming against your defendant.

MR. CASTO: And we, you know, it's our position, Your Honor, that we wanted to hold the State to their burden of proof very respectfully.

734

And, you know, and we talked about, in analysis of the case, the way that Gerald wanted to proceed and, you know, we fulfilled that, Your Honor.

Your Honor, I will say with regard, and if I could place this on the record, the only thing that suggests to me with regard to the co-defendant, O.J. Charley, is several months ago, maybe even last -- well, probably earlier at the turn of this year, Your Honor, I did obtain a sentencing sheet from the clerk's office, and I'm pleased to pass it up to the Court for its review. It's signed by the Solicitor, Orienthal Charley, Mr. Screen and Judge Keesley where he pled but sentencing was deferred. It appears that --

THE COURT: But, respectfully, Counsel, even if there is -- and I believe you're getting ready to tell me you believe there is an eight in the sentence block and it is whited out because Mr. Charley's sentence was deferred until after he testified, which I must say Mr. Charley was probably the most noncredible witness I think I've ever seen in 14 years of this job. But this Court is in no way bound by any alleged agreement which may have existed with Mr. Charley, and I'm sure that Mr. Williams understands that. This is not a matter

735

that's even been discussed in any way with this Court about any sentence range agreement, reduction or whatever that may be.

MR. CASTO: Yes, sir, Your Honor. And we just wanted to pass it up to give the Court a full presentation about what we'd found. And, Your Honor, in crafting a sentence, very respectfully, we would ask the Court for a concurrent time or as much mercy as the Court can see fit to give in this case.

THE COURT: Very good.

Mr. Williams, do you have something you want to say, sir? Please remember you remain under oath from yesterday when I discussed with you your right to remain silent, as well as your right to testify. Do you have anything you wish to say?

DEFENDANT: Not at this moment, Your Honor.

THE COURT: That was a no?

DEFENDANT: Yes, sir.

THE COURT: Just one moment, please.

(Pause.)

THE COURT: How much time do you believe your client is entitled to based on the amount of time he's spent in jail awaiting these proceedings?

MR. CASTO: Your Honor, he's been incarcerated since April 13th of 2012, that is 553 days up

736

through today.

THE COURT: All right. And, Mr. Williams, you realize that under South Carolina law, these charges are most serious charges. And we have what's called a two strikes and you are out law, meaning that if you have another most serious charge, because these all arose in one event so they're only counted as one strike, but if you should get out of prison and have another most serious, then the penalty for that second most serious, no matter what the statutory penalty is, will be life without parole. You understand that?

DEFENDANT: Yes, sir, I do.

THE COURT: Furthermore, this is classified as a violent crime, that may affect where you are housed in the department of corrections. It also, the fact that this is a most serious, is going to affect your parole eligibility and you may indeed serve every day that the Court sentences you to, but certainly you will serve at least 85 percent of that time. And do you understand that, sir?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: All right, sir. Just one moment.

(Pause.)

THE COURT: This is the sentence of the Court,

737

Mr. Williams -- and I would say to you, first of all, that after a full and fair trial where you've been given every opportunity to contest these charges and put the State to the burden of proof, which is every right that you have and you have exercised those rights, this jury has, and the Court believes very appropriately, found that you are guilty beyond a reasonable doubt of these three charges.

What concerns this Court is, is that you were aware, because you were most likely present the day before, that if not present, certainly aware, that there were children that lived in this home. You, in sort of gangland, gang banger fashion, shot up a home with complete disregard for any human life that may have been in that home, and it is a miracle that no one was killed. And if someone had been killed and you had a murder conviction, you'd be looking at 30 years day-for-day service at a minimum. And so in a way, you're fortunate even though you find yourself where you do not wish to be.

But based upon the depravity of this crime, the way in which it occurred, the fact that you were willing to potentially take the lives of multiple people for whatever reason, apparently the reason

738

was for payment in money or drugs, the Court cannot permit this type of activity in Saluda County and in society in general. It endangers all of us.

I sentence you to 20 years in the department of corrections on each of these charges to be served concurrently. So you have one 20-year sentence. I'm going to credit you 553 days against that service. That is the sentence of the Court. I'm going to now remand you to the department of corrections to begin your service. Good luck to you, sir.

MR. CASTO: Thank you, Your Honor.

THE COURT: Thank you.

All right. Anything further now from the State with regard to this case?

MR. MAYE: No, sir, Your Honor. We will proceed to sentencing on the co-defendant. Mr. Screen is supposed to be here shortly. He said he would be here after lunchtime. I will want to proceed to sentencing on the co-defendant today.

THE COURT: Very good.

Then, ladies and gentlemen of the jury, that concludes this matter. There will be no further action in this matter. Thank you again for a service well done.

739

And, ladies and gentlemen, as you leave, let me tell you one more thing, just to follow up with the discussion we had the other day after there was testimony about the eight years. It's the Court's responsibility to sentence. The jury has no responsibility in whatever sentence is given. Whether you believe it to be appropriate, high or low, we have a division of authority. You made the correct decision with regard to the facts of the case. Again, I commend you for a job well done. You have a good day, ladies and gentlemen.

(Pause.)

THE COURT: Mr. Maye, it's my understanding that you had agreed to have a picture of the door as opposed to having the Clerk keep up with the door in the evidence room.

MR. MAYE: I did want to look after our Clerk of Court in that regard. What I would propose that we do and would ask is that we be allowed to take a picture of the front and back of the door and substitute that into evidence. We will prepare a form order for the Court. Basically, the sheriff is going to keep and maintain that door until such time as the pendencies of appeals or anything else have been exhausted in this case so it could be returned

740

back up here and that it would not be changed or altered in any way. And we felt like that was the most prudent course. And if that pleases the Court, that's what we'll do.

THE COURT: Is there an objection to that from the defense?

MR. CASTO: No, sir, Your Honor.

THE COURT: All right. Then by agreement, the Court will permit that. And you may just proceed to do that at any time and the Clerk is instructed not to take that door into the evidence room, and the State may take it away after the photographs are procured.

MR. MAYE: We'll make sure that we do that before the close of business this week.

THE COURT: All right. Thank you. Then before we end our morning session, let's bring back Mr. Baker.

(Pause.)

THE COURT: All right. Go ahead, Mr. Casto.

Mr. Baker, just step to the side one moment. We're going to briefly hear from Mr. Casto on his post-trial motions.

MR. CASTO: Your Honor, we place on the record, at this time, and we'd ask the Court to -- we renew

741

all of our motions and objections raised at pretrial and during the trial, including our motion for a directed verdict. And in addition to that, we'd move for a new trial, specifically that with the evidence that's been presented, a jury could not have found the defendant guilty beyond a reasonable doubt. And we just, very respectfully, place that on the record at this time to preserve our appellate issue.

THE COURT: Very good. The Court is going to respectfully deny all post-trial motions and confirm the judgment of the jury and the sentence of the Court, and will now close the record in this file. Good luck to you, sir. Thank you.

END OF PROCEEDINGS

742

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 14th - 17th of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 7, 2014

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE # 2013-002304

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

AMENDMENTS

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to compel disclosure of SLED's investigation of a police officer's alleged misconduct where such information could have been used to impeach the officer when he testified for the State?

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767.

On October 14, 2013, appellant was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented appellant. R. 1. The jury convicted appellant. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. This appeal follows.

ARGUMENT

The trial court erred in refusing to compel disclosure of SLED's investigation of a police officer's alleged misconduct where such information could have been used to impeach the officer when he testified for the State.

Relevant Facts

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Orienthal James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him $26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver drugs and agreed with the solicitor that his intention was "to rip [Young] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 11. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 511, l. 9 – 512, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified appellant as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw Charley come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Appellant was Ycedra's second cousin and she did not identify appellant as being with Charley in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long claimed he found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He claimed a person who "undoubtedly was laying in the ditch beside the van" stood up and faced him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him their hands. R. 324, ll. 14 – 21. Officer Long claimed the person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the vehicle and notify the other officers. R. 325, ll. 1 – 17. He claimed a camera in his vehicle was not working. R. 325, ll. 1 – 6. Officer Grenier pulled his vehicle in front of the van to box it in. R. 325, ll. 18 – 23. The van stopped. R. 325, ll. 18 – 25. The police claimed they found appellant driving the car and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense. R. 576, ll. 1 – 10. On direct-examination, Charley testified that he told appellant he would pay him to drive Charley and a man named Rico that night. R. 584, l. 5 – 585, l. 11. Charley told appellant he was "going to see some girls." R. 585, ll. 23 – 25. Charley never told appellant anything about a shooting, or guns, or his dispute with Young. R. 586, ll. 1 – 13.

While appellant waited in the van, Charley and Rico went to Young's trailer. R. 590, l. 3 – 591, l. 7. Charley heard Young shout. R. 591, ll. 14 – 19. Young opened the door of the trailer and fired two shots in the air. R. 592, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 592, ll. 9 – 21. Charley ran. R. 592, ll. 24 – 25. Rico shot at the trailer. R. 592, l. 17 – 18. When Charley got into the van, he said the police pulled up "within five seconds." R. 593, ll. 16 – 23. Appellant was still in the van when Charley returned. R. 593, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 601, l. 21 – 604, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R. 604, ll. 4 – 6. The solicitor accused Charley of "double-crossing the State." R. 604, ll. 15 – 19. Only after the solicitor's accusations of a double-cross and mentioning his plea deal did Charley recant his direct-examination testimony and implicate appellant in the shooting. R. 605, ll. 13 – 631, l. 24.

During pretrial hearings, appellant moved under Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 514 U.S. 419 (1995) for any information the solicitor's office had regarding Officer Long. R. 74, l. 10 – 75, l. 4. Defense counsel stated it was their understanding that the solicitor in appellant's trial had filed "some type of formal complaint on Officer Long." R. 74, ll. 20 – 23. The solicitor admitted asking SLED to look into a failure to serve a subpoena. R. 76, l. 25 – 77, l. 17. He told the court he had the investigative file but that it had no "nexus or relevance to this case" and that he had no "information involving anything that would be basically dishonesty." R. 76, l. 25 – 77, l. 17. He submitted the investigative file to the court for review. R. 77, ll. 16 – 17.

After reviewing the file, Judge Baxley found it involved "the failure to issue or serve a subpoena on a confidential informant." R. 79, ll. 2 – 7. He found that the file made no reflection of any criminal charges or criminal activity regarding Officer Long. R. 79, ll. 2 – 7. He found the file was not probative or relevant or likely to be admissible. R. 79, ll. 8 – 17. Judge Baxley ultimately placed the investigative file under seal and made a court's exhibit. R. 104, ll. 4 – 12. This Court ordered the file transported under seal and allowed review by the parties' attorneys and the Court for appellate review. Order, filed January 5, 2015.

Discussion

The trial court erred in not allowing appellant to use the investigative file to impeach Officer Long.[1] "The suppression by the [state] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." Brady, 373 U.S. at 87. See also U.S. Const. amends. V, XIV. Consequently, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles, 514 U.S. at 432-42. Brady evidence includes both exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 (1985); Kyles, 514 U.S. at 436-40.

The trial court incorrectly concluded that the file was not relevant or would not be admissible. Appellant could have used the file to impeach Officer Long's credibility. Rule 608(b), SCRE. See also State v. Outlaw, 307 S.C. 177, 414 S.E.2d 147 (1992). Any impeachment would not have been collateral and extrinsic evidence would have been allowed. See Wigmore on Evidence: Impeachment and Rehabilitation, § 5.9. The failure to do so was prejudicial. Officer Long's testimony as one of the officers who found the van and arrested appellant was crucial to the case. It placed appellant at the scene of the crime.

Appellant was not identified by any of the people in the trailer as a shooter. Ycedra did not see appellant with Charley when he came to Young's trailer before the shooting. Charley only implicated appellant after being confronted by the solicitor about his prior plea and

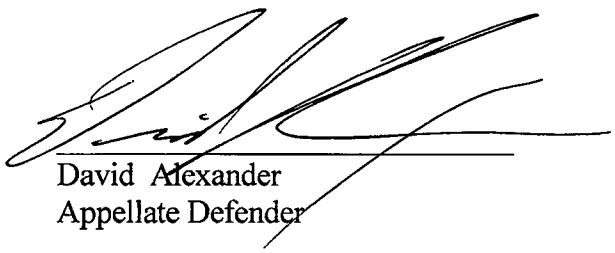
[1] Mindful of the fact that the investigative file remains under seal with this Court and that this case is on review pursuant to Anders v. California, appellant will argue the issue without making any specific references to the contents of the file. The Court's review of the file will provide the Court with the facts necessary to place appellant's legal argument in context.

upcoming sentencing. Under these circumstances, the trial court erred in not allowing disclosure of the file and impeachment and appellant's conviction should be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and grant a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE # 2013-002304

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gerald R. Williams states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge J. Michael Baxley, which was held on October 14-17, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Gerald R. Williams.

Respectfully submitted,

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2015.

STATEMENT OF ISSUE ON APPEAL

RECEIVED
MAR 30 2015
SC Court of Appeals

Fraud upon the Court

I. Did the trial court erred in allowing intrinsic fraud evidence (Perjured testimony) to be allowed as the reason for not allowing Directed Verdict to be Granted?

This raise's; "Fraud Upon The Court".

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant, "Gerald Rudell Williams," for three counts of attempted murder TR 762 — TR. 767.

ON October 14, 2013, Appellant was tried before the Honorable J. Michael Baxley and a jury. "Ervin J. Maye" represented the State. "Bennett E. Casto," and "Robert M. Madsen represented Appellant. The jury convicted appellant TR. 722 At 23 — Tr. 723 At 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. TR. 738, At 4+11. This Appeal follows.

STATE OF SOUTH CAROLINA
County OF SALUDA.

THE STATE

RESPONDENT,

V.

Gerald Rudell Williams

APPELLANT.

IN THE COURT OF APPEAL

Motion To Submit
AS Pro. SE Counsel;

ISSUE To Be Considered
To Appellant's Appeal;
Appelant's case # 2013-002304.

1. Trial court erred in failing to grant directed Verdict by allowing instrinsic fraud evidence (perdured testimony) to be his reason for denial. This Raise's; "Fraud Upon The Court"

Come Now "Pro-SE Counsel; Gerald Rudell Williams," here-in after, Appellant, Seeking relief in this Court, Pursuant to Fourteenth Amendment right to a fair trial was violated as well this being Protected by the Due Process clause, and Pursuant to Rule 60(b)(3) SCRCP.

Fundamental / Plain Error

The trial Court erred in allowing intrinsic fraud Evidence (Perdured testimony) to be his reason for denial of a directed Verdict to Appellant's case. Tr. 636 at Line "20" — Tr. 637 at Line "2". The record reflect Appellant's trial as a Whole was damaged by the testimony of "Orientha Jermaine Charley's" (Perdured testimony). Tr. 576 at Line 1 — Tr. 631 at Line 24.

IN a review of the record the record reflects that "there's absolutely no evidence of anything on the three indicted offenses". Tr. 716 at Line 18-21. This response came from the state.

Appellant, through the issue Presented, and citations of authorities relied on will show unto this court, Appellant's entitlement to the requested relief stated herein. Appellant set forth the grounds upon which issue is based. (make at least a Prima facie showing which would entitle Appellant to relief. before this court of Appeal. Tr. Dated October 14-17, 2013 is Attached.

IN reviewing the refusal to grant a directed verdict, this court must determie whether there is any evidence, either direct or circumstahtial, which reasonably tend to Prove the guilt of the accused. State V. Creech, 314 S.C 76, 441 S.E 2d 635 (ct. App. 1993), (see) Tr. 716 at Line 18-21; the record reflect theres absolutely no evidence of anything on the three indicted offenses.

If the evidence is consistent with both innocence and guilt it cannot support a conviction. United State V. Varoz, 740 F2d 772, 775 (10th Cir. 1984). The record reflects perjured Testimony from testifing witness, consistent with both innocence and guilt. Tr. 576 at Line 1— Tr. 631 at Line 24. This being the testimony of Mr. Charley. A directed Verdict should be granted when there is an absence of competent evidence tending to Prove the offense charged because the Jury should not be allowed to decide the case based on conjecture. (Perjured testimony) which only a mere suspicion of the defendant's guilt. State V. Lyles-Gray, 328 S.C 458, 492 S.E 2d 802 (ct. App. 1997), State V. Barsdale, 311, S.C 210, 428 S.E 2d 498 (ct. App 1993

Duing a renew of all Prior motion and Objections at Pretrial and during trial. Tr. 636 At Line 15-19.

Trial court denyed all motions and allowed intrinsic fraud evidence (Perjured testimony) by Mr. Charley, to be his reason for his denial of a directed Verdict.

Perjured testimony was allowed to be determine by the jury. Tr. 632 At Line 25— Tr. 633 At Line 5.

Trial court Positively Asserts by, commenting on, "Mr. Charley's testimony as being the most noncredible witness he's ever seen" in his 14 Year's on the Job." Tr. 734 At Line 20-22.

APPellant's trial as a whole was damage by the Perjured testimony of "Mr. Charley". When there was Absolutely no evidence in the three indicted offenses tending to Prove the guilt of the APPellant. (see) Tr. 716 At Line 18-21.

ARGUMENT

The trial court erred in allowing intrinsic fraud evidence (perjured testimony) from "Mr. Charley to be the reason for his denial of Appellant's Directed Verdict, Fraud Upon The Court.

Relevant Facts

Charley testified for the defense. Tr. 576 At Line 1-10. ON direct-examination, Charley testified that he told Appellant he would Pay him to drive charley that night. Tr. 584 At Line 5— 585 At 11. Charley told Appellant he was "going to see some girls. Tr. 585 At Line 23-25. Charley never told Appellant anything about a shooting, or guns, or his dispute with Young. Tr. 586 At Line 1— Tr. 587 At 2.

Charley testified that he told Appellant to "Park far away Tr. 589 At Line 12-23. while appellant waited in the van, Charley and Rico went to Young's trailer. Tr. 590 At Line 3— Tr. 591 At Line 7. Charley heard Young shout. Tr. 591 At Line 14-19. Young opened the door of the trailer and fired two shots in the air. Tr. 592 At 2-6. Charley then fired one shot in the air. Tr. 592 At Line 17-18. When charly got back to the van. Appellant was still in the Van. Tr. 593 at Line 16-18. Appellant never had any knowledge of the crime. Tr. 594 At Line 17-19.

ON Cross-examination the Solicitor immediately Suborn Mr. Charley which INduce Mr. Charley to

Commit an unlawful act in a secret and underhand manner confroned Charley with the fact that he had already Pled guilty but had not Yet been sentenced. Tr. 601 At Line 21— Tr. 604 At Line 4. Charley responed that he believed he was going to receive a sentence of eight Years. Tr. 604 At Line 4-6. The Solicitor accused Charley of double-crossing the state and mentioning his Plea deal did Charley recant his direct-examination testimony and implicate Appellant in the shooting. Tr. 604 At Line 11— Tr 631 At Line 24. (See) Burns V. Clayton 117 S.E 2d 300 237. S.C 316.

Duing a renew of all Prior Motion and Objections at Pretrial and during trial Tr. 636 At Line 15-19.

Trial court denyed all motions and allowed intrinsic fraud evidence (Perjured Testimony) from Mr. Charley to be his reason for his denial of a directed Verdict. Tr. 636 At Line 20— Tr. 637 At Line 2.

Perjured testimony was allowed to be determine by the Jury. Tr. 632 At Line 25— Tri 633 At Line 5.

Trial court Positively asserts by "Commenting on Mr. Charley testimony as being the most Noncredible witness he's ever seen in his 14 Year's on the Job. Tr. 734 At Line 20-22.

Appellant trial as a whole was damage by the Perjured testimony of Mr. Charley. When there was Absolutely no evidence in the three indicted offenses tending to Prove the guilt of the accused. Tr. 716 At Line 18-21.

Discussion

The trial Court erred by allowing Perjured testimony to be heard by the Jury, and the same Perjured testimony was the basis for denying Appellant's directed Verdict. There was absolutely no evidence as stated by the State. Tr. 716 At Line 18-21. Appellants trial as a whole was damage by the trial courts actions for allowing such Perjured testimony from Mr. Charley. This was Predudicial and Crucial to the Case by allowing the use of Perjured testimony. This was a Clear Violation of Due Process that barrs state from invoking Judicial or any other Proceedings against Appellant (See) Lambert Vs Blackwell, 962 F. Supp. 1521, Vacated 134 F.3d 506, as amended. and rehearing and suggestion for rehearing denied. Under these Circumstances by allowing intrinsic fraud evidence to be the reason for denial of directed Verdict and allowing this Perjured testimony to be heard by the Jury. When the witness testimony is determined to be truthful or nontruthful by the jury. The witness Mr. Charley testified to two (2) different accounts of events; to one (1) Question of Fact. The use of intrinsic fraud evidence (Perjured testimony) is one of the many Violation in Lambert V. Blackwell.

The trial Court demonstrated the Appearnce of Bias and impartiality which amounts to extrinsic Fraud. The trial court admitted that Mr. Charley's Credibility was the worst in the (14) Year's of Judge Baxely's career. Furthermore a clear and convincing abuse of Discretion took Place by the Honorable Judge Baxely.

1.) The Judge is not a dudge of the fact's,

2.) The Judge is the Judge of the law; IN which Mr. Charley's testimony is a Violation of §16-9-10 which it amounts to extrinsic fraud by the dudge for allowing intrinsic fraud to take Place. (Perdured Testimony)

Last defense Counsel objected in references to seek the truth, trial court also decline to alter the charge as given. Tr. 720 At Line 14— Tr. 721 At Line 19.

Conclusion

For the foregoing reasons, this court should reverse Appellants convictions and grant a new trial.

Respectfully Submitted
Gerald Rudell Williams
Appellant.

This 11 day of March 2015

STATE OF SOUTH CAROLINA
IN The Court of APPeals

APPeal from Saluda County
J. Michael Baxley, Circuit
Court Judge

The State

Respondent,

V.

Gerald Rudell Williams

APPellant.

I, Gerald R. Williams Pro-SE Counsel hereby certifies that a true copy of this Motion has been served upon "Jenny ABBOTT Kitchings, Clerk, Address P.O Box 11629, Columbia, S.C 29211

Subscribed and sworn to before me
this 11 day of March 2015

(notary Public for S.C)

my commission Expires 12/16/2019

My Commission Expires December 16, 2019

x Gerald R. Williams
Gerald Rudell Williams
S.C D.C # 279073
(Date)

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerald Rudell Williams, Appellant.

Appellate Case No. 2013-002304

ORDER

Counsel has submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and a motion to be relieved as counsel. We deny the motion to be relieved as counsel and direct the parties to brief the following issues and any other issue of arguable merit:

(1) Whether the trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery?

(2) Whether the trial court erred in charging the jury on the doctrine of transferred intent?

Appellant shall serve and file a brief on these issues within twenty days of the date of this order. Thereafter, Respondent shall have thirty days to serve and file its brief.

H. Bruce Williams J.

Paula A. Thomas J.

John D. Geathers J.

Columbia, South Carolina

FILED
3/31/16

cc:
Gerald Rudell Williams, 279073
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Joshua L. Thomas, Esquire

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE # 2013-002304

BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery?

2.

Whether the trial court erred in charging the jury on the doctrine of transferred intent?

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767. On October 14, 2013, appellant was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented appellant. R. 1. The jury convicted appellant. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. This appeal follows.

ARGUMENT

1.

The trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery.

Relevant Facts

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Orienthal James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him $26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver drugs and agreed with the solicitor that his intention was "to rip [Young] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 11. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 511, l. 9 – 512, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified appellant as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw Charley come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Appellant was Ycedra's second cousin and she did not identify appellant as being with Charley in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long claimed he found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He claimed a person who "undoubtedly was laying in the ditch beside the van" stood up and faced him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him

their hands. R. 324, ll. 14 – 21. Officer Long claimed the person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the vehicle and notify the other officers. R. 325, ll. 1 – 17. He claimed a camera in his vehicle was not working. R. 325, ll. 1 – 6. Officer Grenier pulled his vehicle in front of the van to box it in. R. 325, ll. 18 – 23. The van stopped. R. 325, ll. 18 – 25. The police claimed they found appellant driving the car and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense. R. 576, ll. 1 – 10. On direct-examination, Charley testified that he told appellant he would pay him to drive Charley and a man named Rico that night. R. 584, l. 5 – 585, l. 11. Charley told appellant he was "going to see some girls." R. 585, ll. 23 – 25. Charley never told appellant anything about a shooting, or guns, or his dispute with Young. R. 586, ll. 1 – 13.

While appellant waited in the van, Charley and Rico went to Young's trailer. R. 590, l. 3 – 591, l. 7. Charley heard Young shout. R. 591, ll. 14 – 19. Young opened the door of the trailer and fired two shots in the air. R. 592, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 592, ll. 9 – 21. Charley ran. R. 592, ll. 24 – 25. Rico shot at the trailer. R. 592, l. 17 – 18. When Charley got into the van, he said the police pulled up "within five seconds." R. 593, ll. 16 – 23. Appellant was still in the van when Charley returned. R. 593, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 601, l. 21 – 604, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R.

604, ll. 4 – 6. The solicitor accused Charley of "double-crossing the State." R. 604, ll. 15 – 19.

Only after the solicitor's accusations of a double-cross and mentioning his plea deal did Charley recant his direct-examination testimony and implicate appellant in the shooting. R. 605, ll. 13 – 631, l. 24. Under intense questioning from the solicitor, Charley claimed appellant was with him at the scene of the shooting and that there was no "Rico." R. 605, l. 13 – 611, l. 25.

However, Charley was adamant that Ycedra and her brother were not in the house at the time of the shooting. R. 615, ll. 8 – 23. Charley testified that he knew they were not there because the van that Ycedra drove was not in the yard. R. 615, ll. 8 – 23. Charley testified he had no "beef" with Ycedra and no "beef" with Joseph. R. 615, l. 24 – 616, l. 5. When asked why he would have "shot the whole house up not caring about whether they lived or died," Charley responded, "I can't say I was not caring about whether they lived or died. He shot, so I shot in the air, that's how it happened." R. 616, ll. 6 – 11. Charley claimed appellant shot, but did not know the direction that appellant fired. R. 618, ll. 9 – 13. When shown a picture of the trailer, Charley explained that the bullet holes could have come from inside the trailer. R. 627, ll. 4 – 21.

Discussion

After the trial court charged the jury, appellant placed his earlier objections at a bench conference on the record. R. 713, l. 14 – 716, l. 15. Appellant requested the lesser included offense of first-degree assault and battery. R. 716, ll. 5 – 15. Appellant argued "there's been no testimony of any injuries with any of the people inside this home." R.

716, ll. 5 – 15. Appellant pointed out that no physical evidence matching the guns was found. R. 716, ll. 5 – 15.

In response, the State argued that appellant was entitled only to a charge on attempted murder because the "two theories that were posited were either that he was totally not present and unaware of this and had absolutely no involvement, criminal involvement at all or he was completely involved in it." R. 716, ll. 18 – 25. The trial judge denied the request for the lesser included offense because "[a]ll the evidence in this case" showed that appellant "shot up a mobile home with the intent to kill an individual who was within the home. . . ." R. 717, ll. 15 – 23. The court added, "The evidence is devoid of any lesser included offense indicia." R. 718, ll. 5 – 6.

The trial judge erred because no one in the trailer was injured. A person can be guilty of first-degree assault and battery if the person unlawfully "offers or attempts to injure another person with the present ability to do so, and the act . . . is accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600(C)(1)(b)(i). From the plain language of the statute, first-degree assault and battery does not require an injury. Id. It is enough that the defendant "offer" or "attempt to injure." Id. Furthermore, one can be guilty even if the means used are likely to produce death. Id.

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the

facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

Viewing the facts in the light most favorable to appellant, the jury could have found that appellant lacked malice, but used means likely to produce death. No one in the trailer was injured. Charley testified that he was not sure of the direction appellant fired. Charley also testified that Young fired first. R. 592, ll. 2 – 6. The trial judge mistakenly accepted the solicitor's argument that there was "no middle ground." R. 717, ll. 2 – 3. Under the "any evidence" standard, the jury could have concluded that appellant did not possess malice, especially considering that no one was injured and Young fired first. This Court should reverse appellant's convictions and grant him a new trial.

2.

The trial court erred in charging the jury on the doctrine of transferred intent.

Because attempted murder requires specific intent, the trial court erred in charging transferred intent. State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015) *cert. granted* Mar. 28, 2016. Appellant objected to the trial court's charge on transferred intent. R. 713, l. 18 – 714, l. 7. The State requested the charge. R. 714, ll. 8 – 21. Appellant argued:

> We object to the transfer[red] intent charge. Generally speaking, transferred intent is, is—I understand it is shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice just because there is a shooting. And we would respectfully object to the transfer[red] intent charge, Your Honor.

R. 713, l. 23 – 714, l. 7. The trial court granted the State's request to charge transferred intent over appellant's objection, noting that appellant was accused of shooting into a house with people "he did not know were there." R. 714, ll. 8 – 21. The trial judge explained that "the Court was concerned that the jury may believe, after charging that intent is necessary, that the defendant had no intent to harm those individuals." R. 714, ll. 8 – 21.

In King, this Court held that the attempted murder statute requires the State to prove the defendant acted with the specific intent to kill. King at 407-11, 772 S.E.2d at 191-93. The Court relied on the language used by the Legislature when it enacted the attempted murder statute. Id. The Court also relied on State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) in which the Supreme Court refused to recognize a separate offense of attempted murder and stated that attempted murder would require specific intent. Id.

Because attempted murder requires the State to prove specific intent, the trial court erred in charging that any intent appellant had to kill Young could be transferred to other people. This error is magnified in the factual situation presented here because, as recognized by the trial court, the evidence did not show that appellant was aware that anyone was inside of the trailer. Charley testified that no "beef" existed with respect to the other two occupants of the trailer. The transferred intent charge allowed the jury to find appellant guilty of attempted murder as to Ycedra and Joseph without requiring the State to prove that (1) appellant knew they were in the trailer; and (2) appellant intended to kill them as well as Young.

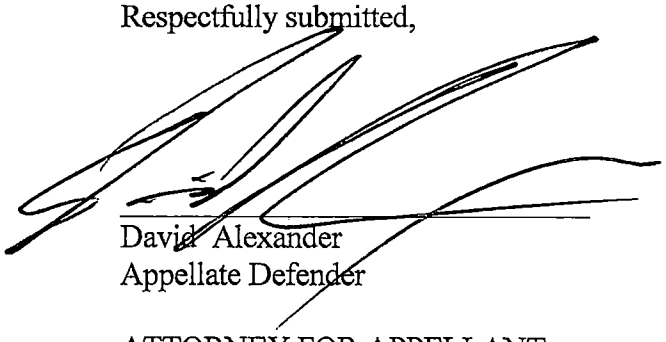
Furthermore, the transferred intent doctrine does not apply to attempt crimes. State v. Hinton, 630 A.2d 593, 600-02 (Conn. 1993). See also People v. Smith, 124 P.3d 730, 739-40 (Cal. 2005) ("The mental state required for *attempted* murder is further distinguished from the mental state required for murder in that the doctrine of 'transferred intent' applies to murder but not to attempted murder."). In Connecticut, attempted murder requires specific intent. Hinton, 630 A.2d at 601. "Transferred intent is not needed, however, to insure that a defendant is prosecuted for attempted murder." Id. at 600-02. "A defendant can still be prosecuted for his intent to kill and conduct aimed at killing the intended victim whether a third party is killed **or no one is even injured**." Id. (emphasis added). "The doctrine of transferred intent, generally considered a necessary fiction, is therefore not necessary to prosecute for attempted murder a defendant whose aim was poor." Id. The Hinton court further reasoned that the rule of lenity required this result. Id. See also State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.").

Just like in Hinton, South Carolina's version of attempted murder requires specific intent and South Carolina uses the rule of lenity. Therefore, this Court should apply the reasoning of Hinton to this case and hold that South Carolina does not apply transferred intent to attempted murder. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of May, 2016.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of General Sessions
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002304

THE STATE,

Respondent,

vs.

GERALD RUDELL WILLIAMS,

Appellant.

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

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

I.

On April 13, 2013, Appellant Jamel Dashawn Watt was arrested following a shooting outside of TJ Whispers nightclub in Anderson County, South Carolina. On July 9, 2013, the Saluda County Grand Jury indicted Appellant on three counts of attempted murder (2013-GS-41-257,-258,-259). On October 14–17, 2013, Appellant proceeded to a jury trial before the Honorable J. Michael Baxley. Bennett E. Casto, Esquire and Robert M. Madsen, Esquire, represented Appellant; Assistant Solicitors Ervin J. Maye, Esquire, and H. Franklin Young, III, Esquire, represented the State. The jury found Appellant guilty of the charges as indicted, and

the trial judge sentenced him to three concurrent terms of twenty years' incarceration. Thereafter, Appellant filed a timely notice of appeal.

II.

On April 6, 2016, Appellant filed an Initial Brief of Appellant, claiming the trial judge erred in: (1) refusing to charge the jury on the lesser-included offense of first-degree assault and battery; and (2) charging the jury on the doctrine of transferred intent. In arguing his second issue, Appellant contends that the trial judge erred in instructing the jury on the doctrine of transferred intent because attempted murder requires a specific intent to kill and thus any intent he had to kill his intended target could not be transferred to the other victims. Appellant's argument is premised on State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), reh'g denied (June 5, 2015).

III.

On April 22, 2015, while Appellant's case was pending on appeal, this Court issued its opinion in King. King was convicted of attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime following the robbery and shooting of a taxi driver. The King court held "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder" and the trial court erred in charging the jury that attempted murder is a general intent crime. Id. This Court additionally found the trial court erred in admitting hearsay testimony from the responding officer as to how many shots were fired. The Court concluded the trial court's errors prejudiced King as to his attempted murder charge, finding the officer's "inadmissible testimony as to the number of shots King fired affected the jury's verdict on attempted murder, and we cannot say that either the admission of the evidence or the erroneous jury charge are harmless beyond a reasonable doubt." Id. at 417,

772 S.E.2d at 196. The Court affirmed the other convictions, finding that the trial court's errors did not prejudice King as to his convictions for armed robbery and possession of a firearm because the errors did not affect the result of his trial those charges. Id. Both King and the State filed timely petitions for rehearing, which this Court denied by order filed June 5, 2015.

IV.

Following this Court's decision in King, King and the State filed timely petitions for a writ of certiorari to the South Carolina Supreme Court. In its petition, the State asks the Supreme Court to resolve whether it is error for a trial court to instruct the jury that the offense of attempted murder does not require a specific intent to kill.[1] The Court granted certiorari on this issue on March 28, 2016.[2]

VI.

Because the Supreme Court's decision in King is highly relevant to Appellant's case and will likely play a large and perhaps decisive role in the ultimate outcome in one of two issues of Appellant's appeal, the State believes it is critical and necessary for the final decision in King to be issued before the State can fully and properly respond to Appellant's challenge to his conviction. Accordingly, the State asks this Court to hold Appellant's appeal and the time for filing the Initial Brief of Respondent and Designation of Matter in abeyance pending the Supreme Court's resolution of King and to permit the State thirty days to file the Initial Brief of Respondent and Designation of Matter in this case after the Supreme Court issues its final decision in King. The State also asks this Court to hold the filing deadlines in abeyance pending resolution of this motion. Should this Court grant the State's motion, the State will immediately notify this Court in writing when the Supreme Court issues its final decision in King. Further,

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

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

the State also asks that should this Court deny the State's motion, the State have thirty days from such order to submit its Initial Brief of Respondent and Designation of Matter in this case.

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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

BY: _____
William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

May 19, 2016

Exhibit A

RECEIVED

JUN 15 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Anderson County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

The State, Petitioner,

v.

Raheem D. King, Respondent.

Opinion No. 5313 (S.C. Ct. App. filed April 22, 2015)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies a Petition for Rehearing was filed in the South Carolina Court of Appeals on May 12, 2015. The Petition for Rehearing was denied by Order filed June 5, 2015.

STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals err in finding the circuit court erroneously charged the jury attempted murder was a general intent crime, and the charge as given was not harmless error?

II. Did the Court of Appeals err in finding a police officer's testimony regarding what she learned during a neighborhood canvass after the shooting was inadmissible hearsay, and the admission of her testimony was not harmless error?

STATEMENT OF THE CASE

On March 8, 2011, the Charleston County Grand Jury indicted Respondent Raheem D. King on one count of attempted murder, one count of armed robbery, and one count of possession of a firearm during the commission of a violent crime. The charges arose from an incident on November 26, 2010, during which Respondent lured a cab to an address in Charleston County, and then robbed and shot at the cabdriver, Dario Brown ("Mr. Brown"). The case was called for trial on November 5, 2012, before the Honorable J.C. Nicholson, Jr., Circuit Court Judge.

Prior to trial, Respondent moved to suppress records from Cricket Wireless regarding a particular cell phone number associated with the case, asserting the affidavits submitted in support of the search warrants for the records were insufficient, and contained conclusory and misleading statements. The State argued the supporting affidavits contained more than sufficient information establishing probable cause to obtain the records. After reviewing the affidavits and search warrants, the circuit court denied the motion to suppress. (Record on Appeal [R.], pp. 2-12; 297).

Devin Parker ("Parker"), a Yellow Cab Company telephone operator, testified a call came in at 4:06 a.m. on November 26, 2010, requesting a cab at [redacted] Carlton Street, and he dispatched Mr. Brown to that address at 4:11 a.m. Parker stated the caller identified himself as Kevin, and the caller ID showed the call came from the number [redacted]. (R., pp. 44-51, 313).

Mr. Brown testified he arrived at [redacted] Carlton within one or two minutes. He was familiar with Carlton Street because he lived there for several years, and his aunt lived on the street. When he arrived at [redacted] Carlton, Mr. Brown saw a man walking out

of the yard across the street at [redacted] Carlton Street, which he knew was abandoned. (R., pp. 53-55, 58-61).

The man entered the cab's passenger side backseat. When he opened the cab door, the dome light came on, and Mr. Brown was able to see the man's facial features and attire. Mr. Brown asked the man why he came out of the yard of an abandoned residence, and the man replied it was his yard. (R., pp. 60-62).

After the man shut the door, Mr. Brown made a U-turn at the dead end of the road. He heard a pistol cocking, looked back and saw the man raise a gun to his head. The man demanded money, and Mr. Brown gave him the "give away money," or "dummy money," which was a stack of one-dollar bills drivers keep under the seat or between their legs to give to robbers, but the man demanded more money. Mr. Brown testified he was basically begging for his life at this point, and was so scared his legs would not move. (R., pp. 62-65).

Mr. Brown tried to use his forearm to move the gun away from his head three times, pleading with the man not to shoot him. The third time, the man shot Mr. Brown in the elbow and the bullet passed through his forearm. Mr. Brown described the gun as a .25 caliber automatic that ejects shells when fired. (R., pp. 65-68, 95-97).

After the man shot him, Mr. Brown got out of the cab and ran toward the dead-end of the street, screaming for help. With the man chasing him, Mr. Brown flipped headfirst over a three to four foot chain-link fence, and landed on his back, fracturing a vertebrae. Mr. Brown testified the man fired a shot during the pursuit, and after he flipped over the fence, the man pointed the gun over it and fired another shot. Mr. Brown was able to maneuver himself behind a burgundy van in the yard, approximately five to

ten feet away from the fence, and the man fired six or seven more shots. The man yelled he would stop shooting if Mr. Brown gave him the money. (R., pp. 68-72, 78-79,101, 104).

Mr. Brown used his cell phone to call the police, and the man fled the scene. Mr. Brown testified he clearly saw the man, and described him as having "brown skin, kind of heavy set with a round face, scruffy beard and an afro . . ." wearing a hoodie over his head, and he told law enforcement there was no doubt in his mind he could identify the man in a photo lineup. When law enforcement subsequently showed him a photo lineup of six individuals, he was able to identify Respondent as the shooter with "100 percent" certainty. (R., pp. 73-74, 77-78, 86, 89, 104).

Officer Jennifer Butler ("Officer Butler"), with the North Charleston Police Department, was the first responding officer at the scene, arriving at approximately 4:21 a.m. She saw a cab had run into a pole on the side of the road, but no one was inside. Mr. Brown flagged her down from across the dead-end of the street, and he was very distraught, scared, and appeared to be in shock. He reported he had been dispatched to [redacted] Carlton, and the man he picked up there robbed him and shot him in the forearm. (R., pp. 110-114, 120).

The responding officers did not know where the shooter went, and a canine unit came to try and track him if possible. Officer Butler and another officer canvassed houses in the area to determine if anyone saw or heard anything relating to the crime. The State asked Officer Butler if she was able to make contact with anyone in the area, and she responded they were able to speak to two people, who "were able to confirm . . ."

At that point, the circuit court sustained Respondent's hearsay objection. (R., pp. 114-115).

The State then asked Office Butler what she learned during the investigation she conducted that night. The circuit court overruled Respondent's second hearsay objection, stating Officer Butler could testify to what she learned in the investigation, Officer Butler testified she learned approximately three or four shots were fired that night. (R., p. 115).

Shawn Mitchell ("Mitchell"), a legal compliance analyst at New Star ("New Star"), a records production company, testified New Star maintains the phone records, including subscriber information and call logs, for Cricket Wireless subscribers. In response to a subpoena, Mitchell pulled the records for 843-642-4849, which was the number from the call requesting the cab pickup at [redacted] Carlton. The records revealed a Cricket Wireless subscriber named "Kevin King," with the address [redacted] Elliot Street, Charleston, South Carolina 29405-7332, and a 1991 date of birth (R., pp.142-146).

Mary Wearing ("Wearing"), a custodian of driver's records at the South Carolina Department of Motor Vehicles ("SCDMV"), testified Respondent's most recent address on his driver's license was [redacted] Osceola Street, North Charleston, South Carolina 29405. Also, Respondent's driver's license reflected a 1991 birthdate. (R., p.162, 165-166).

Detective Patricia Jourdan ("Detective Jourdan") testified she showed Mr. Brown a photo lineup on November 29, 2010. There were photos of six men in the lineup, but Mr. Brown did not identify any of them as the shooter. (R., pp. 168-174). Detective Mark Evans ("Detective Evans") testified the only information investigators had initially was the cell phone number from the call to the cab company. They learned it was a

Cricket Wireless number, which was registered to Kevin King, [redacted] Elliott Street, with a 29405 zip code and a 1991 date of birth. They determined the street address given to Cricket Wireless did not exist, and Elliott Street was in the 29401 zip code area. Using driver's license records, they then tried matching up people in the area with the last name King and the 1991 birthday. They found Rakeem King (Respondent) with the same 1991 birthday given to Cricket Wireless, and an address of [redacted] Osceola Street with a 29405 zip code. (R., pp. 192-195).

As a result of the information obtained from this investigation, Detective Evans recommended a second photo lineup with Respondent's photo. On December 3, 2010, Mr. Brown viewed the second photo lineup with six photos, including Respondent. Detective Walter Boone testified Mr. Brown immediately identified the third photo (Respondent), and was 100% sure Respondent was the man who robbed and shot him. (R, pp. 176-184, 195-197).

Respondent moved to suppress a compact disk containing recordings of telephone calls Respondent made while in custody at the Detention Center (the "CD"), arguing relevancy and unfair prejudice due to the language used and difficulty understanding what was said. The State argued the CD was highly relevant because it directly connected Respondent to the cell phone used to lure the cab to the scene. The circuit court denied the motion to suppress, but offered to redact portions Respondent believed were unduly prejudicial. Respondent then withdrew his request to redact portions of the CD. (R., pp. 209-216).

Kevia Heyward ("Heyward"), Security and Administrative Supervisor at the Detention Center, testified the Detention Center has a recording system to record all

inmate telephone calls. When booked into the Detention Center, each inmate receives a unique pin number for the system that must be used when they attempt to make a phone call, and the system automatically records all completed calls, except those made to the inmate's attorney, into compact disk storage form. The inmate is advised all calls are recorded, and the recordings are maintained in the Detention Center's ordinary course of business. The Detention Center Call Log indicated Respondent called the cell phone at issue sixty-three times in one month. The cell phone was in the possession of an unknown third party, but Respondent and the third party made statements during the calls clearly indicating the cell phone belonged to Respondent. (R., pp. 218-224), 314).[1]

The circuit court charged the jury on the elements of attempted murder, the lesser included offenses of assault and battery of a high and aggravated nature ("ABHAN") and first degree assault and battery, armed robbery, attempted armed robbery, and possession of a weapon during commission of a violent crime. (R., pp. 249-266). Respondent objected to the attempted murder jury charge on the ground attempted murder is a specific intent crime rather than a general intent crime. He also objected to the inference of malice from use of a deadly weapon charge. (R., pp. 268-271).

The jury convicted Respondent of attempted murder, armed robbery and possession of a weapon during a crime of violence. The circuit court sentenced Respondent to concurrent prison terms of thirty years on the armed robbery conviction and ten years on the attempted murder conviction, with a consecutive five year term on the possession conviction. (R., pp. 267, 278-279). This appeal followed.

---

[1]State's Exhibit 33 (CD) was transported to the Court of Appeals for consideration.

By published opinion filed April 22, 2015, the South Carolina Court of Appeals affirmed in part, reversed in part, and remanded the case to the circuit court for a new trial on the attempted murder charge. The Court affirmed Respondent's convictions for armed robbery and possession of a firearm during commission of a violent crime, but reversed his attempted murder conviction, finding the circuit court erred in charging the jury attempted murder is a general intent crime. The Court also found Officer Butler's testimony about what she learned during the neighborhood canvass was inadmissible hearsay, and the error in admitting it was not harmless. (Appendix, pp. 1-14).

The State petitioned for rehearing, which the Court denied by Order filed June 5, 2015. (Appendix, pp. 15-27). The State now serves and files its Petition for Writ of Certiorari to the Court of Appeals, and asks this Court to review the Court of Appeals' findings regarding the attempted murder jury charge and Officer Butler's testimony.

ARGUMENT

I. The Court of Appeals erred in finding the circuit court erroneously charged the jury attempted murder was a general intent crime, and the charge as given was not harmless error.

Premised primarily on dicta from State v. Sutton, 340 S.C. 393, 532 S.E.2d 283, 285 (2000), stating a **common law** attempted murder charge "would require the specific intent to kill," the Court of Appeals concluded the Legislature "intended to require the State to prove the specific intent to kill as an element of attempted murder" under S.C. Code Ann. §16-3-29 (Supp. 2014). As further support for its conclusion, the Court cited to common law "attempt" cases, as well as cases holding the Legislature is presumed to be aware of the courts' interpretation of its statutes. The Court of Appeals' reliance on Sutton, "attempt" cases, and statutory interpretation cases was misplaced, and ignored relevant case law and history leading to enactment of the attempted murder statute in 2010.

A. Attempted Murder Statute/Legislative Intent

Murder is "the killing of any person with malice aforethought, either express or implied." S.C. Code §16-3-10 (2003). A specific intent to kill is not required for a murder conviction. State v. Foust, 325 S.C. 12, 479 S.E.2d 50, 51 (1996).

The common law offense of assault and battery with intent to kill ("ABWIK") was defined as an unlawful act of violence to the person of another, with either express or implied malice aforethought, and a specific intent to kill was **not** required. *Id.*.[2] For

[2]In 1962, the Legislature made the common law ABWIK offense a felony punishable by up to twenty years incarceration. S.C. Code Ann. 16-3-620 (2003), *repealed by* 2010 Act No. 273, §7.A, effective June 2, 2010 (abolishing ABWIK, ABIK, ABHAN and other common law offenses). Therefore, the requisite common law general intent requirement still applied.

purposes of murder and ABWIK, malice is the wrongful intent to injure with a wicked or depraved spirit intent on doing wrong, and doing the act intentionally, without just cause or excuse. Tate v. State, 351 S.C. 418, 570 S.E.2d 522, 527 (2002).

In Sutton, this 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 an 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." 532 S.E.2d at 285-286. In short, unlike **common law** attempted murder, common law ABWIK did **not** require a specific intent to kill.

In 2010, as part of an omnibus crime bill, the South Carolina Legislature enacted the attempted murder statute, and expressly abolished the common law offense of ABWIK. Section 16-3-29 provides "[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."

In concluding the Legislature did not intend §16-3-29 to codify the common law ABWIK offense, which did not require a specific intent to kill, the Court of Appeals cited to statutory construction cases indicating the Legislature is presumed to know about judicial decisions interpreting its statutes. Significantly, in reaching this conclusion, the Court ignored multiple cases holding common law ABWIK, like murder, was a general intent rather than a specific intent offense, relying instead on the dicta in Sutton as case law the

Legislature was presumed to know when it passed the attempted murder statute.[3] *See, e.g.*, State v. Dennis, 402 S.C. 629, 742 S.E.2d 21, 27 (Ct. App. 2013) (ABWIK requires a general intent to kill, and South Carolina courts have recognized "the element that distinguishes ABWIK from ABHAN is not malice, but an intent to kill.")

Given the fact the attempted murder statute uses language virtually identical to common law ABWIK, and the Legislature is presumed to be aware of the ABWIK case law regarding the intent required for ABWIK, it is clear the Legislature intended the attempted murder statute to incorporate the same intent required for ABWIK.[4] *See* William S. McAninch, W. Gaston Fairey, Lesley M. Coggiola, The Criminal Law of South Carolina 253-256 (6th ed. 2013) (common law ABWIK did not require specific intent to kill; attempted murder statute removed issues regarding the intent required by adopting definition mirroring the definition of murder, and limited the offense to actions that would be murder if the victim died). As interpreted by the Court of Appeals, the attempted murder statute imposes a more culpable intent requirement than required for murder itself.

If a defendant grievously injures someone with malice aforethought, and the victim dies, the defendant can be convicted of murder and sentenced to prison for thirty years to life, **without** any proof the defendant actually intended to kill the victim. Under

---

[3]Notably, when the Legislature enacted §16-3-29 in 2010, there were no cases interpreting previous statutes regarding attempted murder because they did not exist. Thus, the Legislature's only point of reference when writing §16-3-29 and abolishing ABWIK was the case law interpreting "malice aforethought," and holding ABWIK, which also required "malice aforethought," was a general intent crime.

[4]Contrary to the Court of Appeals' rationale, the Legislature's use of the term "with intent to kill" in the statute does not obviate an intent to codify the common law ABWIK offense with the same general intent requirement. On its face, common law ABWIK included "with intent to kill," but courts consistently held proof of a specific intent to kill was not required.

the Court of Appeals' interpretation of §16-3-29, however, if the same defendant acts with the **same** malice aforethought against the same victim, and inflicts the same grievous injuries, but the victim survives, the defendant cannot be convicted of attempted murder unless the State proves the defendant acted with the specific intent to kill the victim. That is an absurd result the Legislature could not have intended. *See* State v. Sweat, 386 S.C. 339, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.").

In support of its analysis, the Court of Appeals noted the Legislature abolished ABWIK with no reference to codifying it as attempted murder, and legislatively changing all statutory references to ABWIK to attempted murder was merely to avoid any confusion regarding the effect of the "new crime of attempted murder." This overlooks the fact the Legislature also abolished the common law offenses of assault and battery of a high and aggravated nature (ABHAN), simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault, but did not reference the "new" crimes of ABHAN, and first degree, second degree and third degree assault and battery created by S.C. Code Ann. §16-3-600 (Supp. 2014), which incorporated the elements of those common law offenses.

If the Legislature intended attempted murder to be a specific intent crime because common law attempt requires a specific intent to commit the underlying offense, the attempted murder statute is essentially superfluous. The 2010 Omnibus Crime Act did not repeal S.C. Code Ann. §16-1-80 (2003), which provides that a person committing the common law offense of attempt must be punished as for the principal offense, and all the

case law regarding common law attempt prior to 2010 required the specific intent to commit the underlying offense. Thus, the Legislature could have simply abolished ABWIK, and amended S.C. Code Ann. §16-3-20 (2003) (punishment for murder) to include the punishment for attempted (based on §16-1-80) murder (up to thirty years in prison). The fact the Legislature enacted the attempted murder statute indicates it did not intend the common law attempt specific intent requirement to apply to attempted murder.[5]

The Court of Appeals' conclusion also overlooks the fact the Legislature was not bound by the dicta in Sutton regarding common law attempted murder when enacting the attempted murder statute. Rather, it was free to use the common law ABWIK elements in defining attempted murder.

In this case, the circuit court charged the jury:

> **An attempt includes a specific intent to do a particular criminal act along with that act falling short of the act intended.** The State must show more than mere preparation and intent. It must be some overt act committed and the effort to commit the crime. **Intent means intending the results which actually occurred not accidentally or involuntarily.** Intent may be shown by acts and conduct of the defendant in other circumstances from which you may naturally and reasonably infer intent. **Attempted murder: a person with the intent to kill attempts to kill another person with [m]alice [a]forethought either expressed or implied commits the offense of attempted murder.** Malice is a hatred, ill will, or hostility towards another person is (sic) the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury under circumstances that the law will infer as evil intent.

[5]Notably, the Legislature did not enact any other specific "attempt" crimes in 2010, and no other such crimes exist in the South Carolina criminal code, which is further indication the Legislature intended attempted murder to be different from common law attempt.

(R., pp. 258-259) (emphasis added).[6] The court subsequently stated "a specific intent to kill is not an element of [a]ttempted murder, but it must be a general intent to commit serious bodily harm," and correctly defined intent as "intending the results which actually occur, not accidentally or involuntarily." (R., pp. 260-261).

Respondent objected to the charge that attempted murder is a general intent crime, and requested the jury be charged it is a specific intent crime. Respondent acknowledged the attempted murder statute included "malice," but suggested the jury be charged attempted murder requires intent to kill, without a definition of malice.[7] The circuit court reviewed the attempted murder statute language, and found the Legislature intended the same general intent requirement for attempted murder as for murder. The court logically reasoned that making attempted murder a specific intent crime would create a higher intent requirement for attempted murder than murder, which could not have been the legislative intent when enacting the attempted murder statute. (R., pp. 268-270).

The circuit court's jury charge as a whole was substantially correct, adequately covered the applicable law, and included the statutory elements of attempted murder, including the "intent to kill" and "malice aforethought" language. Accordingly, the State

---

[6]While the court also referenced the "attempt" charge in connection with attempted armed robbery, the attempted murder charge was immediately after the attempt charge. Further, the charge given is almost verbatim the attempted murder charge suggested in the General Session jury charges found on the South Carolina Judicial Department website.
See http://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=896, at pages 83-86.

[7]Such a charge would have been an incorrect statement of the law because malice is an element of attempted murder under §16-3-29, and the definition of malice is part of the standard jury charge used in murder and ABWIK. *See* State v. Fennell, 340 S.C. 266, 531 S.E.2d 512, 517, n. 2 (2000) (definition of malice for murder and ABWIK cases); State v. Kinard, 373 S.C. 500, 646 S.E.2d 168, 170 (Ct. App. 2007) (same).

submits the Court of Appeals erroneously held the circuit court erred in charging attempted murder under §16-3-29 is a general intent offense, and reversing Respondent's attempted murder conviction. The Court of Appeals' holding is contrary to the legislative intent of the attempted murder statute, and leads to a ludicrous result the Legislature could not have intended.

B. Harmless Error

Even if §16-3-29 did create a specific intent offense and the circuit court's general intent charge was erroneous, the Court of Appeals failed to do a harmless error analysis. When the jury charges are viewed in their entirety, the circuit court's general intent charge was harmless beyond a reasonable doubt.

Erroneous jury instructions are subject to a harmless error analysis. State v. Logan, 405 S.C. 83, 747 S.E.2d 444, n. 8 (2013) (*citing* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802, 809 [2009]). "Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions which may be misleading do not constitute reversible error." *Id.* (*citing* State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248, 251 [2000]).

The jury charges in this case included common law attempt as a specific intent to commit the underlying offense, and the statutory elements of attempted murder, including "intent to kill" and "malice aforethought." Regardless of the circuit court's subsequent charge that attempted murder did not require a specific intent to kill, but a general intent to commit serious bodily harm, the jury was clearly instructed it had to find Respondent acted with "malice aforethought."

In Kinard, the Court of Appeals found there is no discernible difference between malice aforethought and intent to kill, and "[s]ince the definition of malice aforethought [in ABWIK cases] encompasses general intent to kill, [it is] difficult to reconcile a manner in which one could find malice aforethought and yet not find general intent to kill." 646 S.E.2d at 170. Thus, if the jury found Respondent acted with malice aforethought as defined by the circuit court, it had to find he acted with the intent to kill required by §16-3-29. Therefore, error in charging attempted murder as a general intent crime, if any, was harmless, and the Court of Appeals opinion on this issue should be reversed.

II. The Court of Appeals erred in finding a police officer's testimony regarding what she learned during a neighborhood canvass after the shooting was inadmissible hearsay, and the admission of her testimony was not harmless error.

A. Hearsay

Citing State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), and State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004), *aff'd as modified*, 374 S.C. 313, 649 S.E.2d 479 (2007), the Court of Appeals also found error in admitting the Officer Butler's testimony regarding what she learned during a neighborhood canvass immediately after the shooting. The Court ignored the evidence indicating there was a real possibility an active shooter was still in the area, and learning what neighbors heard and/or saw was vital as officers tried to locate him and process the crime scene. In addition to Mr. Brown's account of multiple shots fired, the information provided further reasons to look for additional shell casings in the area.

Contrary to the Court of Appeals' analysis, Kromah and Weaver support admission of Officer Butler's limited testimony. In Kromah, an investigator testified about the investigation and numerous people he interviewed, including the minor victim, and did not directly relate any statements made by the people he interviewed, but stated he made the decision to arrest the defendant based on all the information he received. The Supreme Court held his testimony was properly admitted, even if it was a form of indirect hearsay, because it was part of what the investigator considered in reaching his decision, and he did not repeat what the victim (or any other person he interviewed) said. 737 S.E.2d at 498 (officer's testimony that all the evidence gathered at the scene, including interviews with witnesses, led to the defendant was not inadmissible hearsay;

officer never repeated statements made to him by individuals at the crime scene, or testified to any specific statements identifying the defendant).

In Weaver, the investigator testified on re-direct, over objection, that all the witnesses he interviewed implicated the defendant as the sole gunman in the murder. The Court of Appeals affirmed, finding the testimony was not inadmissible hearsay because it did not recite any statements made to the investigator, it was offered to explain why the investigator did not do gunshot residue tests on others at the scene, and the investigator did not testify about any specific statements identifying the defendant. 602 S.E.2d at 792-793.

Similar to the police officers in Kromah and Weaver, Officer Butler merely testified about what her part of the investigation at the crime scene revealed.[8] She did not repeat any specific statements made by the people she interviewed, and contrary to the investigator's testimony in Weaver, nothing she related about what she learned during the canvass identified Respondent in any way. Further, the information she received provided another reason for investigators to search the area for additional shell casings.

B. Harmless Error

The Court of Appeals found the circuit court's error in admitting Officer Butler's testimony was not harmless, speculating that but for her testimony, the jury "could" have found Respondent fired only one shot, which was fired during a struggle with no intent to kill Mr. Brown. The Court further speculated "it is more difficult to imagine, however that [Respondent] could have chased Brown down Carlton Street while shooting at him

[8]Officer Butler was not the lead investigator on the case, but she was the first officer on the scene, and gave the information she gathered during the canvass to the officers conducting the crime scene investigation.

unless he specifically intended to kill Brown," which made Officer Butler's testimony regarding the number of shots fired "critical to the State's ability to prove [Respondent] continued to shoot at Brown after they exited the cab." (Appendix, pp. 11-12). The Court of Appeals' analysis overlooks the totality of the evidence presented, and assumes the only way the jury could find attempted murder was to believe multiple shots were fired.

The Court of Appeals opined the fact the gun went off when Mr. Brown pushed the gun away supports an inference Respondent did not intend to kill Mr. Brown. This overlooks the undisputed evidence Respondent held a loaded, cocked handgun to the back of Mr. Brown's head, and brought it back to his head the first two times Mr. Brown pushed it away, from which the jury could easily find an intent to kill (specific or general), even if it believed Respondent only fired one shot. It also overlooks the undisputed fact Respondent lured Mr. Brown to an abandoned home in the middle of the night, and immediately pulled the gun on Mr. Brown when he got into the cab.

Significantly, the jury's question during deliberations belies the Court of Appeals' focus on the number of shots fired. The jury asked whether pointing a gun at someone's head and not pulling the trigger would be attempted murder. This question indicates the jury was focused on the one shot fired inside the cab, and what led up to it, **not** the number of shots fired, and establishes the harmless nature of Officer Butler's testimony.

Further, the Court of Appeals overlooked the fact Officer Butler's testimony regarding the number of shots fired was cumulative to Mr. Brown's testimony Respondent fired six or seven shots that night. (R., pp. 69-70). *See* State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645, 662 (2013) ("'Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless.'") (*quoting* State v.

Jennings, 394 S.C. 473, 716 S.E.2d 91, 93–94 [2011]). In addition, it was clear Officer Butler was not present during the shooting, and her information about the number of shots fired was based solely on information for neighbors, and Respondent had ample opportunity to cross-examine her on that issue. *See* State v. Price, 368 S.C. 494, 629 S.E.2d 363, 366 (2006) (admission of hearsay testimony from investigator regarding defendant's association with a gang was harmless because it was cumulative to other evidence in the record, and defendant impeached the testimony by eliciting admission it was based solely on information from informants).

CONCLUSION

For all of the foregoing reasons, the State respectfully submits this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY: Deborah R.J. Shupe
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FORPETITIONER

June 15, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Anderson County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

The State, Petitioner,

v.

Raheem D. King, Respondent.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the within Petition For Writ of Certiorari to Court of Appeals and Appendix by depositing copies in the United States mail, postage prepaid, addressed to:

Jenny L. Barwick, Esquire (1 copy)
650 E. Washington Street
Greenville, South Carolina 92601

Robert M. Dudek (1 copy)
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

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

This 15th day of June, 2015.

Sally Ellison

SALLY ELLISON
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Exhibit B

The Supreme Court of South Carolina

The State, Petitioner/Respondent,

v.

Raheem D. King, Respondent/Petitioner.

Appellate Case No. 2015-001278

ORDER

This matter is before the Court on petitions seeking review of the decision of the South Carolina Court of Appeals in *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015). Based on the vote of the Court, the petition for a writ of certiorari is granted on Respondent/Petitioner's (King's) Questions 1 and 3, and is denied as to King's Question 2. Further, the petition for writ of certiorari filed by the State is granted as to all questions.

The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

FOR THE COURT

BY _____

CLERK

Few, J., not participating.

Columbia, South Carolina
March 28, 2016

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Deborah R.J. Shupe, Esquire
Scarlett Anne Wilson, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Julie J. Armstrong

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2013-002304

RETURN TO RESPONDENT'S MOTION TO HOLD APPEAL IN ABEYANCE

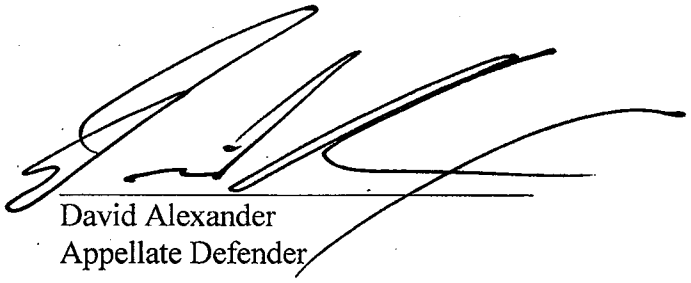
The State asks this Court to hold this appeal in abeyance until the Supreme Court decides State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015). Appellant opposes the State's motion. The sole reason for delay is that the Supreme Court's decision in King may change the outcome of this case.

The common law evolves and changes every day. In nearly every case this Court decides, new law could affect the outcome. The fact that a case is pending at the Supreme Court that may affect this appeal does not distinguish appellant's case from most other cases decided by this Court. If the Supreme Court decides King while this appeal is pending, counsel for the State or Appellant will likely submit the Supreme Court's decision as

additional authority. The State is certainly free to make alternative arguments in its brief that take the range of outcomes at the Supreme Court into account.

Furthermore, it is unknown when (or if) the Supreme Court will render a decision in King. The Supreme Court may dismiss the writ as improvidently granted. If the Supreme Court dismisses the writ, the delay sought by the State will have served no purpose. Meanwhile, appellant will continue serving his sentence of imprisonment.

WHEREFORE, appellant asks that the State's motion to hold this appeal in abeyance be denied.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

May 20, 2016

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerald Rudell Williams, Appellant.

Appellate Case No. 2013-002304

ORDER

After careful consideration, Respondent's motion to hold this appeal in abeyance is denied.

FOR THE COURT

Columbia, South Carolina

cc:
Gerald Rudell Williams, 279073
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Joshua L. Thomas, Esquire
William Frederick Schumacher, IV, Esquire

FILED
12/30/16

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 30 2016
SC Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of General Sessions
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002304

THE STATE, ...RESPONDENT,

v.

GERALD RUDELL WILLIAMS,.....APPELLANT.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3922

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

P.O. Box 874
Lexington, SC 29071
(803) 785-8285

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of General Sessions
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002304

THE STATE, ...RESPONDENT,

v.

GERALD RUDELL WILLIAMS,.....APPELLANT.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3922

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

P.O. Box 874
Lexington, SC 29071
(803) 785-8285

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Statutes:

STATEMENT OF ISSUES ON APPEAL

I. The trial judge's refusal to charge the jury on the lesser-included offense of first-degree assault and battery was harmless error as the only conclusion established by the evidence was Appellant attempted to kill the victims.

II. The trial judge properly charged the jury on the doctrine of transferred intent.

STATEMENT OF THE CASE

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

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent 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 that 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 Appellant 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 Appellant when she discovered two pieces of latex rubber gloves still attached to two of his fingers. Officer Adams recovered those pieces of gloves from Appellant'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 Appellant'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 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) Appellant was his driver; (2) a man named Rico Riverez also followed them in a separate vehicle; (3) Appellant was unaware of the true purpose for the trip; (4) he disembarked from the vehicle some distance from Young's home, and told Appellant 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 Appellant 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

[1] In addition to the three victims, six other individuals lived in the home: Mike and Felicia Barlow, their three children and Williams' 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).

murder against him because he had agreed to cooperate with the police and in the State's case against Appellant. He admitted to telling Investigator Shorter about the crime and that Appellant, not Rico, was the second gunman. The solicitor reminded Charley that his sentencing hearing was deferred until after Appellant's trial. He conceded he was "double-crossing" the State and that he was lying about Appellant's involvement in the crime in an attempt to try and help him. 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 Appellant 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 Appellant 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).

ARGUMENT

I.

The trial judge's refusal to charge the jury on the lesser-included offense of first-degree assault and battery was harmless error as the only conclusion established by the evidence was Appellant attempted to kill the victims.

Appellant argues the trial judge erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery because the jury could have inferred from the facts presented at trial that Appellant lacked malice in his attack. The State agrees the trial judge erred in failing to charge the jury on first-degree assault and battery, as Appellant's actions did meet the definition of that charge; however, such error was clearly harmless as the only conclusion established by the evidence was Appellant possessed malice aforethought and intended to kill the victims.

Section 16-3-600 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. 2011). Further, if there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense. Dempsey v. State, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005).

Even if improper, this Court can determine an improper charge to be entirely harmless. See 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, this Court has stated: "in determining whether the error was 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 the South Carolina Supreme Court 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). The South Carolina Supreme Court has further explained: "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)).

In State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014),[2] the defendant appealed his conviction for attempted murder, arguing the trial judge erred in refusing to charge the jury on 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 South Carolina Supreme Court found the trial judge erred in failing to charge the jury on first-degree assault and battery, as it was undisputed that the

---

[2] The full facts of the case, as stated by the South Carolina Supreme Court, are as follows:

> 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. Appellant, 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 Appellant 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 Appellant 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 Appellant shot at them 5–7 times. None of the bullets struck Mack or Stephens. At trial, Mack testified that her only injuries 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.
>
> Appellant 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.

defendant's actions met the elements of § 16-3-600(C)(1)(b)(i). However, the court found the trial judge's error was harmless, as the only evidence produced at trial showed the defendant attempted to kill the victim because he opened fire into the victim's vehicle and shot at least five times, and the only reason thw 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.

In the instant case, the only evidence presented at trial demonstrated Appellant attempted to murder the victims. The three witnesses testified Appellant 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,[3] which differed in various respects from the witnesses' testimonies, supported the attempted murder charge. He testified Young came outside and fired only a single warning shot into the air before Appellant fired eleven shots at Young and the house. Here, much like Middleton, the only evidence adduced at trial shows Appellant attempted to murder Charley. 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 247-248, 534 S.E.2d at 18-19.

[3] Admittedly, Charley initially testified Rico Riverez, not Appellant, was the gunman who shot the trailer. However, such testimony would only support a finding of Appellant'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 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).

II.

The trial judge properly charged the jury on the doctrine of transferred intent.

Appellant argues the trial judge erred in charging the jury on the doctrine of transferred intent. Citing to this Court's decision in State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), He contends attempted murder requires specific intent, and that the facts show he had no knowledge of Williams's and Wrighton's presence in the home at the time of the crime. The State disagree with Appellant's allegation of error. Appellant possessed specific intent when he committed the crime, and that intent applied to all three victims because specific intent does not exclude crimes to other victims. Moreover, attempted murder is actually a general intent crime under the laws of the State.

ABWIK versus Attempted Murder

Murder is "the killing of any person with malice aforethought, either express or implied." S.C. Code §16-3-10 (2003). A specific intent to kill is not required for a murder conviction. State v. Foust, 325 S.C. 12, 479 S.E.2d 50, 51 (1996).

The common law offense of assault and battery with intent to kill ("ABWIK") was defined as an unlawful act of violence to the person of another, with either express or implied malice aforethought, and a specific intent to kill was **not** required. Id.[4] South Carolina Courts treated ABWIK as its version of attempted murder, instructing juries that if a defendant would have been found guilty of murder had the victim died as a result of the assault and battery, then the appropriate offense was ABWIK, not ABHAN. Id.

[4] In 1962, the Legislature made the common law ABWIK offense a felony punishable by up to twenty years' incarceration. S.C. Code Ann. 16-3-620 (2003), repealed by 2010 Act No. 273, §7.A, effective June 2, 2010 (abolishing ABWIK, ABIK, ABHAN and other common law offenses). Therefore, the requisite common law general intent requirement still applied.

To prove ABWIK, the State had only to show the defendant possessed the same degree of general intent as required to prove murder. Foust, 325 S.C. at 15–16, 479 S.E.2d at 51–52. For purposes of murder and ABWIK, malice is the wrongful intent to injure with a wicked or depraved spirit intent on doing wrong, and doing the act intentionally, without just cause or excuse. Tate v. State, 351 S.C. 418, 570 S.E.2d 522, 527 (2002). As the South Carolina Supreme Court had recognized that a specific intent was not required to commit murder, it found the "logical inference" was that, similarly, specific intent was not required to commit ABWIK. Foust, 325 S.C. at 14–15, 479 S.E.2d at 52.

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.

In 2010, as part of the Omnibus Crime Reduction and Sentencing Reform Act, the South Carolina Legislature enacted the attempted murder statute, and expressly abolished the common law offense of ABWIK, and stated: "[W]herever in the 1976 Code reference is made to [ABWIK], it means attempted murder as defined in § 16-3-29." Act. No. 273, 2010 S.C. Acts 1949–50. South Carolina Code §16-3-29 provides "[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."

In State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), this Court found attempted murder requires a specific intent to kill, and clarified that "specific intent means the defendant consciously intended the completion of acts compromising the [attempted] offenses." Id. at 409, 772 S.E.2d at 192 (quoting Sutton, 340 S.C. at 397, 532 S.E.2d at 285). In concluding the Legislature did not intend §16-3-29 to codify the common law ABWIK offense, which did not require a specific intent to kill, the Court of Appeals cited to statutory construction cases indicating the Legislature is presumed to know about judicial decisions interpreting its statutes. Significantly, in reaching this conclusion, the Court ignored multiple cases holding common law ABWIK, like murder, was a general intent rather than a specific intent offense, relying instead on the dicta in Sutton as case law the Legislature was presumed to know when it passed the attempted murder statute.[5] See, e.g., State v. Dennis, 402 S.C. 629, 742 S.E.2d 21, 27 (Ct. App. 2013) (ABWIK requires a general intent to kill, and South Carolina courts have recognized "the element that distinguishes ABWIK from ABHAN is not malice, but an intent to kill.")

Specific Intent is Not Isolated to Specific Victims

As an initial matter, the State contends Appellant possessed the specific intent to kill the victims. Notably, Appellant 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 Appellant's argument is the mistaken belief that specific intent can only exist as to the specific, intended victim of attempted murder. Not only is there an absence of language requiring a specific victim in § 16-3-29, but this contradicts established state law. In State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the South Carolina Supreme Court found a defendant who killed his intended

[5] Notably, when the Legislature enacted §16-3-29 in 2010, there were no cases interpreting previous statutes regarding attempted murder because they did not exist. Thus, the Legislature's only point of reference when writing §16-3-29 and abolishing ABWIK was the case law interpreting "malice aforethought," and holding ABWIK, which also required "malice aforethought," was a general intent crime.

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 was like a "spotlight," which was not extinguished at the moment a bullet strikes and killed the intended victim, but in that case shined on both victims. 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. 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."

The State legislature has also taken steps to incorporate the doctrine of transferred intent into specific criminal statutes. S.C. Code Ann. § 16-3-1083 states a person who commits a violent crime that causes death of, or bodily injury to, a child who is in utero at the time that the violent crime was committed, is guilty of a separate offense, and is generally the "same as the punishment provided for had the death or bodily injury occurred to the unborn child's mother. Attempted murder is one such offense which falls under this statute. Notably, there is no requirement that the person who committed the offense had knowledge or should have had knowledge that the victim was pregnant or intended to kill or harm the unborn child.

Moreover, Appellant's contention that § 16-3-29 is only applicable against the targeted victim would lead to preposterous and unjust results in future criminal cases. To illustrate this point, the State presents the following hypothetical:

Intruder breaks into the home of Husband and Wife, intending to murder Husband. After searching the home, he hears a muffled voice from behind the closed bathroom door. Intruder, believing it to be Husband, throws open the door and immediately starts shooting.

If Husband is the person behind the door, and he hits and kills Husband, he is guilty of murder and can be punished by death or a mandatory prison term of thirty years to life, and is ineligible for parole or any early release program. If he only injures husband or completely misses, Intruder is guilty of attempted murder. Intruder could be sentenced up to a maximum of thirty years' imprisonment and would be ineligible for probation or a suspended sentence. Both offenses are classified as most serious offenses under the recidivist sentencing statute, S.C. Code Ann. § 17-24-45 (Supp. 2015), and the State may be able to pursue a sentence of life without the possibility of parole if Intruder had previously been convicted of serious or most serious offenses.

In both scenarios, Intruder "consciously intended the completion of actions compromising the [attempted] offense." However, if we adopt Appellant's position on specific intent only applying to the target of attempted murder, Intruder could face a drastically different sentence if the victim is Wife, not husband.

If Intruder shoots and kills Wife, he would still be guilty of murder and would face the same penalties referenced above. Yet, if Intruder shoots and only injures Wife, he would only be guilty of ABHAN. Pursuant to § 16-3-600(B), he would only face a maximum sentence of twenty years' imprisonment, without restrictions on the judge's ability to issue a suspended sentence or probation. Intruder would also eventually be eligible for early release programs. If Intruder missed Wife with his shots, he is now only guilty of first-degree assault and battery, and would face a maximum sentence of only ten years' imprisonment. Similarly, the judge could suspend a portion of Intruder's sentence or order probation, and he could later be eligible for an early release program. Additionally, convictions for ABHAN and first-degree assault and battery would also place additional limitations on the State's ability to pursue a sentence for life

without parole under § 17-25-45, because ABHAN is classified as only a "serious" offense and would require two or more prior convictions for a most serious offense or serious offense under the statute. Even worse, in the scenario in which Intruder shoots and misses Wife the State would be unable to seek life without parole against Intruder or consider the crime in a future LWOP-eligible conviction because first degree assault and battery is neither a most serious or serious offense.

As demonstrated in the above example, the only difference between the Husband's and Wife's scenarios was the identity of the person behind the door. In every situation, Intruder entered the home with the express purpose of killing Husband and made a clear attempt at accomplishing said task. There is no question that Intruder acted deliberately and intended his actions to culminate in Husband's murder. However, in the scenarios in which he encountered Wife and miraculously failed to kill her, he would only be guilty of lesser crimes with drastically reduced sentences.

The instant case possesses a comparable situation. The victims testified Appellant initially shot at Wrighton, not Young. While it could very well be true that Appellant had no knowledge that Young was not the only person in the home, the evidence shows his malice manifested when he opened fire on the silhouetted figure he saw at the door of the trailer. At that moment, he "consciously intended the completion of acts" constituting attempted murder. Accordingly, Appellant was guilty of attempted murder against all three victims.

General Intent is the Requisite Level of Intent for Attempted Murder

Given the attempted murder statute uses language virtually **identical** to common law ABWIK, and the Legislature is presumed to be aware of the ABWIK case law regarding the intent required for ABWIK, it is clear the Legislature intended the attempted murder statute to

incorporate the same intent required for ABWIK,[6] which is only general intent. See William S. McAninch, W. Gaston Fairey, Lesley M. Coggiola, The Criminal Law of South Carolina 253–56 (6th ed. 2013) (common law ABWIK did not require specific intent to kill; attempted murder statute removed issues regarding the intent required by adopting definition mirroring the definition of murder, and limited the offense to actions that would be murder if the victim died).

For example, if a defendant grievously injures someone with malice aforethought, and the victim dies, the defendant can be convicted of murder and sentenced to prison for thirty years to life, without any proof the defendant actually intended to kill the victim. Under this Court's interpretation of §16-3-29, however, if the same defendant acts with the same malice aforethought against the same victim, and inflicts the same grievous injuries, but the victim survives, the defendant cannot be convicted of attempted murder unless the State proves the defendant acted with the specific intent to kill the victim. That is an absurd result the Legislature could not have intended. See State v. Sweat, 386 S.C. 339, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.").

In King, this Court supported its analysis by noting the Legislature abolished ABWIK with no reference to codifying it as attempted murder, and legislatively changing all statutory references to ABWIK to attempted murder was merely to avoid any confusion regarding the effect of the "new crime of attempted murder." 412 S.C. at 411, 772 S.E.2d at 193. This overlooks the fact the Legislature also abolished the common law offenses of assault and battery of a high and aggravated nature (ABHAN), simple assault and battery, assault of a high and

[6] Contrary to the Court of Appeals' rationale, the Legislature's use of the term "with intent to kill" in the statute does not obviate an intent to codify the common law ABWIK offense with the same general intent requirement. On its face, common law ABWIK included "with intent to kill," but courts consistently held proof of a specific intent to kill was not required.

aggravated nature, aggravated assault, and simple assault, but did not reference the "new" crimes of ABHAN, and first degree, second degree and third degree assault and battery created by S.C. Code Ann. §16-3-600 (Supp. 2014), which incorporated the elements of those common law offenses.

If the Legislature intended attempted murder to be a specific intent crime because common law attempt requires a specific intent to commit the underlying offense, the attempted murder statute is essentially superfluous. The 2010 Omnibus Crime Act did not repeal S.C. Code Ann. §16-1-80 (2003), which provides that a person committing the common law offense of attempt must be punished as for the principal offense, and all the case law regarding common law attempt prior to 2010 required the specific intent to commit the underlying offense. Thus, the Legislature could have simply abolished ABWIK and amended S.C. Code Ann. §16-3-20 (2003) (punishment for murder) to include the punishment for attempted murder (up to thirty years in prison pursuant to §16-1-80). The fact the Legislature enacted the attempted murder statute indicates it did not intend the common law specific intent requirement to apply to attempted murder.[7]

[7] Notably, the Legislature did not enact any other specific "attempt" crimes in 2010, and no other such crimes exist in the South Carolina criminal code, which is further indication the Legislature intended attempted murder to be different from common law attempt.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: _____

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

ATTORNEYS FOR RESPONDENT

September 30, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Gerald Rudell Williams, Appellant.

Appellate Case No. 2013-002304

Appeal From Saluda County
J. Michael Baxley, Circuit Court Judge

Opinion No. 5540
Heard March 14, 2017 – Filed February 28, 2018

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant Attorney General William Frederick Schumacher, IV, both of Columbia; and Assistant Solicitor Joshua L. Thomas, of Greenwood, for Respondent.

WILLIAMS, J.: In this criminal appeal, Gerald Rudell Williams appeals his convictions for attempted murder, arguing the circuit court erred in (1) refusing to charge the jury on the lesser included offense of first-degree assault and battery and (2) charging the jury on the doctrine of transferred intent. We affirm.

FACTS/PROCEDURAL HISTORY

This case arises out of an incident on April 13, 2012, in which a double-wide mobile home (the Residence) in Saluda, South Carolina, was shot several times. At the time, Al Jerome Young lived in the Residence, along with Ycedra Williams[1] and her husband, Joseph Wrighton. Prior to the incident, Young agreed to purchase drugs for OJ Charley in exchange for Charley paying Young $26,000 in cash. Young, however, stated he never planned on purchasing any drugs with the money; instead, Young intended to "rip [Charley] off." Following Young and Charley's meeting, Young received a call from Ycedra, who stated a van with five individuals[2] came to the Residence looking for Young, which prompted him to purchase a .40 caliber Smith & Wesson firearm from "a random dude on the street." Ycedra testified the Residence's other occupants[3] recognized something was "going on" with Young and left the Residence out of fear, leaving only Ycedra, Young, and Wrighton at the Residence.

On April 12, 2012, Investigator Robert Shorter, then-chief investigator for Saluda County's sheriff's office, received information from an individual in the Williston Police Department. The individual indicated Charley and others would be traveling from Barnwell County to Saluda County that night seeking to retaliate against some individuals as a result of something that occurred earlier that week. After receiving the tip, Investigator Shorter issued a "be-on-the-lookout" advisement to the night shift officers, warning them of armed and dangerous individuals, including Charley, who were potentially seeking to retaliate against Young. Investigator Shorter further advised officers that Charley was likely heading to the Residence because Young might be hiding there.

---

[1] Ycedra and Williams were second cousins. However, Ycedra testified she had not had much contact with Williams since they were young, and furthermore, she had not spoken with him at all in the months prior to the April 2012 shooting incident.

[2] Ycedra testified Williams was not one of the individuals in the van.

[3] The following individuals also lived in the Residence with Young, Ycedra, and Wrighton: Young's sister, Felicia Barlow; her husband, Michael Barlow; the Barlow's three children; and Ycedra's stepbrother, Frank Gonzalez.

Ycedra testified she and Wrighton were in the den of the Residence while Young was in his bedroom that night. Shortly after midnight, Ycedra heard a dog barking, went to look out the window, and saw two people in the driveway approaching the Residence. Ycedra yelled to Young that people were outside, and he told her to turn off the lights. At that point, Wrighton went to the door to check outside and the people began shooting at him. Wrighton ran back into the den, grabbed Ycedra, threw her down to the floor, and lay down with her. Thereafter, Young fired several shots back at the shooters through the door. Once the shooting stopped, Ycedra called the police.

Investigator Shorter testified his office informed him a shooting occurred at the Residence. Law enforcement arrested Williams and OJ Charley shortly after midnight. When Investigator Shorter arrived at the Residence, the scene was secure and officers had Williams and Charley in custody. Investigator Shorter observed multiple bullet holes in the walls and door of the Residence as well as shell casings in the yard and inside the Residence. He also noted the door "had bullet holes going both ways, bullets going in, bullets coming out."

On July 9, 2013, a grand jury indicted Williams for three counts of attempted murder. The case was called for a jury trial on October 14, 2013. At trial, Charley testified for the defense. Charley admitted he was involved in the shooting incident at the Residence. He testified that a few days before he participated in the shooting incident, he went to the Residence and met with Young. Charley stated he and Young drove to a laundromat, and once they arrived, Young pointed a gun at Charley and stole $32,000 from him. Charley testified he returned to the Residence the night of the shooting incident with Williams, whom he referred to as the driver. Charley stated he offered to pay Williams to drive and told Williams they were going to see some girls. According to Charley, Williams had no idea the shooting incident was about to take place. Charley stated Williams was also unaware another individual, Rico, was following them in another vehicle. Charley testified he left Williams in the van and met up with Rico, who had two handguns in his possession. Charley stated that as he and Rico approached the Residence, Young opened the front door and fired two shots in the air. Charley stated he then fired a shot in the air and then his gun jammed. He ran back to the van and was soon arrested, but he believed Rico stayed and continued to fire shots toward the Residence.

On cross-examination, the State questioned Charley about the plea deal he received in exchange for testifying against Williams. Charley acknowledged he was double-crossing the State and had lied to the jury on direct examination to help Williams.[4] Charley subsequently testified Williams was entirely aware of Charley's intentions when they went to the Residence and eventually confessed to lying about Rico's involvement in the shooting incident. When asked whether he and Williams went to the Residence to kill Young, Charley stated, "No. I came back to get my money. If killing was in the process, I mean, I don't -- I can't say what would have happened, but I did come back to get my money." Additionally, Charley testified Williams had a handgun, participated in the shooting incident, and agreed to help Charley because Charley offered to pay Williams a portion of the money they recovered from Young.

After the defense rested its case, Williams objected to several of the circuit court's jury charges, including an inferred malice charge and a transferred intent charge.

---

[4] Charley's description of the shooting incident changed several times during cross-examination, and he admitted he was lying after the State informed Charley he could be charged with perjury. Specifically, the following occurred on recross-examination:

> [The State]: Are you trying now to hedge your bet and work yourself out some deal on the back side of this now and say you got some deal in hopes it'll get you a lighter sentence?
>
> [Charley]: No sir. I'm just -- I'm telling the truth. I mean, I tried to help -- tried to help him out. And this -- I mean, the right thing to do is just tell the truth.
>
> [The State]: And you tried to help your co-defendant by getting up here and lying, bald-faced lying, to 12 people, didn't you? More than 12, but 12 actual jurors?
>
> [Charley]: Yes, sir, I did. It's wrong. I'm wrong. I'm sorry. I mean, that's just -- it is what it is, a lie. I apologize and it's not right.

Additionally, Williams objected to the circuit court's failure to give a charge on the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN) and first-degree and second-degree assault and battery. The circuit court found all of the evidence in the case "goes to the alleged crime where [Williams] . . . shot up [the Residence] with the intent to kill an individual who was within the home and there happened to be two other individuals in there as well." The court found the evidence "devoid of any lesser included offense indicia" and declined to give the requested charges. At the conclusion of the three-day trial, the jury convicted Williams for the attempted murders of Young, Ycedra, and Wrighton. The circuit court sentenced Williams to concurrent terms of twenty years' imprisonment. This appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err in refusing to charge the jury on the lesser included offense of first-degree assault and battery when it charged the jury on attempted murder?

II. Did the circuit court err in charging the jury on the doctrine of transferred intent?

STANDARD OF REVIEW

"In criminal cases, [the appellate court] sits to review errors of law only and is bound by the factual findings of the [circuit] court unless an abuse of discretion is shown." *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). "An abuse of discretion occurs when the conclusions of the [circuit] court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

LAW/ANALYSIS

I. Lesser Included Offense Charge

Williams first argues the circuit court committed error by refusing to charge the jury on the lesser included offense of first-degree assault and battery when it charged the jury on attempted murder. We agree, but we find this error to be harmless.

"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 required to charge only the current and correct law of South Carolina." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). "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). "A [lesser included] offense is one whose elements are wholly contained within the crime charged." *State v. Dickerson*, 395 S.C. 101, 118, 716 S.E.2d 895, 904 (2011). However, even if the elements of the greater offense do not include all the elements of the lesser offense, we may still construe the lesser offense as a lesser included offense if it "has traditionally been considered a lesser included offense of the greater offense." *Watson*, 349 S.C. at 376, 563 S.E.2d at 338.

Section 16-3-29 of the South Carolina Code (2015) codifies attempted murder and states that "[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." Section 16-3-600 of the South Carolina Code (2015 & Supp. 2017) codifies the varying degrees of assault and battery, which—in descending order of severity—includes ABHAN and assault and battery in the first, second, and third degree. As relevant to this case, subsection 16-3-600(C)(1) provides:

> (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;[5] or
>
> (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

Additionally, subsection 16-3-600(C)(3) provides, "[a]ssault and battery in the first degree is a lesser[]included offense of [ABHAN], as defined in subsection (B)(1), and attempted murder, as defined in [s]ection 16-3-29."

We find the facts of this case fit within the confines of subsection 16-3-600(C)(1)(b)(i). Accordingly, we hold the circuit court erred in refusing to charge the lesser included offense of assault and battery in the first degree. *See State v. Scott*, 414 S.C. 482, 486, 779 S.E.2d 529, 531 (2015) ("The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." (quoting *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007))). Thus, the dispositive question is whether the circuit court's error affected the results of the trial.

"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). The circumstances of a particular case dictate whether an error is harmless. *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." *Id.* (internal quotation marks omitted) (quoting *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)). "When considering whether an error with respect to a jury instruction [is] harmless, [the appellate court] must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (internal quotation marks omitted) (quoting *State v. Kerr*, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct. App. 1998)). Moreover, when considering harmless error, the appellate court's analysis is focused on whether the erroneous charge contributed to the verdict rendered, not

---

[5] "Great bodily injury" is defined as "bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1).

what the verdict would have been had the circuit court correctly charged the jury. *Id.* "[W]e must review the facts the jury actually heard and weigh those facts against the erroneous jury charge to determine what effect, if any, it had on the verdict." *State v. Jefferies*, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994).

Williams asserts the circuit court committed reversible error. Williams argues that, under the any evidence standard and when viewing facts in the light most favorable to Williams, the jury could have concluded Williams lacked malice because no one was injured and Charley testified Young shot first. Conversely, the State contends the error was harmless because the only conclusion established by the evidence was Williams possessed malice aforethought and intended to kill the victims.

We find our supreme court's analysis in *Middleton* to be instructive in resolving this issue. *See* 407 S.C. at 317–19, 755 S.E.2d at 435–36. In *Middleton*, the supreme court affirmed the appellant's convictions for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. *See id.* at 314, 755 S.E.2d at 433. There, the appellant requested a jury charge on the lesser included offense of assault and battery in the first degree on both counts of attempted murder, but the circuit court only charged the jury on the lesser included offense as to the injured victim and refused to charge the lesser included offense as to the uninjured victim. *Id.* at 314–15, 755 S.E.2d at 434. Although the circuit court erred in refusing to charge the jury on the lesser included offense of assault and battery in the first degree, the supreme court found the error was harmless beyond a reasonable doubt. *Id.* at 319, 755 S.E.2d at 436. Specifically, the supreme court found the jury could only reach the conclusion that the appellant attempted to murder the victims because the evidence presented at trial showed the appellant deliberately approached the passenger side of the car containing the victims and shot at least five times into the car, and the victim testified to escaping injuries because he jumped into the driver's seat and ran the appellant off the road. *Id.* Thus, in light of this evidence, the court noted the erroneous jury charge did not contribute to the verdict beyond a reasonable doubt. *Id.*

Similarly, in the instant case, we find the circuit court's error did not contribute to the verdict beyond a reasonable doubt because the evidence presented at trial yielded only the conclusion that Williams acted with malice aforethought and attempted to commit murder. Moreover, the circuit court instructed the jury on the charges of malice, malice aforethought, expressed malice, and inferred malice. Specifically, the court stated malice is "hatred or ill will or hostility towards

another person" and is "the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent." The court instructed malice aforethought "must exist in the mind of the defendant just before and at the time that the act is committed" and may be "expressed or inferred." The court stated malice may be inferred[6] "from conduct that shows a total disregard for human life" and may arise when the act is "performed with a deadly weapon."[7] Finally, the court stated "[i]f facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to [the jury's] satisfaction, this inference would be simply an evidentiary fact to be considered by . . . the jury, along with the other evidence in the case" and informed the jury it was free to give the evidence the weight it deemed necessary.

In the instant case, with regard to the evidence, Charley testified Williams (1) was aware of the circumstances leading up to the shooting incident at the Residence; (2) had a handgun and participated in the shooting; and (3) agreed to help Charley in exchange for a portion of the money. Further, the victims testified to being shot at numerous times through the door and walls of the Residence. Last, evidence demonstrated Williams was present at the scene of the crime and possessed a firearm. This evidence supports the jury's findings that Williams had malice aforethought and intended to kill the victims.

In light of the charges and the facts presented at trial, the only conclusion the jury could draw from the evidence was that Williams acted with malice aforethought and was guilty of attempted murder of the victims. Therefore, we find the circuit court's error did not contribute to the verdict beyond a reasonable doubt.

II. Transferred Intent Charge[8]

---

[6] Williams did not appeal the inferred malice jury charge. Thus, the circuit court's ruling on this issue is the law of the case and cannot be considered by this court. *See State v. Black*, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (holding an unchallenged ruling, right or wrong, becomes the law of the case and will not be considered by the appellate court).

[7] The circuit court charged the jury that a firearm may be considered a deadly weapon.

[8] The circuit court gave a transferred intent charge to assist the jury with its deliberations regarding whether Williams was guilty of the attempted murders of

Williams next argues the circuit court erred in charging the jury on transferred intent. We disagree.

"Criminal liability is normally based upon the concurrence of two factors, 'an evil-meaning mind [and] an evil-doing hand . . . .'" *United States v. Bailey*, 444 U.S. 394, 402 (1980) (alterations in original) (quoting *Morissette v. United States*, 342 U.S. 246, 251 (1952)). "A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense." *State v. Fennell*, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). "In general, '[a]ttempt is a specific intent crime.' . . . 'The act constituting the attempt must be done with the intent to commit that particular crime.'" *State v. Sutton*, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (alteration in original) (quoting 21 AM. JUR. 2D *Criminal Law* § 176 (1998) (current version § 150)). As related to "attempt" crimes, specific intent means "the defendant consciously intended the completion of acts comprising the choate offense." *Id.*

In South Carolina, attempted murder requires proving the specific intent[9] to commit murder. *See State v. King*, Op. No. 27744 (S.C. Sup. Ct. filed Oct. 25, 2017) (Shearouse Adv. Sh. No. 40 at 27–28, 35) (finding the circuit court erred in charging the jury that attempted murder is a general intent crime and requiring proof of a specific intent to kill as an element of attempted murder). "The doctrine of transferred intent applies only in the situation of the same intended harm inflicted on an unintended victim." *State v. Bryant*, 316 S.C. 216, 219, 447 S.E.2d 852, 854 (1994).

Ycedra and Wrighton. Williams objected to this charge, and the circuit court responded by describing the case as "a situation where the defendant is accused of shooting into a house where individuals may have been, that he did not know were there, that is giving him the benefit of the facts of the case." The circuit court explained it gave the charge because it was "concerned that the jury may believe, after charging that intent is necessary, that [Williams] had no intent to harm those individuals."

[9] "A specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries." *Sutton*, 340 S.C. at 397 n.5, 532 S.E.2d at 285 n.5.

In the instant case, Williams asserts that because attempted murder is a specific intent crime, any intent he had to kill Young could not be transferred to other victims. In response, the State contends Williams had specific intent when he committed the crime of attempted murder. Moreover, the State argues Williams' specific intent applied to all three victims "because specific intent does not exclude crimes to other victims." We find that charging the doctrine of transferred intent is proper to convict a defendant of attempted murder regardless of whether a victim, intended or unintended, suffers an injury.

Historically, South Carolina courts have applied the doctrine of transferred intent in finding a defendant guilty of manslaughter or murder, typically applying it when the defendant, acting with malice and an intention to kill one person, misses his intended target and mistakenly kills an unintended victim. In these cases, the defendant's criminal intent to kill the intended victim—his mental state of malice—transfers to an unintended victim. *See State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941) (affirming murder conviction of a defendant who mistakenly shot and killed a police officer when the defendant believed the officer to be an assassin sent by a former employer); *id.* ("If there was malice in appellant's heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake."); *see also* WILLIAM SHEPARD MCANINCH ET AL., THE CRIMINAL LAW OF SOUTH CAROLINA 18–19 (6th ed. 2013) ("[A]ll that is required for murder is mental state of malice, provided here by the intent to kill a human being, coupled with an act which caused the death of a human being.").

In *Fennell*, our supreme court stated the term transferred intent was "somewhat misleading" and provided clarification for its meaning, explaining:

> 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. Applying this analogy, the court found that, unlike other jurisdictions, South Carolina law required applying the doctrine of transferred intent to convict a defendant of assault and battery with the intent to kill (ABIK) when the defendant killed his intended victim and merely injured an unintended victim.[10] *Id.* at 274, 276, 531 S.E.2d at 516, 517 ("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 injures an unintended victim.").

We are unaware of another South Carolina case that addresses a factual scenario similar to that of the instant case, in which the circuit court charged the jury with the doctrine of transferred intent when a defendant was charged with attempted murder of an intended and unintended victim but neither the intended nor unintended victims were injured. We apply the doctrine of transferred intent in this instance in accord with South Carolina jurisprudence. Other jurisdictions vary when deciding whether to apply the doctrine of transferred intent to attempted murder cases;[11] however, similar to *Fennell*, we recognize South Carolina's

---

[10] In *Fennell*, the supreme court determined the required mental state for ABIK was the same as that for murder—malice aforethought—whereas for an ABHAN conviction, the State was not required to prove malice. 340 S.C. at 275, 531 S.E.2d at 517. The court found that, although the record showed the appellant did not act with malice toward the unintended victim and was angry with the intended victim, a stray bullet happened to strike the unintended victim while the appellant killed the intended victim. *Id.* As a result, the court held the doctrine of transferred intent was the only way the State could show appellant acted with malice toward the unintended victim and obtain a conviction and sentence for ABIK rather than ABHAN. *Id.* at 275–76, 531 S.E.2d at 517.

[11] *Compare State v. Brady*, 745 So. 2d 954, 957 n.4, 958 (Fla. 1999) (finding "no need to resort to the doctrine of transferred intent" when the facts supported the conviction of attempted second-degree murder, but listing cases from several jurisdictions in which courts used transferred intent to affirm convictions when the

criminal laws require the imposition of the doctrine of transferred intent. *See Fennell*, 340 S.C. at 273–74, 531 S.E.2d at 517. Furthermore, as long as the State has shown the specific intent to kill or commit a murder, the identity of the victim is irrelevant. *See Heyward*, 197 S.C. at 377, 15 S.E.2d at 672 ("If there was malice in appellant's heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake.").

Initially, we note South Carolina does not require a victim be injured to convict a defendant of attempted murder. *See* S.C. Code Ann. § 16-3-29 ("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."); *Middleton*, 407 S.C. at 314–15, 755 S.E.2d at 433–34 (affirming the conviction of attempted murder against an uninjured victim). Moreover, we find Williams misconstrues the attempted murder statute to the extent he argues the statute requires the specific

---

crime required proof of an intent to kill), *id.* ("[S]o long as there is evidence of an intent to kill, it makes no difference that someone other than the intended victim was killed or injured."), *State v. Rodriguez-Gonzales*, 790 P.2d 287, 288 (Ariz. Ct. App. 1990) ("[T]ransferred intent addresses the circumstances surrounding an attempted crime as the actor believes them to be, i.e., where the actor's belief about some facts varies from the actual circumstances only insofar as there is a different victim or different harm. Intent to murder is transferable to each unintended victim once there is an attempt to kill someone."), *and State v. Gillette*, 699 P.2d 626, 636 (N.M. Ct. App. 1985) (affirming three convictions of attempted murder when a defendant sent a poisoned drink to an intended victim, and the intended victim and two others ingested the drink but were not injured; finding defendant's felonious intent to kill transferred to others who foreseeably would ingest the poison), *with Harrison v. State*, 855 A.2d 1220, 1237 (Md. 2004) (listing cases from several jurisdictions that have rejected the doctrine of transferred intent in relation to the crime of attempted murder of an unintended victim), *id.* (holding "the theory of transferred intent applies only when a bystander has suffered a fatal injury" and finding this holding "comports with numerous other jurisdictions [that] have considered the issue [because it] avoids the numerous logical hurdles that arise when 'transferred intent' is applied to inchoate offenses"), *People v. Bland*, 48 P.3d 1107, 1117 (Cal. 2002) ("Someone who in truth does not intend to kill a person is not guilty of that person's attempted murder even if the crime would have been murder—due to transferred intent—if the person were killed."), *and id.* ("Someone who intends to kill only one person and attempts unsuccessfully to do so[] is guilty of attempted murder of the intended victim, but not the others.").

intent to murder specific victims. Williams specifically argues the transferred intent charge erroneously allowed the jury to find Williams guilty of attempted murder of Ycedra and Wrighton without requiring the State to prove (1) Williams knew they were in the Residence and (2) Williams specifically intended to kill Ycedra and Wrighton, in addition to Young. We disagree.

Section 16-3-29 does not require a specific victim; instead, it states a "person who, with the intent to kill, attempts to kill *another* person" is guilty of attempted murder. *See* S.C. Code Ann. § 16-3-29 (emphasis added). Furthermore, the requisite specific intent for attempted murder is the specific intent to commit murder. *See King*, Op. No. 27744 (S.C. Sup. Ct. filed Oct. 25, 2017) (Shearouse Adv. Sh. No. 40 at 27–28, 35). Murder is defined as "the killing of any person with malice aforethought, either express or implied," and does not require a specific victim be killed. *See* S.C. Code Ann. § 16-3-10 (2015) (defining murder); *see also Fennell*, 340 S.C. at 276, 531 S.E.2d at 517 (finding the defendant's state of mind is more important than the identity of the victim in convicting a defendant of homicide); *Heyward*, 197 S.C. at 377, 15 S.E.2d at 672. Finally, the specific intent to kill can be inferred by the surrounding circumstances of the case, including the use of a deadly weapon and the character of the attack. *See Sutton*, 340 S.C. at 397 n.5, 532 S.E.2d at 285 n.5.

In the instant case, evidence supports the finding that Williams and Charley specifically intended to commit murder. In particular, testimony established Williams went to the Residence with a loaded weapon, intended to get Charley's money back from Young, and was fully aware of the reason for visiting the Residence. Additionally, testimony indicated Williams fired multiple shots into the walls and doors of the Residence after Ycedra informed Young of someone being outside the Residence and after Wrighton—albeit as a silhouetted figure—appeared at the door of the Residence. We find the evidence indicates Williams went with Charley to the Residence intending to kill Young to get Charley's money back, and Williams' actions of firing multiple shots at a dark figure standing in a door represented an attempt to kill another person with malice aforethought. *See* S.C. Code Ann. § 16-3-29 ("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."); *see also Sutton*, 340 S.C. at 397, 532 S.E.2d at 285 ("In the context of an 'attempt' crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense.").

The evidence also indicated Charley was aware Young did not live alone at the Residence. Thus, Williams' use of deadly force in attempting to kill Young would warrant the transferred intent charge as to Ycedra and Wrighton because it was foreseeable that Young would not be alone, especially when considering Young lived at the Residence with several other people. *See Fennell*, 340 S.C. at 276, 531 S.E.2d at 517 ("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 injures an unintended victim."); *id.* at 272, 531 S.E.2d at 515 (finding in a typical case of transferred intent, "[a]lthough the defendant did not act with malice toward the unintended victim, the defendant's criminal intent to kill the intended victim . . . is transferred to the unintended victim").

Therefore, in light of the evidence and case law supporting transferred intent being charged to the jury, we find the circuit court did not err in charging transferred intent.

CONCLUSION

In conclusion, we find the circuit court committed harmless error in refusing to charge the jury on the lesser included offense of first-degree assault and battery. Moreover, we find the circuit court did not err in charging transferred intent to the jury. Thus, based on the foregoing analysis, Williams' convictions for attempted murder are

AFFIRMED.

KONDUROS, J., and LEE, A.J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2013-002304

Appeal from Saluda County

Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 5540

PETITION FOR REHEARING

Appellant Gerald Rudell Williams petitions this Court for rehearing on both issues. Respectfully, the Court's opinion overlooks and misapprehends points of law and fact that, if corrected, require the reversal of appellant's convictions. Rule 221(a), SCACR. On Issue One, the Court's harmless error analysis improperly weighs the evidence and fails to recognize that credibility is an issue for the jury. On Issue Two, the Court erred in holding that specific intent can be transferred and that the trial judge's charge was proper.

Issue One

The Court correctly found that the trial judge erred in refusing to charge the lesser included offense of first-degree assault and battery, but incorrectly found this error to be harmless. To reach this conclusion, the Court only uses O.J. Charley's testimony during his cross-examination and discards his testimony during his direct-examination. Op. at 9. In doing so, the Court makes its own credibility finding and improperly weighs the evidence. Op. at 9. This usurps the jury's function and fails to recognize that inconsistencies in a witness's testimony must be resolved by the jury. See State v. Light, 378 S.C. 641, 648-49, 664 S.E.2d 465, 468-69 (2008). In Light, the defendant gave "inconsistent stories," but the trial court erred in refusing to give a lesser included offense instruction and the Supreme Court reversed. Id.

The jury was entitled to decide which parts of O.J. Charley's testimony were true. The jury was also free to discard O.J. Charley's testimony entirely. Credibility determinations are not made on appeal and when a case hinges on credibility, an error cannot be harmless. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016) (holding that an error could not be harmless because the "case hinged on credibility"). The Court's opinion says "the facts of this case fit" the lesser included offense, but does not state which facts necessitate giving the charge. Op. at 7. As argued in appellant's brief, these facts necessarily include O.J. Charley's testimony during direct-examination. Br. App. at 9-10. The Court's opinion is therefore inconsistent in using part of O.J. Charley's testimony to find that a lesser included offense charge was warranted but another part of O.J. Charley's testimony to find the error harmless. Picking and choosing which parts of O.J. Charley's testimony to believe is a jury function, and the error requires reversal so that a jury can weigh credibility and decide between the greater and lesser offenses.

Issue Two

The Court erroneously concluded that specific intent can be transferred under South Carolina's attempted murder statute and under the Supreme Court's opinion in State v. King, ___ S.C. ___, ___ S.E.2d ___, 2017 WL 4800004 (Oct. 25, 2017). First, the Court's statutory analysis is flawed. Op. at 14. The Court relies on the statute's use of "another person" to find that the intent to kill a specific person is not required. Op. at 14. See S.C. Code Ann. § 16-3-29. Had the Legislature intended the result found by the Court, it would have used the more general, "any person" or "persons." "Another person" is singular and means one person—a specific person. Further compelling this result is the Rule of Lenity, which the Court failed to address in its opinion. See State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.").

Second, the Court's analysis, which relies primarily on State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), is flawed. Fennell dealt with a conviction under the old ABIK law. Fennell at 270-76, 531 S.E.2d at 514-518. The Court applied the transferred intent doctrine under the ABIK law, **which did not require specific intent to kill.** Id. citing State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996) ("Here, Foust sought only a specific intent to kill charge. As that is not the law of this State, the charge was properly refused."). The reasoning of Fennell cannot apply to attempted murder, which is a specific intent crime.

The Fennell Court also applied the transferred intent doctrine because, as it said, the criminal laws regarding assault and battery, **as they existed at the time**, made it "necessary." Fennell at 274, 531 S.E.2d at 516. Those laws have changed. The Legislature completely rewrote the assault and battery laws, adding attempted murder and degrees of assault and battery.

See S.C. Code Ann. § 16-3-29; S.C. Code Ann. § 16-3-600. The rationale for Fennell's decision no longer exists.

In King, the Court rejected the State's claim that the Legislature "merely codified ABIK." King at * 7. The King Court's recognition that attempted murder is not ABIK means the Fennell Court's use of the transferred intent doctrine does not apply to attempted murder. Respectfully, this Court erred in extrapolating from Fennell that our new attempted murder statute, which after King unquestionably requires specific intent, allows (or needs) the doctrine of transferred intent.

A close reading of King further supports that the doctrine of transferred intent does not apply to a specific intent crime like attempted murder. The Court favorably quotes a Nevada decision that malice cannot be implied in an attempt crime. King at *5 quoting Keys v. State, 766 P.2d 270 (1988). If malice cannot be implied, it follows that it cannot be transferred. As this Court recognized in its opinion, multiple jurisdictions hold that specific intent in an attempted murder case cannot be transferred. Op. at 12 and n.11, citing Harrison v. State, 855 A.2d 1220, 1237 (Md. 2004) (citing cases from many jurisdictions to support its decision rejecting transferred intent for attempted murder). See also People v. Smith, 124 P.3d 730, 739-40 (Cal. 2005) ("The mental state required for *attempted* murder is further distinguished from the mental state required for murder in that the doctrine of 'transferred intent' applies to murder but not to attempted murder."); State v. Hinton, 630 A.2d 593, 600-02 (Conn. 1993) ("The doctrine of transferred intent, generally considered a necessary fiction, is therefore not necessary to prosecute for attempted murder a defendant whose aim was poor."). Our Supreme Court, as evidenced by its reasoning in King, would likely follow these jurisdictions and decline to apply the doctrine of transferred intent to attempted murder.

King also states the Court's belief that without express malice or specific intent, a "crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600." King at *8 n.5. Nothing in King supports the Court's decision to apply the transferred intent doctrine. This Court should reexamine its opinion in light of King, grant rehearing, and reverse appellant's convictions.

Respectfully Submitted,

DAVID ALEXANDER
Appellate Defender

This 13th day of March, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Gerald R. Williams, #279073, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 13th day of March, 2018.

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 13th day of March, 2018.

Notary Public for South Carolina (L.S)
My Commission Expires: July 3, 2023

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerald Rudell Williams, Appellant.

Appellate Case No. 2013-002304

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

cc:
Gerald Rudell Williams, 279073
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Joshua L. Thomas, Esquire

FILED
May 1, 2018

William Frederick Schumacher, IV, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals

Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 5540 (S.C. Ct. App. Filed February 28, 2018)

11-GS-41-00257, 00258, 00259

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

PETITIONER

APPELLATE CASE NO. 2018-000994

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 1, 2018.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred in affirming the trial court's charge of transferred intent for attempted murder?

2.

Whether the Court of Appeals erred in finding harmless the trial court's erroneous refusal to charge the lesser included offense of first-degree assault and battery?

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767. On October 14, 2013, appellant was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented appellant. R. 1. The jury convicted appellant. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. The Court of Appeals affirmed. State v. Williams, ___ S.C. ___, 812 S.E.2d 917 (2018). After the denial of rehearing below, this petition for certiorari follows.

STANDARD OF REVIEW

The standard of review on Issue One is *de novo*. Whether the attempted murder statute allows intent to be transferred is a purely legal question and legal questions are reviewed *de novo*. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). The standard of review on Issue Two is whether the trial court's error was harmless beyond a reasonable doubt. State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014).

ARGUMENT

1.

The Court of Appeals erred in affirming the trial court's charge of transferred intent for attempted murder.

Reasons for Granting Certiorari

This Court should grant certiorari because the legal issue is novel and the decision of the Court of Appeals conflicts with a prior decision of this Court. See Rule 242(b)(1) and (3), SCACR. The Court of Appeals' opinion on transferred intent acknowledges the issue is one of first impression in South Carolina. Williams, 812 S.E.2d at 924-25. The court wrote that it was "unaware" of South Carolina authority addressing a factual scenario similar to this case. Id. at 925. The court reviewed cases from other jurisdictions. Id. at 925, n.11. No case in South Carolina addresses the question of the applicability of transferred intent after the Legislature enacted the attempted murder statute. The need for this Court to address the issue is particularly important after its decision in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), which held that attempted murder requires specific intent.

The Court of Appeals' reasoning also conflicts with this Court's reasoning in King. The Court of Appeals' decision, if left intact, would render the requirement of showing specific intent virtually meaningless. Further, King also states this Court's observation that without express malice or specific intent, a "crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600." King at 26-27, n.5, 810 S.E.2d at 63-64, n.5. The dissent in King agreed with the majority that, after its ruling, the notion of implied malice for specific intent crimes would be problematic. Id. at 73-74, n.9, 810 S.E.2d at 32, n.9. See also State v. Shands, ___ S.C. ___, ___ S.E.2d ___, Op. No.

5569, 2018 WL 2944992 at *10 (Ct. App. June 13, 2018) ("Therefore, we question whether an implied malice instruction is proper in any attempted murder trial."). This part of the Court's King decision indicates that transferring intent for attempted murder is not required by South Carolina law as the Court of Appeals held in petitioner's case. Williams, 812 S.E.2d at 924-26 (stating "we recognize South Carolina's criminal laws require the imposition of the doctrine of transferred intent."). This Court should grant certiorari to resolve these important questions.

Factual and Procedural Background

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Orienthal James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him $26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver drugs and agreed with the solicitor that his intention was "to rip [Charley] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false

information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but said that he had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 12. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 513, l. 9 – 514, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified petitioner as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw people come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Petitioner was Ycedra's second cousin and she did not identify petitioner as being with the people in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He saw a person who "undoubtedly was laying in the ditch beside the van" stand up and face him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him his hands. R. 324, ll. 14 – 21. The person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the van and notified the other officers. R. 325, ll. 1 – 17. Officer Grenier pulled his car in front of the van to box it in. R. 325, ll. 18 – 23. The van stopped. R. 325, ll. 18 – 25. The police testified they found petitioner driving the van and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense and, as the Court of Appeals noted, his direct-examination and cross-examination contradicted. R. 578, ll. 1 – 10. Williams at 920, n.4. On direct-examination, Charley testified that he told petitioner he would pay him to drive Charley and a man named Rico that night. R. 586, l. 5 – 587, l. 11. Charley told petitioner he was "going to see some girls." R. 587, ll. 23 – 25. Charley never told petitioner anything about a shooting, or guns, or his dispute with Young. R. 588, ll. 1 – 13.

While petitioner waited in the van, Charley and Rico went to Young's trailer. R. 592, l. 3 – 593, l. 7. Charley heard Young shout. R. 593, ll. 14 – 21. Young opened the door of the trailer and fired two shots in the air. R. 594, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 594, ll. 9 – 21. Charley ran. R. 594, ll. 24 – 25. Charley said Rico "had to shoot." R. 594, l. 17 – 18. When Charley got into the van, he said the police pulled up "within five seconds." R. 595, ll. 16 – 23. Petitioner was still in the van when Charley returned. R. 595, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 603, l. 21 – 606, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R. 606, ll. 4 – 6. The solicitor accused Charley of "double-crossing the State." R. 606, ll. 15 – 19.

After the solicitor accused Charley of a double-cross and mentioned his plea deal, Charley recanted his direct-examination testimony and implicated petitioner in the shooting. R.

607, l. 13 – 633, l. 24. Under intense questioning from the solicitor, Charley said petitioner was with him at the scene of the shooting and that there was no "Rico." R. 607, l. 13 – 613, l. 25.

However, Charley was adamant that Ycedra and her brother were not in the house at the time of the shooting. R. 617, ll. 8 – 23. Charley testified that he knew they were not there because the van that Ycedra drove was not in the yard. R. 617, ll. 8 – 23. Charley testified he had no "beef" with Ycedra and no "beef" with Joseph. R. 617, l. 24 – 618, l. 5. When asked why he would have "shot the whole house up not caring about whether they lived or died," Charley responded, "I can't say I was not caring about whether they lived or died. He shot, so I shot in the air, that's how it happened." R. 618, ll. 6 – 11. Charley claimed petitioner shot, but did not know the direction that petitioner fired. R. 620, ll. 9 – 13. When shown a picture of the trailer, Charley explained that some of the bullet holes could have come from inside the trailer. R. 629, ll. 4 – 21.

The Trial Court's Charge, the Objection Below, and the Court of Appeals' Decision

Petitioner objected to the trial court's charge on transferred intent. R. 715, l. 18 – 716, l. 7. The State requested the charge. R. 716, ll. 8 – 21. Petitioner argued:

> We object to the transfer[red] intent charge. Generally speaking, transferred intent is, is—I understand it is shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice just because there is a shooting. And we would respectfully object to the transfer[red] intent charge, Your Honor.

R. 715, l. 23 – 716, l. 7. The trial court granted the State's request to charge transferred intent over petitioner's objection, noting that, even giving him the benefit of the facts of the case, petitioner was accused of shooting into a house with people "he did not know were there." R. 716, ll. 8 – 21. The trial judge explained that "the Court was concerned that the jury may

believe, after charging that intent is necessary, that the defendant had no intent to harm those individuals." R. 716, ll. 8 – 21.

The Court of Appeals recognized that King held that attempted murder requires specific intent, but nevertheless ruled that the doctrine of transferred intent applied. Williams, 812 S.E.2d at 924-26. The court used cases from before the enactment of the attempted murder statute to conclude that "South Carolina's criminal laws require the imposition of the doctrine of transferred intent." Id. As will be seen below, the court's reasoning on this novel issue is not compelled by prior decisions of this Court and contradicts both King and the sound reasoning from other jurisdictions that the legal fiction of transferred intent is completely unnecessary for attempted murder.

The Issue of Transferred Intent for the Statutory Crime of Attempted Murder is Novel

While the Court of Appeals correctly realized that the legal issue presented by petitioner's case is novel, it relied on cases whose applicability after the Legislature's passage of the attempted murder statute is questionable. Attempted murder did not exist in South Carolina prior to its creation by the Legislature in 2010. See State v. Sutton, 340 S.C. 393, 398-99, 532 S.E.2d 283, 286 (2000) ("We decline to recognize a separate offense of attempted murder."); S.C. Code Ann. § 16-3-29; King at 62, 810 S.E.2d at 25-26 (noting that the attempted murder statute was part of legislation passed in 2010). The Court of Appeals' decision is the first in South Carolina to address whether transferred intent applies to statutory attempted murder with the element of specific intent.

The primary case the court relied on, State v. Fennell, was decided in 2000 and dealt with the question of transferred intent under the abolished crime of assault and battery with intent to kill ("ABIK"). State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). ABIK did not require

specific intent. King at 57-64, 810 S.E.2d at 23-27, analyzing, *inter alia,* State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996), Sutton, and State v. Kinard, 373 S.C. 500, 646 S.E.2d 168 (Ct. App. 2007). Because petitioner was charged with a statutory crime did not exist in 2000, and that this Court expressly declined to recognize under the common law, cases like Fennell do not compel the conclusion that because transferred intent applied to ABIK it must also apply to attempted murder. Especially after this Court's decision in King that attempted murder is a specific intent crime, the question of transferred intent's applicability remained an open question until the Court of Appeals' decision in petitioner's case.

The Court of Appeals also correctly recognized that jurisdictions around the country differ on whether to apply transferred intent to specific intent and attempt crimes. Williams, 812 S.E.2d at 925 n.11. Petitioner submits that, considering the careful analysis given to the Legislature's intent in King, South Carolina would adopt the rationale of a jurisdiction like Alabama, which declined to read transferred intent into its statutory crime of attempted murder. Cockrell v. State, 890 So.2d 174 (Ala. 2004). The Alabama Supreme Court's decision in Cockrell is well-researched and cites the differing points of view around the nation, including South Carolina law as it existed under ABIK. Id. at 175-82. After analyzing the various rules adopted by other jurisdictions and the intent of the Alabama legislature, the court applied the rule of lenity and determined that it would not adopt transferred intent for attempted murder. Id. at 180-82.

Particularly helpful from Cockrell is the concurrence of Justice Harwood. Id. at 183-84. Justice Harwood wrote separately to emphasize that the Alabama legislature had "'covered all the bases'" with both attempted murder and the different degrees of assault and battery. Id. He wrote, "This complete allocation of criminal culpability under a comprehensive legislative

scheme furnishes some insight concerning the legislative intent regarding the applicability of the doctrine of transferred intent to the offense of attempted murder." Id. South Carolina's comprehensive statutory scheme enacted in 2010 along with the attempted murder statute created new degrees of assault and battery. See S.C. Code Ann. § 16-3-600. The logic of Justice Harwood's concurrence carries equal force in South Carolina. The Court of Appeals' reliance on decisions interpreting common law general intent crimes begs review by this Court to interpret the 2010 changes to assault and battery by our Legislature.

This Court should also take this case because of the differing decisions in courts around the nation. If this Court grants certiorari, the State will likely encourage this Court to follow the reasoning of states like Nevada, which allows application of the transferred intent doctrine. See Ochoa v. State, 981 P.2d 1201 (Nev. 1999). Petitioner will urge this Court to adopt the reasoning of states like Alabama, Alaska, California, Connecticut, and Maryland, which ultimately conclude that the legal fiction of transferred intent is unnecessary. See Cockrell, Ramsey v. State, 56 P.3d 675 (Alaska Ct. App. 2002); People v. Smith, 124 P.3d 730, 739-40 (Cal. 2005); State v. Hinton, 630 A.2d 593, 600-02 (Conn. 1993); and State v. Brady, 903 A.2d 870 (Md. 2006). These courts' analyses apply with great force in South Carolina because here, a defendant can be charged with the attempted murder of his intended victim even if the intended victim is not injured. Unlike murder, a defendant cannot "get away with" attempted murder if his aim fails and can be fully punished under the law. This Court should grant certiorari to consider both the applicability of these jurisdictions' decisions and to interpret our Legislature's intent.

The Court of Appeals' Decision Conflicts with State v. King

This Court should also grant certiorari because the Court of Appeals' decision conflicts with King. King's recognition that the Legislature made specific intent an element of statutory attempted murder is addressed in the court's decision, but the court failed to recognize the impact of King and its statutory analysis is flawed. The court concluded that specific intent does not require a specific victim, erroneously relying on the Legislature's use of "another person." Williams, 812 S.E.2d at 925-26. Had the Legislature intended the result found by the court, it would have used the more general, "any person" or "persons." "Another person" is singular and means one person—a specific person or a specific group of people. Further compelling this result is the Rule of Lenity, which the court failed to address in its opinion. See State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.").

The Court of Appeals' decision also waters down the element of specific intent to the point where, if its decision stands, its meaning would be hard to distinguish from general intent. The court, in contradiction of both the majority and dissent in King, assumed malice can be inferred or implied even though attempted murder requires specific intent. Williams, 812 S.E.2d at 925-26. King states that without express malice or specific intent, a "crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600." King at 26-27, n.5, 810 S.E.2d at 63-64, n.5. The dissent in King agreed with the majority that, after its ruling, the notion of implied malice for specific intent crimes would be problematic. Id. at 73-74, n.9, 810 S.E.2d at 32, n.9. Transferred intent is another way to infer or imply malice and King indicates that doing so for a specific intent

crime is improper. Because nothing in King supports the Court of Appeals' application of the transferred intent doctrine, this Court should grant certiorari to address this conflict.

2.

The Court of Appeals erred in finding harmless the trial court's erroneous refusal to charge the lesser included offense of first-degree assault and battery.

The Court of Appeals correctly found that the trial judge erred in refusing to charge the lesser included offense of first-degree assault and battery, but incorrectly found this error to be harmless. To reach this conclusion, the court only used Charley's testimony during his cross-examination and discarded his testimony during his direct-examination. Williams, 812 S.E.2d at 922-23. In doing so, the court essentially made its own credibility finding and improperly weighs the evidence. This usurps the jury's function and fails to recognize that inconsistencies in a witness's testimony must be resolved by the jury. See State v. Light, 378 S.C. 641, 648-49, 664 S.E.2d 465, 468-69 (2008). In Light, the defendant gave "inconsistent stories," but the trial court erred in refusing to give a lesser included offense instruction and the Supreme Court reversed. Id.

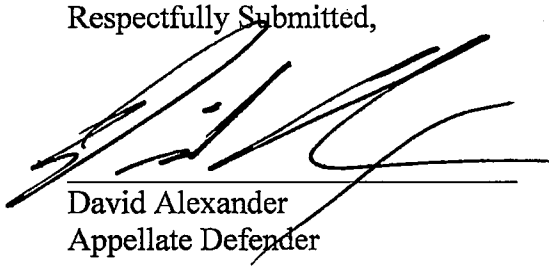
The jury was entitled to decide which parts of Charley's testimony were true. The jury was also free to discard Charley's testimony entirely. Credibility determinations are not made on appeal and when a case hinges on credibility, an error cannot be harmless. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016) (holding that an error could not be harmless because the "case hinged on credibility"). The court's opinion says "the facts of this case fit" the lesser included offense, but does not state which facts necessitate giving the charge. Williams, 812 S.E.2d at 922. These facts necessarily include Charley's testimony during direct-examination. The court's opinion is therefore inconsistent in using part of Charley's testimony to find that a lesser included offense charge was warranted but another part of Charley's testimony to find the error harmless. Picking and choosing which parts of Charley's testimony to

believe is a jury function. Furthermore, if this Court holds that transferred intent does not apply, then this error cannot be harmless. This Court should grant certiorari and reverse so that a jury can weigh credibility and decide between the greater and lesser offenses.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari with the ultimate result of reversing petitioner's convictions and granting him a new trial.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of June, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 23 2019
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

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0368

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

STATEMENT OF ISSUES ON APPEAL

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 possible conclusion established by the evidence was that Petitioner attempted to kill the victims.

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

---

[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

---

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

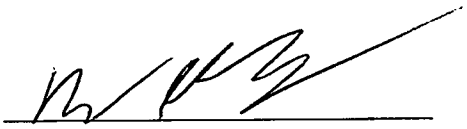
Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

BY: 

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

ATTORNEYS FOR RESPONDENT

July 23, 2018

The Supreme Court of South Carolina

The State, Respondent,

v.

Gerald Rudell Williams, Petitioner.

Appellate Case No. 2018-000994
Lower Court Case No. 2013-GS-41-00257, 2013-GS-41-00258, 2013-GS-41-00259

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

October 18, 2018

cc:
Alan McCrory Wilson, Esquire
Joshua L. Thomas, Esquire
William Frederick Schumacher, IV, Esquire
David Alexander, Esquire

Samuel R. Hubbard, III, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Sheri Coleman

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Supreme Court County

Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

PETITIONER

APPELLATE CASE NO. 2018-000994

BRIEF OF PETITIONER

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred in affirming the trial court's charge of transferred intent for attempted murder?

2.

Whether the Court of Appeals erred in finding harmless the trial court's erroneous refusal to charge the lesser included offense of first-degree assault and battery?

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted petitioner Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767. On October 14, 2013, petitioner was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented petitioner. R. 1. The jury convicted petitioner. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced petitioner to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. After hearing oral argument on March 14, 2017, the Court of Appeals affirmed in a published opinion authored by Judge Williams and joined by Judges Konduros and Lee. State v. Williams, 422 S.C. 525, 812 S.E.2d 917 (2018). After the Court of Appeals denied rehearing, this Court granted certiorari on October 18, 2018, and this brief of petitioner follows.

STANDARD OF REVIEW

The standard of review on Question One is *de novo*. Whether the attempted murder statute allows intent to be transferred is a purely legal question and legal questions are reviewed *de novo*. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). The standard of review on Question Two is whether the trial court's error was harmless beyond a reasonable doubt. State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014).

ARGUMENT

1.

The Court of Appeals erred in affirming the trial court's charge of transferred intent for attempted murder.

Factual and Procedural Background

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Orienthal James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him $26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver the drugs and agreed with the solicitor that his intention was "to rip [Charley] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police ultimately arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but said that he had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 12. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 513, l. 9 – 514, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified petitioner as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw people come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Petitioner was Ycedra's second cousin and she did not identify petitioner as being with the people in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He saw a person who "undoubtedly was laying in the ditch beside the van" stand up and face him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him his hands. R. 324, ll. 14 – 21. The person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the van and notified the other officers. R. 325, ll. 1 – 17. Officer Grenier pulled his car in front of the van to box it in. R. 325, ll. 18 – 23. The van

stopped. R. 325, ll. 18 – 25. The police testified they found petitioner driving the van and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense and, as the Court of Appeals noted, his direct-examination and cross-examination contradicted each other.[1] R. 578, ll. 1 – 10. Williams at 920, n.4. On direct-examination, Charley testified that he told petitioner he would pay him to drive Charley and a man named Rico that night. R. 586, l. 5 – 587, l. 11. Charley told petitioner he was "going to see some girls." R. 587, ll. 23 – 25. Charley never told petitioner anything about a shooting, or guns, or his dispute with Young. R. 588, ll. 1 – 13.

While petitioner waited in the van, Charley and Rico went to Young's trailer. R. 592, l. 3 – 593, l. 7. Charley heard Young shout. R. 593, ll. 14 – 21. Young opened the door of the trailer and fired two shots in the air. R. 594, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 594, ll. 9 – 21. Charley ran. R. 594, ll. 24 – 25. Charley said Rico "had to shoot." R. 594, l. 17 – 18. When Charley got into the van, he said the police pulled up "within five seconds." R. 595, ll. 16 – 23. Petitioner was still in the van when Charley returned. R. 595, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 603, l. 21 – 606, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R. 606, ll. 4 – 6. The solicitor accused Charley of "double-crossing the State." R. 606, ll. 15 – 19.

After the solicitor accused Charley of a double-cross and mentioned his plea deal, Charley recanted his direct-examination testimony and implicated petitioner in the shooting. R.

---

[1] During post-trial motions, Judge Baxley called Charley "probably the most noncredible witness I think I've ever seen in 14 years of this job." R. 734, ll. 15 – 22.

607, l. 13 – 633, l. 24. Under intense questioning from the solicitor, Charley said petitioner was with him at the scene of the shooting and that there was no "Rico." R. 607, l. 13 – 613, l. 25.

However, Charley was adamant that Ycedra and her brother were not in the house at the time of the shooting. R. 617, ll. 8 – 23. Charley testified that he knew they were not there because the van that Ycedra drove was not in the yard. R. 617, ll. 8 – 23. Charley testified he had no "beef" with Ycedra and no "beef" with Joseph. R. 617, l. 24 – 618, l. 5. When asked why he would have "shot the whole house up not caring about whether they lived or died," Charley responded, "I can't say I was not caring about whether they lived or died. He shot, so I shot in the air, that's how it happened." R. 618, ll. 6 – 11. Charley claimed petitioner shot, but did not know the direction that petitioner fired. R. 620, ll. 9 – 13. When shown a picture of the trailer, Charley explained that some of the bullet holes could have come from inside the trailer. R. 629, ll. 4 – 21.

The Trial Court's Charge, the Objection Below, and the Court of Appeals' Decision

Petitioner objected to the trial court's charge on transferred intent. R. 715, l. 18 – 716, l. 7. The State requested the charge. R. 716, ll. 8 – 21. Petitioner argued:

> We object to the transfer[red] intent charge. Generally speaking, transferred intent is, is—I understand it is shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice just because there is a shooting. And we would respectfully object to the transfer[red] intent charge, Your Honor.

R. 715, l. 23 – 716, l. 7. The trial court granted the State's request to charge transferred intent over petitioner's objection, noting that, even giving him the benefit of the facts of the case, petitioner was accused of shooting into a house with people "he did not know were there." R. 716, ll. 8 – 21. The trial judge explained that "the Court was concerned that the jury may

believe, after charging that intent is necessary, that the defendant had no intent to harm those individuals." R. 716, ll. 8 – 21.

The Court of Appeals recognized that King held that attempted murder requires specific intent, but nevertheless ruled that the doctrine of transferred intent applied. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017); Williams, 812 S.E.2d at 924-26. The court used cases decided before the enactment of the attempted murder statute to conclude that "South Carolina's criminal laws require the imposition of the doctrine of transferred intent." Id. The court's reasoning on this novel issue is not compelled by prior decisions of this Court and contradicts both King and the sound reasoning from other jurisdictions that the legal fiction of transferred intent is completely unnecessary for attempted murder.

The Court of Appeals erred by relying on cases whose applicability after the Legislature's passage of the attempted murder statute is, at best, questionable. Attempted murder did not exist in South Carolina prior to its creation by the Legislature in 2010. See State v. Sutton, 340 S.C. 393, 398-99, 532 S.E.2d 283, 286 (2000) ("We decline to recognize a separate offense of attempted murder."); S.C. Code Ann. § 16-3-29; King at 62, 810 S.E.2d at 25-26 (noting that the attempted murder statute was part of legislation passed in 2010). The Court of Appeals' decision is the first in South Carolina to address whether transferred intent applies to statutory attempted murder with the element of specific intent.

The primary case the court relied on, State v. Fennell, was decided in 2000 and dealt with the question of transferred intent under the abolished crime of assault and battery with intent to kill ("ABIK"). State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). ABIK did not require specific intent. King at 57-64, 810 S.E.2d at 23-27, analyzing, *inter alia*, State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996), Sutton, and State v. Kinard, 373 S.C. 500, 646 S.E.2d 168 (Ct. App.

2007). Because petitioner was charged with a statutory crime that did not exist in 2000, and that this Court expressly declined to recognize under the common law, cases like Fennell do not compel the conclusion that because transferred intent applied to ABIK it must also apply to attempted murder. Especially after this Court decided in King that attempted murder is a specific intent crime, the question of transferred intent's applicability remained an open question until the Court of Appeals' decision in petitioner's case.

Considering the careful analysis given to the Legislature's intent in King, South Carolina should adopt the rationale of a jurisdiction like Alabama, which declined to read transferred intent into its statutory crime of attempted murder. Cockrell v. State, 890 So.2d 174 (Ala. 2004). The Alabama Supreme Court's decision in Cockrell is well-researched and cites the differing points of view around the nation, including South Carolina law as it existed under ABIK. Id. at 175-82. After analyzing the various rules adopted by other jurisdictions and the intent of the Alabama legislature, the court applied the rule of lenity and determined that it would not adopt transferred intent for attempted murder. Id. at 180-82.

Particularly helpful from Cockrell is the concurrence of Justice Harwood. Id. at 183-84. Justice Harwood wrote separately to emphasize that the Alabama legislature had "'covered all the bases'" with both attempted murder and the different degrees of assault and battery. Id. He wrote, "This complete allocation of criminal culpability under a comprehensive legislative scheme furnishes some insight concerning the legislative intent regarding the applicability of the doctrine of transferred intent to the offense of attempted murder." Id. South Carolina's comprehensive statutory scheme enacted in 2010 along with the attempted murder statute created new degrees of assault and battery. See S.C. Code Ann. § 16-3-600. The logic of Justice Harwood's concurrence carries equal force in South Carolina.

Just as in Alabama, our Legislature "covered all the bases" with attempted murder and the different degrees of assault and battery. If an unintended victim dies, the defendant can be prosecuted for murder because it remains a general intent crime and the intent can be transferred. If an unintended victim lives, the defendant can be prosecuted for attempted murder for the intended victim and one of the assault and battery crimes enacted by the Legislature according to the degree of intent and harm.

The Alaska Supreme Court recognized both this rationale of applying the varying degrees of assault and battery given by the legislature and the absurd results that can arise from applying transferred intent to attempted murder in Ramsey v. State, 56 P.3d 675 (Alaska 2002). Ramsey dealt with a tragic school shooting. Ramsey, 56 P.3d at 676-77. The defendant walked into a high school cafeteria with a shotgun and pointed it at a student named Palacios. Id. When Palacios turned around, the defendant fired. Id. The shotgun blast killed Palacios and pellets from the shotgun injured two other students, SM and RL.[2] Id.

The Ramsey court dealt with the question of whether the defendant's specific intent to kill Palacios could be transferred to SM for attempted murder. Id. at 680-83. After noting the split in jurisdictions on the issue, the Alaska Supreme Court decided not to apply transferred intent to its attempted murder statute which, like South Carolina's, required specific intent. Id. The court explained part of its reasoning by carrying the prosecution's argument to its logical, but absurd, conclusion:

---

[2] The defendant continued his rampage through the school. Id. He fired into the ceiling and pointed a gun at other teachers. Id. He shot and killed the principal. Id. He fired at police officers who responded to the shooting, but then surrendered. Id. The defendant was ultimately convicted of two counts of first-degree murder, one count of first-degree attempted murder, and fifteen counts of third-degree assault. Id. A note left behind by the defendant provided some evidence that the principal was the defendant's primary focus, but also indicated that he intended to kill other, unidentified individuals. Id. at 677.

> The problem with the State's argument is that its logic leads to the conclusion that Ramsey could have been found guilty of the attempted murder of everyone in the school. The jury certainly found that Ramsey intended to cause the death of Palacios. And because his actions would have placed almost any reasonable person in the school in fear of serious physical injury, it is hard to say where the State's attempted murder theory would stop. A defendant can be found guilty of attempted murder whether or not he actually injures his intended victim. Therefore, the State's argument, carried to its logical extension, would allow it to convict Ramsey of the attempted murder of everyone in the building.

Id. at 681-82. Like the concurrence in Cockrell, the Alaska court rejected this absurd result by relying on its legislature's creation of multiple degrees of assault and battery. Id. at 682-83. The court held the jury should have been instructed that it needed to find that Ramsey had the specific intent to kill SM to find him guilty of attempted murder and needed to assess Ramsey's criminal intent and actions as to each of the remaining victims under the different degrees of assault and battery. Id.

Like Alaska and Alabama, South Carolina's Legislature enacted a comprehensive statutory scheme for attempted murder and assault and battery. South Carolina also requires specific intent for attempted murder. The judicially created fiction of transferred intent is simply not required in this state to fully punish a defendant or to correctly charge a jury.

The Alaska court's rationale serves a workable balance when a trial court is confronted with a case with horrific facts like the school shooting in Ramsey. Rejecting transferred intent does not mean that a mass shooter or bomber like Ramsey cannot be charged with multiple counts of attempted murder. It only means the state cannot rely on transferred intent to convict the defendant of multiple counts of attempted murder. For example, no evidence suggests the shooter in Las Vegas intended to kill any one person at the music concert, but it certainly suggested he specifically intended to kill every person at the concert. Nothing would prevent the State from charging a mass shooter or bomber with the attempted murder of multiple victims in

such a scenario. But such monsters are different from a defendant who may have the intent to kill a specific person, but misses. Rejecting transferred intent for attempt crimes does not deprive the State of any necessary tool to fully prosecute criminals and ensures that the law prevents overreaching by the State in other cases.

Also indicating that this Court should reach the same result is the rule of lenity. The Supreme Court of Connecticut applied the rule of lenity to reject transferred intent for attempted murder. State v. Hinton, 630 A.2d 593, 600-02 (Conn. 1993). "A defendant can still be prosecuted for his intent to kill and conduct aimed at killing the intended victim whether a third party is killed or no one is even injured." Id. "The doctrine of transferred intent, generally considered a necessary fiction, is therefore not necessary to prosecute for attempted murder a defendant whose aim was poor." Id. Just like South Carolina, Connecticut applies the rule of lenity. Id. See also State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant."). The rule of lenity, combined with the force of its own logic, led the Hinton court "to conclude that the transferred intent doctrine should not be applied to the crime of attempted murder." Hinton, 630 A.2d at 602.

California also rejects the doctrine of transferred intent for attempted murder. People v. Smith, 124 P.3d 730, 739-40 (Cal. 2005). Attempted murder in California requires the specific intent to kill. Id. at 734. California recognizes transferred intent for murder, but not attempted murder. Id. at 735. California interprets specific intent as the intent to kill a specific victim. Id. "Whether the defendant acted with the specific intent to kill 'must be judged separately as to each alleged victim.'" Id. quoting People v. Bland, 48 P.3d 1107 (Cal. 2002).

The facts of Smith are instructive. The defendant fired a single shot into a car, narrowly missing both a baby and its mother. Id. at 736-37. He was found guilty of attempted murder of both the baby and the mother. Id. The court distinguished motive and intent. Id. Like in South Carolina, motive is not required. Id. However, because the defendant knew both the baby and the mother were in his line of fire, the court found specific intent as to both victims with no need for transferred intent. Id. at 737-38. Here, the jury should have decided whether petitioner knew Ycedra and Joseph were in the trailer and whether he formed the specific intent to kill them.

In State v. Brady, 903 A.2d 870 (Md. 2006), the Court of Appeals of Maryland considered its own tumultuous precedent and cases from other jurisdictions and decided not to apply transferred intent to attempted murder. The Brady court noted that in 1988, it initially decided that transferred intent would apply to attempted murder, but four years later, in 1993, reversed course. Id. at 876-78 citing State v. Wilson, 546 A.2d 1041 (Md. 1988) and Ford v. State, 625 A.2d 984 (Md. 1993). The defendant in Brady shot at a fleeing apartment resident, missed, and injured another resident. Brady, 903 A.2d at 882-83. The court held that the defendant could be "convicted only of the attempted murder of the intended victim and transferred intent does not apply." Id.

This Court should adopt the reasoning of states like Alabama, Alaska, California, Connecticut, and Maryland. These courts' analyses apply with great force in South Carolina because here, a defendant can be charged with the attempted murder of his intended victim even if the intended victim is not injured. We also require specific intent. Unlike murder, a defendant cannot "get away with" attempted murder if his aim fails and can be fully punished under the law. Refusing to expand the judicially created fiction of transferred intent gives effect to our Legislature's statutory scheme.

The Doctrine of Transferred Intent also Conflicts with State v. King

Rejecting transferred intent would also be consistent with this Court's opinion in King. King's recognition that the Legislature made specific intent an element of statutory attempted murder is addressed in the Court of Appeals' decision, but the court failed to recognize the impact of King and its statutory analysis is flawed. The court concluded that specific intent does not require a specific victim, erroneously relying on the Legislature's use of "another person." Williams, 812 S.E.2d at 925-26. Had the Legislature intended the result found by the court, it would have used the more general, "any person" or "persons." "Another person" is singular and means one person—a specific person or a specific group of people. Further compelling this result is the rule of lenity, which the court failed to address in its opinion. See State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.").

The Court of Appeals' decision also waters down the element of specific intent to the point where, if its decision stands, its meaning would be hard to distinguish from general intent. The court, in contradiction of both the majority and dissent in King, assumed malice can be inferred or implied even though attempted murder requires specific intent. Williams, 812 S.E.2d at 925-26. King states that without express malice or specific intent, a "crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses codified in section 16-3-600." King at 26-27, n.5, 810 S.E.2d at 63-64, n.5. The dissent in King agreed with the majority that, after its ruling, the notion of implied malice for specific intent crimes would be problematic. Id. at 73-74, n.9, 810 S.E.2d at 32, n.9. Transferred intent is just another way to infer or imply malice and King indicates that doing so for a specific intent

crime is improper. Because nothing in King supports the Court of Appeals' application of the transferred intent doctrine, this Court should reverse.

2.

The Court of Appeals erred in finding harmless the trial court's erroneous refusal to charge the lesser included offense of first-degree assault and battery.

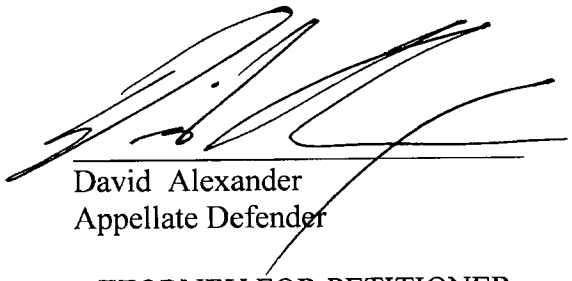
The Court of Appeals correctly found that the trial judge erred in refusing to charge the lesser included offense of first-degree assault and battery, but incorrectly found this error to be harmless. To reach this conclusion, the court only used Charley's testimony during his cross-examination and discarded his testimony during his direct-examination. Williams, 812 S.E.2d at 922-23. In doing so, the court essentially made its own credibility finding and improperly weighed the evidence. Weighing credibility usurps the jury's function and fails to recognize that inconsistencies in a witness's testimony must be resolved by the jury. See State v. Light, 378 S.C. 641, 648-49, 664 S.E.2d 465, 468-69 (2008). In Light, the defendant gave "inconsistent stories," but the trial court erred in refusing to give a lesser included offense instruction and the Supreme Court reversed. Id.

The jury was entitled to decide which parts of Charley's testimony were true. The jury was also free to discard Charley's testimony entirely. Credibility determinations are not made on appeal and when a case hinges on credibility, an error cannot be harmless. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016) (holding that an error could not be harmless because the "case hinged on credibility"). The court's opinion says "the facts of this case fit" the lesser included offense, but does not state which facts necessitate giving the charge. Williams, 812 S.E.2d at 922. These facts necessarily include Charley's testimony during direct-examination. The court's opinion is therefore inconsistent in using part of Charley's testimony to find that a lesser included offense charge was warranted but another part of Charley's testimony to find the error harmless. Picking and choosing which parts of Charley's testimony to

believe is a jury function. Charley may well have been a terrible witness, as the trial judge certainly believed, but defendants are entitled to have juries evaluate even bad witnesses' credibility. Furthermore, if this Court holds that transferred intent does not apply, then this error certainly cannot be harmless. This Court should reverse so that a properly instructed jury can weigh credibility and decide between the greater and lesser offenses.

CONCLUSION

For the foregoing reasons, this Court should reverse petitioner's convictions and remand this case for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF 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.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0368

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF 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.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0368

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

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 possible conclusion established by the evidence was that Petitioner attempted to kill the victims.

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. On October 18, 2018, this Court granted the petition. Petitioner filed his brief on November 16, 2018. This Brief of Respondent 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).

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),[2] the defendant appealed his conviction for attempted murder, arguing the trial judge erred in refusing to charge the jury on

[2] 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,[3] which differed in various respects from the

---

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.

[3] 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.

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).

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 State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), 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.

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 State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), 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 State v. 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 possèssed 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

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

BY: _____
William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

ATTORNEYS FOR RESPONDENT

December 7, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Gerald Rudell Williams, Petitioner.

Appellate Case No. 2018-000994

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Saluda County
J. Michael Baxley, Circuit Court Judge

Opinion No. 27893
Heard March 26, 2019 – Filed June 12, 2019

AFFIRMED AS MODIFIED

Appellate Defender David Alexander, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant Attorney General William F. Schumacher IV, both of Columbia, and Solicitor S.R. Hubbard III, of Lexington, all for Respondent.

JUSTICE KITTREDGE: In this case, the Court is asked whether and to what extent the common law doctrine of transferred intent applies to the newly-codified crime of attempted murder. Petitioner Gerald Williams was convicted of

three counts of attempted murder related to his alleged shooting into an occupied mobile home where he knew his intended victim was present, but did not realize two other individuals were also present.

Under the common law, transferred intent makes a whole crime out of two halves by joining the intent to harm one victim with the actual harm caused to another. Normally, transferred intent applies to general-intent crimes. However, attempted murder is a specific-intent crime in South Carolina, and we have not yet addressed whether transferred intent may supply the requisite *mens rea* for such a crime.

Because this case was tried without objection as a general-intent crime, we find the doctrine of transferred intent applies in this instance. We therefore decline to address the applicability of transferred intent to a specific-intent crime such as attempted murder and vacate the portion of the court of appeals' opinion dealing with this issue. Additionally, looking specifically at the facts of this case, we find no error in failing to charge the jury on the lesser-included offense of assault and battery in the first degree (AB-1st). We therefore affirm the court of appeals as modified.

I.

This case arose after one drug dealer, Al Young, stole $32,000 from another drug dealer, O.J. Charley. The night of the shooting, police were tipped off that Charley and others planned to retaliate against Young that night and would be armed and dangerous. The Saluda County Sheriff's Office issued a "be on the lookout" (BOLO) alert for a teal-green Ford Windstar minivan registered to Charley's wife and coming from Barnwell County to Saluda County. It also informed local law enforcement officers of the address of Young's mobile home as the possible location of the retaliatory act.

According to the State's witnesses, shortly after midnight, Young and two of his roommates—a married couple named Ycedra Williams[1] and Joseph Wrighton—saw two men walking down the driveway. Young told Williams to turn off the lights while Wrighton went to the door and tried to identify the men. The door contained a large glass panel through which at least the silhouette of an individual would be visible from the outside. As soon as Wrighton appeared in the door, the

---

[1] Ycedra Williams is Petitioner's (Gerald Williams) second cousin. For clarity's sake, we will refer to Ycedra Williams as "Williams," and Gerald Williams as "Petitioner."

men began shooting, both directly at him and all along the side of the mobile home. Williams called 911, but before the police arrived, the shooters fled the scene, abandoning their firearms and two sets of latex gloves (a blue pair and a purple pair) nearby. The purple latex gloves were torn and missing the portions that would cover the thumb and index finger.

Two sheriff's officers responded to the 911 call. On their way to the mobile home, the officers noticed a minivan matching the BOLO description parked on the side of the road approximately a block or two away from the mobile home. The officers stopped for around twenty seconds, during which they asked the dispatcher to check the license plate number of the van; checked the van for occupants, including pulling on the door handles to confirm they were locked; and verified the van did not have a flat tire or other obvious signs of being disabled. The dispatcher confirmed the van belonged to Charley's wife. Concerned the van would be used as "the get-away vehicle," the officers notified a nearby Saluda Police Department officer of the van's presence and requested the town officer watch the vehicle so the two sheriff's officers could continue responding to the 911 call.

A minute or two later, upon arriving at the van, the town officer saw Charley lying in a ditch beside the van. When the officer turned on his blue lights and high beams, Charley stood up and got into the passenger side of the van, and the van immediately drove off. After a short chase, the officer was able to force the van to stop and arrested the driver (Petitioner) and Charley. After Petitioner and Charley were transported to the jail, two finger-pieces from a purple latex glove were pulled off of Petitioner's thumb and index fingers.

At trial, the State presented testimony from various law enforcement officers about the events surrounding the night of the shooting and the investigation following the incident. Those officers testified there were additional pieces of a purple latex glove found in the van following Petitioner's arrest, and all of the pieces of purple latex glove—those lying next to the firearms, those found in the van, and those found on his fingers at jail—tested positive for Petitioner's DNA. The law enforcement officers also testified that after receiving Williams's 911 call, they organized a search using bloodhounds to ascertain whether there was a third, unidentified shooter that remained at large; however, the bloodhound search uncovered no trace of anyone besides Charley and Petitioner. The State presented no evidence Petitioner was aware Williams or Wrighton (or anyone else other than Young) was in the mobile home at the time of the shooting.

During his own case-in-chief, Petitioner called Charley to testify. Charley's testimony varied wildly between direct and cross-examination, setting out three

distinct stories.[2] In the first version of events, Charley testified he did not have a driver's license, so he paid Petitioner to drive him to Saluda in order to "see some girls." Charley stated Petitioner did not know anything about the shooting and did not participate in it.

In the second version of events—after the State reminded Charley he had pled guilty to attempted murder for the shooting but had not been sentenced pending his cooperation with the investigation and Petitioner's trial—Charley testified Petitioner had driven Charley to Saluda and accompanied him to Young's mobile home. However, Charley claimed Petitioner was unarmed and did not participate in the shooting. Charley asserted that, rather than Petitioner, a third man (Charley's co-worker) had been the other shooter.

In the third version of events—after the State reminded Charley of the potential for a perjury charge—Charley testified Petitioner agreed to assist Charley the night of the shooting in exchange for either money or drugs. Charley stated he and Petitioner were both armed and wearing latex gloves when they approached the mobile home, but claimed Young started the gunfight by coming outside and firing his gun twice into the air. Charley maintained that in return, he shot one time in the air, but his weapon malfunctioned, and he therefore ran away.[3] Charley asserted Petitioner nonetheless shot at Young and/or the mobile home repeatedly, agreeing with the State that, given the number of bullet holes in the mobile home's door and siding, Petitioner "tore that house up from one end to the other with his [gun] and emptied" the magazine. Charley stated that, after his arrest, he decided to cooperate with law enforcement against Petitioner because the fact that Petitioner was discovered in jail still wearing pieces of the gloves they had worn and discarded with the guns was impossible to explain or overcome.

During closing arguments, the State discussed the doctrine of transferred intent extensively. Petitioner did not object to any of the State's references to the applicability of transferred intent or argue transferred intent did not apply to attempted murder and/or a specific-intent crime.

The trial court then charged the jury on the law, stating in relevant part:

---

[2] After the trial, the trial judge described Charley as "probably the most noncredible witness I think I've ever seen in 14 years of this job."

[3] Law enforcement officers confirmed that one of the weapons found near the latex gloves had malfunctioned and was inoperable.

> [Criminal] intent may be transferred in the commission of a crime. Stated differently and using the charge of robbery as an example, if an individual intends to rob a particular person, but somehow by mistake actually robs a different person, the defendant still has the intent to commit robbery. The criminal intent is merely transferred from the original person the defendant desired to rob to the individual the defendant actually robbed. In other words, it is not a defense to the crime that the wrong person was robbed.
>
> . . . .
>
> . . . In order to prove [attempted murder], the State must first prove the defendant attempted to kill another person with malice aforethought, either expressed or implied.
>
> . . . .
>
> Malice may be inferred . . . from conduct that shows a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. . . .
>
> . . . .
>
> *A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury.*[4] Intent means intending the result that actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent.
>
> . . . Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

(Emphasis added.)

---

[4] *But see State v. King*, 422 S.C. 47, 55–56, 810 S.E.2d 18, 22 (2017) (holding the statutory crime of attempted murder, newly codified in 2010, required a specific intent to kill). Petitioner's case was tried before we issued our decision in *King*, but after the 2010 codification.

Petitioner raised a brief objection to the transferred intent charge, arguing, in its entirety:

> Generally speaking, transferred intent is . . . shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice [is met] just because there is a shooting. And we would respectfully object to the transfer[red] intent charge.

However, Petitioner made no mention of the trial court's instruction that attempted murder was a general-intent crime, or that transferred intent did not apply to specific-intent crimes like attempted murder.[5] The trial court overruled the objection, finding this was "a situation where the defendant is accused of shooting into a house where individuals may have been, that he did not know were there, that is giving him the benefit of the facts of the case." The trial court explained that, absent the transferred intent charge, the jury might be confused as to whether Petitioner needed to specifically intend to harm the specific victims, so it felt the charge was appropriate.

Petitioner also objected to the trial court's refusal to give instructions as to the lesser-included offense of AB-1st, asserting the charge was appropriate because none of the victims was injured.[6] The State opposed the charge, arguing the two theories of the case were that Petitioner either was not present (because he was solely Charley's driver) or he "was completely involved in it." According to the State, there was no middle ground: either Petitioner was guilty of attempted murder, or not guilty of anything. The trial court agreed with the State, explaining,

> All the evidence in this case, both direct and circumstantial, goes to the alleged crime where the defendant . . . shot up a mobile home with the intent to kill an individual who was within the home and there happened to be other individuals there as well.
>
> . . . .

---

[5] To be fair to counsel, at the time of Petitioner's trial, we had not yet handed down our decision in *King*, in which a majority of this Court held attempted murder was a specific-intent crime.

[6] *Compare* S.C. Code Ann. § 16-3-29 (2015) (describing the offense of attempted murder), *with* S.C. Code Ann. § 16-3-600(C) (2015) (describing the offense of AB-1st).

The evidence is devoid of any lesser included offense indicia.

Ultimately, after deliberating for less than an hour, the jury convicted Petitioner of three counts of attempted murder, and the trial court sentenced him to three concurrent terms of twenty years' imprisonment.

Petitioner appealed, arguing the trial court erred in refusing to charge the jury on AB-1st, as a lesser-included offense to attempted murder; and the trial court further erred in charging the jury on the doctrine of transferred intent. Notably, Petitioner did not argue the trial court erred in instructing the jury that attempted murder was a general-intent crime to which transferred intent applied, or that he (Petitioner) was entitled to a new trial based on that error of law alone. *See King*, 422 S.C. at 53–56, 70, 810 S.E.2d at 21–22, 30 (holding attempted murder is a specific-intent crime, and affirming the court of appeals' reversal of the defendant's attempted murder conviction after the trial court instructed the jury that (1) attempted murder was a general-intent crime, and specific intent to kill was not an element of attempted murder; (2) inferred malice may arise when the act is done with a deadly weapon; and (3) malice may be inferred from conduct showing a total disregard for human life).

The court of appeals affirmed Petitioner's convictions. *State v. Williams*, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018). In particular, the court of appeals found any error in failing to charge the jury on AB-1st was harmless because the evidence presented at trial yielded only the conclusion that Petitioner committed the greater, not the lesser, offense. *Id.* at 535–37, 812 S.E.2d at 922–23. Without addressing the trial court's charge to the jury that attempted murder was a general-intent crime, the court of appeals held attempted murder was a specific-intent crime, but "the requisite specific intent for attempted murder is the specific intent to commit murder," not the specific intent to murder a specific person, as Petitioner argued. *Id.* at 541–42, 812 S.E.2d at 925–26. Thus, the court of appeals concluded the doctrine of transferred intent was appropriate and applicable in that instance. *Id.* at 541–43, 812 S.E.2d at 925–26.

We granted Petitioner's petition for a writ of certiorari to review the court of appeals' decision.

II.

Petitioner first contends the court of appeals erred in finding harmless error in the trial court's failure to charge the jury on AB-1st, as a lesser-included offense to attempted murder. We disagree.

In reviewing jury charges for error, we examine the trial court's charge as a whole in light of the evidence and issues presented at trial. *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citation omitted). "The trial court is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007) (citation omitted) (internal quotation marks omitted). In determining whether the evidence requires a charge on a lesser-included offense, we view the facts in the light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996).

Here, there were three distinct theories of Petitioner's involvement in the shooting.[7] However, regardless of which version of events a jury believed, it could not have found Petitioner guilty of the lesser, rather than the greater, offense. *See, e.g.*, *State v. Drayton*, 293 S.C. 417, 428, 361 S.E.2d 329, 335 (1987) (holding the trial court did not err in failing to charge the lesser-included offense because, under the State's version of the facts, the defendant was guilty of the greater offense, and under the defendant's version of the facts, he was innocent of any charge). Accordingly, we find the trial court did not err in failing to charge the jury on the lesser-included offense.

III.

Petitioner next argues the court of appeals erred in finding the doctrine of transferred intent applied to a specific-intent crime such as attempted murder. However, Petitioner has never challenged the trial court's instruction to the jury that "*[a] specific intent to kill is not an element of attempted murder*, but there must be a general intent to commit serious bodily injury." (Emphasis added.)[8] As

---

[7] Charley later recanted two of the three versions of events surrounding Petitioner's involvement. However, given that we must view the evidence in the light most favorable to Petitioner, we cannot discount these versions despite Charley's credibility issues. *See Suber*, 371 S.C. at 559, 640 S.E.2d at 886; *Byrd*, 323 S.C. at 321, 474 S.E.2d at 431. Rather, it is solely for the factfinder to weigh the evidence, including making credibility determinations.

[8] Similarly, Petitioner never contested the trial court's instructions that implied malice would satisfy the *mens rea* requirement for attempted murder, or that malice could be inferred from the use of a deadly weapon. *See King*, 422 S.C. at 64 n.5, 810 S.E.2d at 27 n.5 (explaining implied malice is "arguably inconsistent with a specific-intent crime. *See Keys v. State*, . . . 766 P.2d 270, 273 ([Nev.]

a result, this instruction has become the law of this case. *See Smith v. State*, 413 S.C. 194, 196, 775 S.E.2d 696, 697 (2015) (explaining an unappealed ruling, whether right or wrong, is the law of the case (quoting *Atl. Coast Builders & Contractors, L.L.C. v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)).

It is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes. *See, e.g.*, *State v. Fennell*, 340 S.C. 266, 271–73, 275–76, 531 S.E.2d 512, 515–16, 517 (2000); *State v. Heyward*, 197 S.C. 371, 376–77, 15 S.E.2d 669, 672 (1941). We therefore find no error in the trial court instructing the jury regarding the applicability of transferred intent to a "general-intent" crime.[9] 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.

IV.

Petitioner's attempted murder case was tried, without objection, as a general-intent crime, and that unappealed ruling has become the law of the case. Because it is

---

1988) (stating 'one cannot *attempt* to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result' (citation and internal quotation marks omitted)). Moreover, if there is no evidence that one charged with attempted murder had express malice and a specific intent to kill, we believe the crime would involve a lower level of intent and, thus, would fall within the lesser degrees of assault and battery offenses codified in section 16-3-600.").

[9] Moreover, we find the doctrine of transferred intent unnecessary to sustain the convictions for the attempted murders of Young and Wrighton. Petitioner was alleged to have specifically intended to kill Young the night of the shooting, and to have shot at the door where Wrighton stood, intending to kill the figure in the doorway. It matters not that Petitioner may have been unaware it was Wrighton in the door, rather than Young. Simply put, Petitioner *intended* to shoot the person (Wrighton) who appeared in the doorway. As a result, we alternatively sustain Petitioner's convictions for the attempted murders of Young and Wrighton without resort to the doctrine of transferred intent. Because Petitioner was sentenced to three concurrent twenty-year sentences, reversing his conviction for the attempted murder of Williams would have no effect on the length of Petitioner's term of imprisonment, and we decline to do so, particularly given that the case was tried as if attempted murder was a general-intent crime.

well-established in our state that transferred intent applies to general-intent crimes, we find no error in the trial court's decision to charge the jury on the doctrine of transferred intent. We further find no error in the trial court's refusal to charge the jury on AB-1st, as a lesser-included offense to attempted murder. We therefore affirm the court of appeals decision as modified and vacate the portion of its decision dealing with the issue of transferred intent.

AFFIRMED AS MODIFIED.

HEARN, FEW and JAMES, JJ., concur. BEATTY, C.J., concurring in result only.

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE COURT OF COMMON PLE

CIVIL ACTION COVERSHEET

2019-CP-41-162

Gerald Rudell Williams Plaintiff(s)

vs.

State of South Carolina Defendant(s)

Submitted By: Gerald Rudell Williams #279073
Address: Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: Gerald R. Williams Date:

NOTE: Pursuant to Rule 11, SCRCP, and the South Carolina Rules of Professional Conduct, Rule 3.1, SCACR, an attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Clerk of Court, Saluda, SC

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF Saluda)
Gerald Rudell Williams #279073)
Full name and prison number (if any) of Applicant.)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-41-162

APPLICATION FOR

POST-CONVICTION RELIEF

SC Code Ann §17-27-45 (A)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified(notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fee and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Saluda County Court of General Sessions
2. Name and location of Court which imposed sentence 100 E. Church St. Saluda, SC 29138-1444
3. Name(s) of co-defendant(s) (if any) Orienthal Jermaine Charley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2013-GS-41-257 / Attempted Murder
   (b) 2013-GS-41-258 / Attempted Murder
   (c) 2013-GS-41-259 / Attempted Murder
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) October-17-2013 / 20 Years concurrently
   (b) October-17 2013 / 20 years Concurrently

Revised 3/2003

(c) October - 17 - 2013 / 20 years concurrently

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeal

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) To extensive for this space. (See) attachment (A-1)

(b) To extensive for this space. (See) attachment (B-2)

(c) To extensive for this space. (See) attachment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) To extensive for this space. (See) attachment (A-1)

(b) To extensive for this space. (See) attachment (B-2)

(c) To extensive for this space (See) attachment

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. N/A

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Bennett E Casto, Esquire - Assistant Public Defender

ii. Robert M. Madsen, Esquire - Public Defender

iii. David Alexander, Esquire - Assitant Appellate Defender

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Trial

iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

That the Court enter judgment granting Applicant's application for post conviction relief and remanding the Criminal case for New trial.

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Saluda)

I, Gerald Rudell Williams being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gerald R. Williams

SWORN to and subscribed before me this 23 day of July, 2019

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Gerald Rudell Williams hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gerald R. Williams
Applicant

SWORN or affirmed to and subscribed before me this 23 day of July, 2019.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2026

10. State concisellY the grounds on Which bace Your allegation that YOU are being held in custody unlawfullY.

A(1) Trial counsel was ineffective for not objecting to a harmful Jury instruction.

B.(2) Appellate counsel, "David Alexander," was ineffective for failing to raise harmful error that was Reserve for Appeal.

C(3) Trial counsel and Appellate counsel failed to challenge the trial court's ruling on the Application of 609 on "O.J. Charley,"

(Attachment

11. State concisely and in the same order the fact's which support each of the grounds set out in (10): See A-1, and B-2, C-3.

(Attachment)

ISSUE

Trial Counsel was ineffetive for failing to object to the Courts harmful Jury instruction that a Specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury.

STATEMENT OF THE CASE:

ON July 9, 2013, the Saluda County Grand Jury indicted, "Mr. Williams," on three counts of attempted Murder (2013-GS-41-"257"; "258"; "259;") on october 14-17, 2013 Proceeded to a Jury trial before the Honorable J. Michael Baxley. Bennett E. Costo, Esquire, and Robert M. Madsen, Esquire, represented "Mr. Williams." Assistant Solicitors "Ervin J. Mays," Esquire, and H. Franklin Young, III Esquire, represented the state. The Jury found, "Mr. Williams," guilty as indicted and the trial Judge sentenced "Mr. Williams" to three concurrent terms of twenty Yearys incarreration.

"Mr. Williams," Filed a timely notice of Appeal and the direct appeal Perfected on February 28, 2018 the South Carolina appeal Court affirmed the conviction and sentences in a Published OPinion. Stat Vi Williams, 422 S.C 525, 812 S.E 2d 917 (Ct. APP 2018) Mr. Williams timely Petition for rehearing was denied on may 1, 2018. ON June 21

2018). "Mr. Williams," submitted a Petition for a writ of certinrar to the court, the South Carlolina Supreme Court; Petition for writ of certinrar was granted. The Supreme Court Affirmed As Modified.

Standard of Review:

Before "2010" Supreme court held, Attempt Crime require the State to Prove the defendant had Specific intent to complete the Attempt crime. (See) State V. Sutton, 340 S.C 393, 397. 522. S.E 2d 283, 285, (2000) Stating, (Attempt is a Specific intent crime).

Newly codified in 2010, required a Specific intent to kill.

IN "2015." State V. King a case that deals SQUarely with Specific intent and the elements of Attempted Murder, Legislature Clarified "A Specific intent to kill as a element of Attempted Murder. In "King" the court instructed the Jury that a Specific intent to kill is not an element of Attempted Murder, but there must be a general intent to commit Serious bodily harm. King's trial counsel objected to that instruction which Preserved the issue for Direct Appeal. King's Appellate counsel raised this issue on Direct Appeal in the initial brief

and the, "King;" Attempted Murder Conviction reversed. because the court of Appeals ruled that the Jury instruction Prejudiced, "King," as to his Attempted Murder conviction. Affected the result of his trial on that charge. However in "King 1.2017) the Supreme court looked further, and ruled that this particular error could not be deemed harmless.

ARGUment :

Therefor if Prejudiced is Present in, "King," case, and the language used in this case is indentical, it is evident that Prejudiced is Present in this case as well. The state must Prove as a element of Attempted murder that Williams acte with specific intent to kill. not general intent. The South Carloling constilution reguires the Judge charge the Jury on the Applicable Law.

IN Sum. Trial Counsel was ineffetive for failing to object to the court's harmful Jury instruction "that a specific intent to kill is not an element of Attempted Murder, but there must be a general intent to commit serious bodily indury.

(A) 1.

Had trial Counsel object to the harmful Jury instruction "That a Specific-intent to Kill is not a element of Attempted Murder, but there must be a General-intent to commit Serious bodily injury; informed the court that such Misleading instruction on the element of Attempted Murder would also Lessen the bruden of Proof for the State; Attempted Murder required a specific-intent to kill as a element which is a higher Levele-intent than that of a general -intent, and that the State must Prove as a element of Attempted Murder that Williams act with specific-intent to kill. There's a reasonable Probability the results of the Proceedings would have been different.

Furthermore the issue would have also been Preserved for Direct Appeal the conviction would have been reverse. IN STATE. V. Williams the South caralina Supreme Court stated "Notably Petitioner did not argue the trial court erred in instructing the Jury that attempted Murder was a general-intent crime to which transferred intent applied, or that he (Petitioner) was entitled to a New trial based on that error of Law alone. See King 422, S.C at 53-56, 70, 810 S.E 2d at 21-22 30. Lhold attempted murder is a specific-intent crime, and affiming the court of appeals, reversal of defendants attempted Murder conviction after the trial court instruded the Jury that,

(1) attempted Murder was a general-intent crime, and Specific-intent to kill was not an element of Attempted Murder....

The Conclusion of the Supreme court was that (Petitioners Attempted Murder case was tried, without Objection as a general-intent crime...) Counsel's unProfessional error not objecting Prejudiced Williams; Williams was not able to receive a new trial on that charge.

ISSUE:

Appellate counsel was ineffetive assistance of Counsel for failing to riase harmful error that was Preserve for APPeal; inferred Malice charge from the Use of a deadly Weapon.

STATEMENT OF FACTS:

The record reflect that trial counsel; "Mr. Casto," did obiected to the courts instruction that inferred Malice. from the Use of a deadly Weapon given by the trial Court, Trial court decline. to alter the charge in light of Belcher's decision. Tr. 719 At 3-5 Tr. 720 At 1-8.

There after the trial; on Appeal Appellate counsel, "David Alexander;" filed an mert brief and ask to be relieve as counsel. Appellate court denined Appellate Counsel "David Alexander." Motion to be relieved as Counsel and direct the Parties to brief the following issues and any other issue of arguable merit; (see) Order

1.) Whether the trial court erred in refusing to charge the Jury on the lesser-included offense of first-degree assault and battery?

2.) Whether the trial court erred in charging the Jury on the doctrine of Transferred intent?

"mr. Alexander," did brief the two issuse's order by the Appellated courts and failed to vase harmful error that was Prerve for Appeal. Like the inferred Malice charge from the Use of a deadly Weapon.

(B)(2.)

Standard of Review

In "2009," State V. Belcher the court held that instructing the jury that malice may be inferred from the use of a deadly weapon is error. Here, however, the error in charging that Malice may be inferred by the use of a deadly weapon can not be considered harmless. Evidence of self-defense was Presented, thereby highlighting the Preludice resulting from the charge. The court therefore reverse Belcher's conviction and remand for a new trial.

In "2018," Shands argues the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon... Shands contends the instruction was contrary to State V. Belcher because the attempted murder charge could have been reduced or mitigated by the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) or Shand's defense that he lacked criminal intent. The Courts Of APPeal agree and reversed Shands conviction for attempted murder.

In Shands the court of APPeal contends that if there is no evidence that one charge with attempted murder had express malice, and a specific intent to kill, the court of APPeals believe the crime would involve a lower level of intent, and thus would fall within the lesser degree of assault and battery offenses codified in section 16-3-600 (see) S.C. Cod ann § 16-3-600 (2015) and (2016) indentifing levels and degrees of assault and battery offenses.

(B) 2.

IN sum, Appellate Counsel was ineffetive assistance of Cahsel for failing to riase harmful error that was Preserve for Appeal; inferred malice charge, from the use of a deadly weapon.

Had Appellate Counsel, "Mr. Alexander," riased Preserve issue of inferred malice from the use of a deadly weapon, in light of State Vi Belcher There's a reasonable Probability the results of the proceeding would have been different; there was evidence from the fact's of this case fit within the confines of Subsection 16-3-600.(c) (1)(b)(i), which is lesser included offense of Attempted murder that reduced. (See) State V. WilliAMS Court of Appeals. The South Carolina Supreme Court hold today that a Jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is Presented that would, reduce, Mitigate, excuse, or Justify. (See) State Vi Belcher

LLJ3.

During the Counsel of the Applicant's trial the defense introduced O.J. Charley as a Witness for the defense. No foundation was ever laid by the defense or the Respondent's to Justify the introduction of OJ charley Prior Conviction. Was this matter admitted for example, Under authority of Rule 609 (A)(1) or Rule 609 (A)(2) [or Rule 403-404] of the South Carolina Rule of Evidence?

In fact, these convictions only extended to the accused. However, trial Counsel and the Respondent stipulate to by Pass the Colf factors and consent not to have the Court look at the Prejudicial Versus a Probative value under Colf. State V. Colf. 337 S.C 622, 525 S.E 2d 246 (2000).

Rule 609 (A). SCRE Provids that for the Purpose of attacking the Credibility of a witness:

1.) evidence that a witness other than an accused has been convicted of a crime shall be admitted, Subject to Rule 403..., or

Rule 404 (A) and (b) SCRE United State V. Masters. 622 F.2d 83 (4th Cir. 1980.)

At the time of Applicant's trial, no rule of Law exist in South Carolina that allow other then the accused to be Valuated under 609. Had only Counsel reasonably Considered to investigate O.J. Charley Criminal histroy.

review the discovery Provided by the Respondent's and/or reviewed O.J Charley Plea transcript. It is entirely Possible that trial counsel's Strategy would have been wholly different had he known that his client would be blindsided by the testimony and credibility on the centrality of the issue Applicant stood trial. Trial Counsel action undermine the Jury's confidence in his credibility.

Trial counsel and Appellate Counsel failed to challenge the trial court's ruling on the Application of 609 on "O. J. Charley," so as to avoid an unconstitutional ex post facto application to the Applicant. (See) Tr. 571; Tr. 572; Tr. 573; Tr. 574; Tr. 575.

STATE OF SOUTH CAROLINA
County of SALUDA

Gerald Rudell Williams #279073
Applicant,

V.

State of South Carolina
Defendant,

IN THE COURT OF Common PLEAS
ELEVENTH JUDICIAL CIRCUIT

MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF APPLICATION

Case NO. 2019-CP-41-162

Come now Gerald Rudell Williams, Pro-se here-in after, Applicant, Seeking relief in this court, Pursuant to S.C Code Ann § 17-27-20 through § 17-27-160 claiming that his constitutional right's were violated at trial including, but not limited to his Sixth Amendment right to the effective assistance of trial Counsel that is guaranted by the Sixth Amendment and furthermore, that his fourteenth Amendment right to a fair trial Was Violated as well, this being Protected by the Due Process Clause.

Applicant, through the issue Presented, and citations of authorities relied on will show unto this Court. Applicant's entitlement to the requested relief stated herein. See also S.C code Ann § 17-27-50 (1985). Specifically Set forth the grounds upon which the application is based. (make at least a Prima facie showing which would entitle him to relief before an evidentiary hearing will be schedule and held). Trial Transcript Record (Record) dated October 14-17, 2013 is attached, Exhibit (A) also attached order From the South Carolina Court of Appeals.

In Strickland v. Washington, 466 U.S 688 (1984), the United States Supreme Court held that an ineffective assistance of counsel Claim has two components, To establish ineffectiveness, a defendant must show that Counsel's representation fell below an objective standard of reasonableness." Id. at 689. To establish Prejudice he must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the Proceeding would have been different. A reasonable Probability is a probability sufficient to undermine the outcome of the Proceeding." Id. at 694.

In Williams, Terry v. Taylor, 529 U.S. 362 (2000) Justice" O'Conner" stated for the Court that in Strickland that the Prisoner need only demonstrate a "reasonable Probability that.... the result of the Proceeding would have been different." Williams, 529 U.S At 405-06.

I. Ineffective Assistance of Trial Counsel:

As to both trial Counsel, Bennett E. Casto, esquire and Robert M. Madsen, esquire, acting Jointly or Severally ("He", infra, apply to both Counsel.); And Appellate Defender David Alexander, esquire.

Trial Counsel may generously be characterized as ineffective. He not only failed the Strickland test, Id, his performance was so dismal from start to finish—after the State had rested. It actually, adversarial process broke down. That deficiency and Prejudice must be Presumed per se under Cronic, 104 S.Ct 2039. Even if Prejudice is not Presumed, there is a reasonble Probability that the outcome of the Applicant trial would have been different if his trial Counsel's Preformance had not been deficient.

Facts:

In this case, a critical analysis of the "record" demonstrates errors and omission by trial Counsel; Mr. Bennett E. Casto, esquire and "Robert M. Madsen;" and also Appellate counsel "David Alexander."

1.) Trial Counsel's "Mr. Bennett E. Casto," and Robert M. Madsen was ineffective for not objecting to incorrect jury instruction; that a specific intent to kill is not an element of attempted Murder, but there must be a general intent to commit serious bodily injury.

2.) Appellate counsel was ineffective for not raising arguable merit that was Preserve for Appeal. Mr. David Alexander did not raise Preserve issue that, "inferred malice, from the use of a deadly weapon.

3.) Trial counsel and Appellate Counsel failed to challenge the trial Court's ruling on the Application of 609 to avoid an unconstitutional ex-Post-facto application to the Applicant, (See) Tr. 571 Through Tr. 575.

CONCLUSION

WHEREFORE, Applicant believes that through the issue presented and the citations of authorities relied on that he has shown unto this Court that his constitutional rights were violated at trial and that he is entitled to the requested relief stated herein.

THEREFORE, Applicant will forever pray that this Court will grant the requested relief of a new trial.

Respectfully Submitted
Gerald Rudell Williams

Gerald Rudell Williams #279073
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Saluda

Case NO.

Gerald Rudell Williams #279073 Applicant,

vs.

State of South Carolina Defendants

Trial Transcript of

RECORD

Gerald Rudell Williams

Copy m

State of South Carolina

Court of General Sessions

County of Saluda

State)
)
v.) Transcript of Record
) 13-GS-41-257
) 13-GS-41-258
) 13-GS-41-259
)
Defendant.)

October 14 - 17, 2013
Saluda, South Carolina

B E F O R E:

The Honorable J. Michael Baxley, Judge; and a jury.

A P P E A R A N C E S:

Ervin J. Maye, Assist. Solicitor
H. Franklin Young, III, Assist. Solicitor
Attorneys for the State

Bennett E. Casto, Assist. Public Defender
Robert M. Madsen, Public Defender
Attorneys for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

INDEX

INDEX

Page 90

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-1	Photograph	154	154
S-2	Aerial Photograph	156	156
S-3	Aerial Photograph	158	158
S-4	Photograph	169	172
S-5	Photograph	169	172
S-6	Photograph	169	172
S-7	Photograph	169	172
S-8	Photograph	169	172
S-9	Photograph	169	172
S-10	Photograph	169	172
S-11	Photograph	169	172
S-12	Photograph	169	172
S-13	Photograph	169	172
S-14	Photograph	169	172
S-15	Photograph	169	172
S-16	.40 Caliber Pistol	169	383
S-17	9mm Pistol	169	383
S-18	Door	172	172
S-19	Photograph	173	177
S-20	Photograph	173	177
S-21	Photograph	173	177
S-22	Photograph	173	177
S-23	Photograph	173	177

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-24	Photograph	173	177
S-25	Photograph	173	177
S-26	Photograph	173	177
S-27	Envelope	191	214
S-28	Photograph	321	328
S-29	Photograph	321	328
S-30	Partial Latex Glove	348	390
S-31	Glove Fragments	349	391
S-32	Bandana and Hats	350	351
S-33	Shell Casings	370	379
S-34	Buccal Swabs	419	421
S-35	DNA Swabs	472	
S-36	DNA Swabs	472	
D-1	Photograph	288	288
D-2	Photograph	288	288
D-3	Photograph	292	295
D-4	Photograph	487	488
D-5	Photograph	487	488
D-6	Photograph	489	489
D-7	Photograph	489	489
C-1	Search Warrant	90	
C-1A	Search Warrant	104	
C-2	Search Warrant	103	

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
C-3	SLED Report	104	

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 14th - 17th of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 7, 2014

Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

EXHIBIT A

996
(3) SW.

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerald Rudell Williams, Appellant.

Appellate Case No. 2013-002304

ORDER

Counsel has submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and a motion to be relieved as counsel. We deny the motion to be relieved as counsel and direct the parties to brief the following issues and any other issue of arguable merit:

(1) Whether the trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery?

(2) Whether the trial court erred in charging the jury on the doctrine of transferred intent?

Appellant shall serve and file a brief on these issues within twenty days of the date of this order. Thereafter, Respondent shall have thirty days to serve and file its brief.

H. Bruce Williams J.

Paula H. Thomas J.

John D. Geathers J.

Columbia, South Carolina

FILED
3/31/16

State of South Carolina
County of SALuda

Gerald Rudell Williams #279073
Applicant,

V.

State of South Carolina
Defendant,
_____X

2019 JUL 25 AM 10:54
Filed: Clerk of Court, Saluda, SC

IN The Court of Common Pleas
ELEVENTH JUDICIAL CIRCUIT

SUMMONS

File NO 2019-CP-41-162

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to aswer the Complaint herein, a copy of which is herewith served upon You, and to serve a copy of Your answer to this complaint upon the subscriber, at the address shown below, within ninety (90) days. after service hereof, exclusive of the day of such service, and if You fail to answer the complaint Judgment by default will be rendered against You for the relief demanded in the Complaint.

Bishopville South Carolina

Sworn To before me this ____ day
of _____

_____

mY Commission EXPires: _____

Gerald R. Williams

Gerald Rudell Williams #279073
Lee Correctional Institution
990 Wisacky HWY.
Bishopville, SC 29010

STATE of SOUTH CAROLINA
County of SALUDA

Gerald Rudell Williams #279073
Applicant,

V.

State of South Carolina
Defendant, X

IN THE COURT of Common PLEAS
ELEVENTH JUDICIAL CIRCUIT

2019 JUL 25 AM 10:58
Filed Clerk of Court, Saluda, S.C.

Case Number:

CERTIFICATE of SERVICE

2019-CP-41-162

I certify that a true copy of: Post-Conviction Relief Application and attached Record of Transcript dated October 14-17-2013 (EXhibits) in this case have been served on: Robert D. Corney. Esq., office of the Attorney General at Rembert Dennis Building, 1000 Assembly St. Room 519, Columbia S.C 29201 and filed at City Courthouse, Doris B. Holmes, Clerk of Court, 100 East Church street Suite 6, Saluda, S.C 29138-1444 this 23 day of 7 2019.

Sworn To before me this ____ day of ____

____

my Commission EXpires: ____

Gerald Rudell Williams #279073.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C 29010

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Gerald Williams, SCDC #279073, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-41-0162 **RETURN** (COUNSEL APPOINTED)

In response to the post-conviction relief (PCR) action commenced by Gerald Williams (Applicant) on July 25, 2019,[1] the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its July 2013 term, the Saluda County Grand Jury indicted Applicant for three counts of attempted murder (2013-GS-41-0257, -0258, -0259). On October 14, 2013, Applicant proceeded to a jury trial before the Honorable J. Michael Baxley. Bennett E. Casto, Esquire and Robert M. Madsen, Esquire (collectively, Trial Counsel), represented Applicant. Assistant Solicitors Ervin J. Maye, Esquire, and H. Franklin Young, III, prosecuted the case.

A. Summary of Evidence Adduced at Trial

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

[1] The State received the application on November 27, 2019.

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 Applicant 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