STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

PETITIONER,

v.

MONTRELLE LAMONT CAMPBELL,

RESPONDENT.

Appellate Case No. 2022-000349

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on February 24, 2022.

QUESTIONS PRESENTED

I. **Did the Court of Appeals err in its analysis of malice for attempted murder under *State v. King* and S.C. Code of Laws § 16-3-29, and in its disregard for the copious amount of direct and circumstantial evidence supporting a finding of malice?**

II. **In considering *State v. Burdette*, did the Court of Appeals err by misapplying the standard for harmless error and resting its decision to reverse on the assumption that the jury could have ignored the other evidence of malice in the record?**

III. **Did the Court of Appeals fail to properly apply the "any evidence" standard to the accomplice liability instruction given at trial when the evidence demonstrated that a second gunman was seen fleeing the scene, two cell phones were found at the scene, two brands of ammunition were found at the scene, no ballistics evidence was offered demonstrating all ammunition was fired by the same gun, and the video evidence of Campbell and co-defendant Richardson is not of sufficient quality to confirm their respective identities with absolute certainty?**

STATEMENT OF THE CASE

Campbell was indicted on April 11, 2016, by a Charleston County Grand Jury for murder and two counts of attempted murder. Respondent proceeded to trial on January 8, 2018, before the Honorable Deadra L. Jefferson, and a jury. (R. p. 1). The State was represented at trial by Assistant Solicitors Chad Simpson and Alex Ginsberg. (R. p. 1). Attorneys Mary Ford and Michael Williams represented Campbell. (R. p. 1). At the conclusion of trial on January 12, 2018, the jury found Campbell guilty as indicted. (R. p. 554, line 9 through p. 555, line 14). Campbell was sentenced to life without parole for murder and to concurrent thirty year sentences for each count of attempted murder. (R. p. 556, lines 7-14).

Campbell filed a timely notice of appeal on January 23, 2018. He sought reversal of his conviction on the grounds that a *Belcher* charge for implied malice was improper for an attempted murder charge under *King* and that there was no evidence in the record to warrant the trial court giving a hand of one is the hand of all jury charge. The parties completed briefing on August 16, 2019, and conducted oral argument on September 15, 2021. The Court of Appeals reversed Campbell's conviction by its Opinion filed December 22, 2021. *State v. Campbell*, 435 S.C. 528, 868 S.E.2d 414 (Ct. App. 2021), reh'g denied (Feb. 24, 2022). The State filed a Petition for Rehearing on January 6, 2022. The Court of Appeals requested Campbell file a Return to the Petition for Rehearing on January 7, 2022. Campbell filed his Return on January 14, 2022, and the Court of Appeals later denied the Petition for Rehearing on February 24, 2022.

This Petition for Writ of Certiorari now follows.

STATEMENT OF FACTS

Campbell visited the home of Katrina Brown on the night of September 17, 2015. Campbell's sister, Kadeshia, along with other visitors, were at Katrina's home that night, but Katrina was not familiar with Campbell and asked him repeatedly to leave. (R. p. 23, line 7; p. 29, lines 12-25; p. 30, line 5 through p. 31, line 11). Soon after, she stepped outside to smoke a cigarette and was attacked by Campbell. Campbell struck Katrina in the head and appeared ready to continue the attack, but he was interrupted by other party goers who came out to intervene. Their presence caused Campbell to back away. It appeared as though Campbell was going to pull something out of his car, but ultimately Campbell left. (R. p. 31, line 16 through p. 32, line 10; p. 33-34). Katrina learned the following day (Friday) that people in town were already talking about Campbell hitting her that night. ((R. p. 36, lines 15-24). Friday evening Katrina hosted friends and family at her

home again, a get together that ran into Saturday morning when Victim Antwan Frost arrived. (App., p. 37-38).

Less than 36 hours after assaulting Katrina - sometime after 4am on September 19, 2015 – Campbell took the keys to his girlfriend's car without her permission, and convinced his friend, co-defendant Trivelle Richardson (hereinafter "Richardson"), to join him on a drive into Charleston. Richardson testified that Campbell told him they were going to get cigarettes, but that Campbell passed the store and continued into downtown. (R. p. 260-265; p. 230).

Video surveillance captured the car as it parked on Nunan Street, near Katrina's home on Norman Street. (App., p. 23-24; p. 465; p. 207). Tomeka President, Campbell's girlfriend, testified that the gold Buick Century in the surveillance video was hers, and that she called a taxi and was late to work due to the surprising absence of her car that morning. (R. p. 232, line 19 through p. 233, line 15; p. 237, line 15 through p. 239, line 7; p. 240, line 4-24). Video footage shows two Africa-American individuals pulling up to Nunan Street, with one of the individuals staying in the car and the other retrieving a rifle from the car and walking up the street in the direction of Katrina's home. (R. p. 207, lines 4-25). The video is not of sufficient quality to positively identify these individuals with absolute certainty. These individuals were later believed to be identified by police as Richardson and Campbell. (R. p. 348-349). Moments later you see the individual with the gun running back to the car. (R. p. 346, lines 11-14). According Richardson, whom testified on behalf of the state, he was the individual in the video who initially stayed with the car. (R. p. 286, lines 11-15). He testified that it was Campbell who walked off toward [Gadsden] Green, then came running back after the shooting, and instructed him to get in the driver seat and drive away. (R. p. 271; p277, line 18 through p. 279, line 9).

At approximately 6:30am, Katrina Brown was in her home with numerous guests, including her sister Kerri Brown, her cousin, Tierra Brown, and her longtime friend Antwan Frost. They were enjoying their get-together when a hail of gunfire into the crowded apartment ensued. (R. p. 41-42; p. 39, p. 73). Kerri and Tierra were both injured, with Kerri taking a bullet that grazed her head and Tierra taking a bullet that struck her arm. (R. p. 76-78; p. 95). Mr. Frost was struck in the heart and died at the scene. (R. p. 194).

The state put forth evidence at trial that demonstrated the following: 14 total rounds of high-caliber ammunition were fired into the apartment from the rear porch area. (R. 122, line 20 through p. 123, line 9; p. 133, line 13 through p. 134, line 4). These 14 rounds were not all of the same brand of ammunition. (R. p. 134-135; p. 137). No gun was ever recovered and no ballistic evidence was presented to the jury that would demonstrate all of the ammunition was fired from the same gun. Police also recovered two cellphones from the location where the guns were fired (as indicated by the location of the spent shell casings). (R. p. 157-158).

In addition to the evidence presented by the State, the defense entered the testimony of Peggy Blake, who lived on Bogard Street near the scene of the crime. (R. p. 432). She testified to hearing the nearby gunfire and saw a separate "hooded individual", carrying a "sporty rifle", leaving from the area where the shooting had just taken place. She testified that this individual left the area in a lime green car. (R. p. 433-434).

ARGUMENT

I. The Court of Appeals committed reversible error in its analysis of malice for attempted murder under *State v. King* and S.C. Code Ann. § 16-3-29, and in its disregard for the copious amount of direct and circumstantial evidence supporting a finding of malice.

The Court of Appeals' reversal involves a conglomeration of errors concerning the interplay of attempted murder, specific intent, and inferred malice. This case no doubt involves an area of law that has come into recent confusion in our State, and certiorari is warranted to address that confusion to ensure proper adjudication in the future. However, the Court of Appeals' opinion is not merely one that insufficiently addresses a confusing topic – it is one that reaches egregiously improper legal and factual conclusions. The Court of Appeals' errors include finding: 1) that attempted murder, currently viewed as a specific intent crime, cannot be accompanied by instruction of the jury's right to infer malice from the facts presented; 2) that the State acquiesced to such a legal construct and relied solely upon evidence of express malice; and 3) that there is insufficient record evidence demonstrating malice other than Campbell's use of a deadly weapon.

The Court of Appeals' first error, that a specific intent attempted murder charge is comprehensively inconsistent with inferred malice, is a legal finding in conflict with both *King* and the controlling statutory law of South Carolina. This improper holding can be found from the outset of the court's legal analysis, wherein it stated: "Campbell argues the trial court erred by giving an inferred malice jury instruction because attempted murder is a specific intent crime and requires both express malice and a specific intent to kill pursuant to our supreme court's ruling in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). We agree." *State v. Campbell*, 435 S.C. 528, 535, 868 S.E.2d 414, 418 (Ct. App. 2021), reh'g denied (Feb. 24, 2022). This holding is in direct conflict with the express language of S.C. Code of Laws Ann. § 16-3-29, dictating that attempted

murder is explicitly satisfied by "malice aforethought, either express or implied". Likewise, though this Court discussed tangentially the topic of implied malice for attempted murder in *King*, it explicitly did not reach a legal holding on the issue the Court of Appeals now relies. The Court of Appeals holding is without controlling authority of any kind, and the holding itself is in error.

This issue reaches further than the post-trial application of *Burdette*. In *Burdette*, this Court held that trial courts should not explicitly instruct the jury on the inference of malice it may make as to the use of a deadly weapon. However, nowhere has this Court ever suggested that a jury is not permitted to make inferences as it sees fit from the circumstantial evidence presented in a case. Not all evidence of malice will be "direct evidence of malice" such that the defendant explicitly announces his evil intentions/hatred/ill-will/hostility (i.e. malice) ahead of time. Real world attempted murder does not usually have the script of a Bond film. Reaching reasonable inferences from circumstantial evidence has been a bedrock component of our nation's jury system since its founding. However, the Court of Appeals improperly concludes that "express and implied malice" in the context of attempted murder, must depart from its correlative understanding that these are not "different types of malice" merely the same malice proven via direct or circumstantial evidence (as was charged to the jury in this case). (R. p. 534). Contrary to the Court of Appeals ruling, no such limitation exists and the State argued vehemently against such a legal limitation.[1]

An individual can harbor a specific intent kill without every one of his actions being an overt demonstration of the malice for such intent. The jury's ability to infer malice from the circumstances of the case is critical and proper. Nevertheless, there is without question explicit

[1] Adding to the perplexing finding of the Court of Appeals, which explicitly found attempted murder to be only provable through "express malice", the Court of Appeals relied extensively upon *State v. Brooks* for both legal and factual comparison. However, *Brooks* does not discuss "express malice" at all. Respondent cannot factually or legally square the Court of Appeals' reliance upon *Brooks* with the holding the Court of Appeals chose to reach in this case.

evidence of malice in this record that requires no need for inference – be it called "express malice" or "direct evidence of malice". And, such would be more than enough to support the jury's finding of malice, without reliance upon the implied malice from the use of a deadly weapon charge.

However, in addition to the legal errors articulated above, the Court of Appeals disregarded the considerable evidence of malice that existed within the record, due at least in part to its erroneous analysis of how malice may be demonstrated. The Court of Appeals considered the State's evidence of malice to be limited to "evidence that Campbell had recently hit Katrina, Campbell drove across town in his girlfriend's car, and fourteen rounds were fired from the rifle into Katrina's apartment." *Campbell*, 868 S.E.2d at 419. While this is incidentally a concession by the court that evidence of malice exists (*infra*), the Court of Appeals misses the mark by being dismissive of numerous other instances of malice within the record.

This Court held that "Campbell's previous altercation with Katrina and Campbell driving across town "is not a total disregard for human life like the defendant in *Brooks* displayed." Such language is one of the ways in which malice may be *inferred.* A jury could easily infer Campbell demonstrated ill-will with an intent to do harm by these actions. In fact, historically, evidence of prior grudges, lying in wait, lying in ambush, and preparation for the crime have all been identified as evidence of malice *that does not require inference by the jury.* See *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020); *State v. Judge*, 208 S.C. 497, 506, 38 S.E.2d 715, 720 (1946); *State v. Strickland*, 147 S.C. 514, 145 S.E. 404, 405 (1928), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *State v. Alford*, 264 S.C. 26, 32, 212 S.E.2d 252, 254 (1975), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (citing 40 C.J.S. Homicide s 209). Suggesting that Appellant's prior physical attack upon Katrina and his driving across town do not satisfy a "total disregard for human life" standard is to

misconstrue the purpose of malice evidence. The evidence shows motive, ill-will, and premeditation of Campbell's intent to kill.

Next, there is a distinction to be made between "inferring malice from the use of deadly weapon" and the "manner in which that deadly weapon was used." Someone committing a shooting in such a way that it could realistically and deliberately result in the deaths of numerous unsuspecting men, women, and children is a demonstration of malice in its most obvious form. There is no explanation for such actions and it demonstrates that the manner in which a shooting takes place can serve as evidence of malice beyond the simple use of a deadly weapon that this Court no longer wishes to see expressly charged. All of which is to say, notwithstanding the *Burdette* issue in this case, *the nature of the case itself is inherently malicious.* Though the Court of Appeals itemized "someone firing a weapon fourteen times" as one of the State's instances of malice, it provided no explanation for why such actions would not carry substantial weight toward establishing malice in this case beyond the limitations of *Burdette*; the Court of Appeals essentially disregarding the nature of Campbell's crime entirely from its reasoning.

Having listed only the above three indications of express malice, the Court of Appeals disregards the additional evidence of preparation for the crime. Campbell[2] 1) took someone else's car without permission *during the early morning hours* so as to commit the crime without being seen, 2) acquired the services of a friend[3] to park his getaway car *away from the scene*, 3) arranged it so that his friend would serve as a getaway driver, 4) walked on foot in the early morning hours to Katrina's apartment while carrying with him an assault rifle, 5) committed the crime in a "lying

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[2] Presumably, Campbell *is at least one of the gunmen* who committed this shooting. (*Infra*).

[3] The State's theory of the case is that this friend is Trivell Richardson, but Petitioner argues the video does not provide absolute proof as to which culprit is which, leaving Richardson the possibility of switching his role in the crime with that of Campbell's, and making an accomplice liability charge necessary. (*Infra*).

in wait/lying in ambush" manner, such that the victims were unaware of his presence and intentions, 6) ran from the scene without concern for the well-being of the apartment's occupants – constituting positive evidence of his deliberate intention to take life, and 7) ran back to the getaway vehicle and had his friend drive away from the scene. Each of these actions is a separate and distinct portion of the Campbell's planning and preparation for the shooting, and they each constitute evidence of malice. Moreover, as evidence of preparation for the crime itself, these actions do not *require* inference to demonstrate ill-will. They are direct evidence that Campbell formulated in his mind the desire to 1) go to the scene of a prior dispute, 2) shoot 14 rounds into a crowded apartment so as to kill the individuals residing in that location, and 3) evade responsibility for the crime. Inexplicably, however, none of these facts were considered by the Court of Appeals.

The Court of Appeals did not abide by the express statutory language set forth in § 16-3-29, it then stretched this Court's opinion in *King* well beyond its legal holding and ruled that an attempted murder charge can only be supported by evidence of "express malice". To compound these legal errors, the Court of Appeals then disregarded substantial evidence of malice in reaching its decision to reverse. Certiorari should be granted in this matter to correct the Court of Appeals' errors of law and fact. Certiorari should also be granted to clarify an area of law plagued by confusion and inconsistency.

II. In considering *State v. Burdette*, the Court of Appeals erred by misapplying the standard for harmless error and resting its decision to reverse on the assumption that the jury could have ignored the other evidence of malice in the record.

In addition to the Court of Appeals' errors of law and fact concerning *King* and § 16-3-29, the Court of Appeals also failed to properly apply the standard for harmless error, conceded that evidence of malice was present within the record, and based its decision to reverse on the

assumption that the jury could have ignored the "non-*Burdette*" evidence of malice within the record. Certiorari should be granted to correct this error of law.

The Court of Appeals asserted the following recitation of law for harmless error review of a jury instruction:

> 'An erroneous instruction alone is insufficient to warrant this [c]ourt's reversal.' *Id.* at 496, 832 S.E.2d at 578. '[E]rroneous jury instructions are subject to a harmless error analysis.' *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020). 'When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.' *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (quoting *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014)). 'In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.' *Id.* at 496, 832 S.E.2d at 578-79 (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998)).

Campbell, 868 S.E.2d at 419. This is not an inaccurate statement of law. However, the Court of Appeals cannot avoid reversible error by correctly reciting law and then inappropriately applying that law. Such error exists in the fact that the Court of Appeals expressly conceded the presence of direct evidence of malice in the record, but erroneously construed the harmless error paradigm to support the contention that a jury instruction is not harmless if the jury "could have" relied upon that erroneous instruction.

The Court of Appeals' errors are demonstrated within the following excerpts from its opinion.

i. "In the present case, the evidence of express malice is significantly less than the amount in *Brooks*."[4]

[4] Respondent would also dispute the conclusion that *Brooks* carries more evidence of malice, given the lying in ambush style shooting that killed one and endangered numerous other individuals. It

ii. "The jury could have reasonably found malice partially based on the use of a weapon."

iii. "Indeed, the jury may have found malice based solely on the use of a weapon."

Id. at 419. In the first and second statements (i & ii), the Court of Appeals explicitly concedes that there is evidence within the record to support the element of malice, other than the use of a deadly weapon. The first statement even goes so far as to concede that there is evidence of malice in the record that does not require inference by the jury. (See *Supra*). The element of malice is not one that must be satisfied "by degree". There no "substantial evidence of malice" threshold that must be met; the satisfaction of the element is judged strictly by its existence or nonexistence in the evidence presented. Thus, a charge on inferred malice from the use of a deadly weapon cannot be said to have contributed to the verdict when the record has been shown to include other evidence of malice. This is especially so when there is, as conceded by the Court of Appeals, *evidence of express*[5] malice within the record. See *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020) (parenthetically summarizing the holding in *Wilds* that "malice need be implied only if there is no positive evidence of express malice."). An outright concession by the Court of Appeals as to the presence of proper and indisputable evidence of malice is in conflict with its decision to reverse.

The second circumstance of error from these statements (ii & iii) is that the Court of Appeals has clearly misapplied the law governing harmless error analysis. In truth, the Court of Appeals' error demonstrates that it has not conducted any analysis at all. The conclusion reached by the Court of Appeals concludes that if the jury could have considered the erroneous charge in

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is strictly a matter of the victims' good fortune that Campbell is not facing multiple counts of murder for his actions.

[5] I.e. direct evidence of malice that does not require inference by the jury.

question, either partially or entirely, then it cannot reach the conclusion that the charge was harmless. Such an evaluation would render only an absolutely irrelevant jury charge as "harmless" in the eyes of the law, and harmless error is not the strict equivalent of irrelevant error.

In addressing whether an erroneous charge is harmless the analysis cannot be so simple as asking: "could the jury have relied upon it". *The answer to this question will always be yes.* The proper framing of the issue is whether the jury "needed" to rely upon it. This sentiment is entirely absent from the Court of Appeals' review, but it is clearly apparent in numerous holdings by this Court. *State v. Jefferies*, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994) ("[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."); *Arnold v. State*, 309 S.C. 157, 166, 420 S.E.2d 834, 839 (1992) ("The first step in determining whether these instructions contributed to the jury's verdict is to determine what evidence the jury considered on the issue of [malice], independently of the presumptions themselves."); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (citing *State v. Jeffries*, and noting that "whether or not the error was harmless is a fact-intensive inquiry" that requires the court weigh the facts heard by the jury against the erroneous charge).

The Court of Appeals did not ask whether the evidence of malice, independent of presumption, would be sufficient to satisfy the charge. The failure by the Court of Appeals to address harmless error in this way coupled with its outright concession that direct evidence of malice existed within the record is tantamount to the Court of Appeals concluding that the jury could have just ignored the considerable evidence of malice within record in reaching its verdict. The Court of Appeals' conclusion that the jury "may have found malice based solely on the use of a weapon" is to presume that the jury disregarded its instruction by the court as to the definition of malice and disregarded the numerous facts establishing malice set forth in evidence presented.

The Court of Appeals' conclusion is inconsistent with the well-settled presumption that the jury will obey the instructions of the court. *Parker v. Randolph*, 442 U.S. 62, 73, 99 S. Ct. 2132, 2139, 60 L. Ed. 2d 713 (1979), abrogated on other grounds by *Cruz v. New York*, 481 U.S. 186, 107 S. Ct. 1714, 95 L. Ed. 2d 162 (1987) ("A crucial assumption underlying that system [of trial by jury] is that juries will follow the instructions given them by the trial judge."); See also *Aldrich v. S. Ry. Co.*, 95 S.C. 427, 79 S.E. 316, 320 (1913); *Coogler v. Thompson*, 286 S.C. 168, 169, 332 S.E.2d 215, 216 (Ct. App. 1985).

The clear error on the part of the Court of Appeals, in conceding the presence of direct evidence of malice and assuming the jury could disregard such evidence in finding malice only from the use of a deadly weapon, is an error demanding correction. Certiorari is warranted in this matter so as to properly apply a harmless error analysis in this case and properly consider the other evidence of malice independently from the erroneous charge.

III. **The Court of Appeals failed to properly apply the any evidence standard to the accomplice liability instruction given at trial when the evidence demonstrated that a second gunman was seen fleeing the scene, two cell phones were found at the scene, two brands of ammunition were found at the scene, no ballistics evidence was offered demonstrating all ammunition was fired by the same gun, and the video evidence of Campbell and co-defendant Richardson is not of sufficient quality to confirm their respective identities with absolute certainty.**

While the evidence presented at trial demonstrated beyond a reasonable doubt that Campbell was, at minimum, a participant in the shooting that resulted in Victim Frost's death, and Victims Kerri and Tierra's injuries, there are no eyewitnesses or forensic proof identifying the individual who actually pulled the trigger. For that matter, the record also fails to confirm that only one trigger was pulled that morning. That limitation to the record, combined with the numerous instances of circumstantial evidence, demonstrated the need for the accomplice liability charge given by the trial court, and the court exercised proper discretion in instructing the jury that

the hand of one is the hand of all. The Court of Appeals failed to properly apply the "any evidence" standard in this matter and it further failed to give deference to the discretion of the trial court ruling, instead choosing to favor its own interpretation of the record. Certiorari should be granted to correct the legal and factual errors of the Court of Appeals.

In determining whether a trial court erred in charging the jury on the law of accomplice liability, "[a]n appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "The law to be charged must be determined from the evidence presented at trial." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction." *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011). "To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. The circumstantial evidence and the conduct of the parties may consist of concert of action." *State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963) (citing *15 C.J.S. Conspiracy § 93a); State v. Condrey,* 349 S.C. 184, 192, 562 S.E.2d 320, 323–24 (Ct. App. 2002); *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

In its opinion, the Court of Appeals summarized Campbell's position: "Campbell first objected to the accomplice liability jury instruction, arguing no evidence implicated a second party." *Campbell*, 868 S.E.2d at 417. The Court of Appeals then agreed that "Campbell argues neither party presented evidence he acted with another pursuant to a common design or plan." *Id.* at 420. The Court of Appeals bases its decision on a review of *State v. Washington*, finding that 1) though evidence of an accomplice relationship existed, there was no evidence that Richardson

actually committed the shooting, and 2) though there was evidence of a second party who could have committed the shooting, there was no evidence supporting an accomplice relationship between he and Campbell. The Court of Appeals erred in both regards.

The Court of Appeals concluded that Richardson was the driver and that Campbell was the shooter, but the only distinguishing proof as to which culprit performed the role of shooter, is the testimony of Richardson himself. The jury is not required to believe the entirety of Richardson's testimony. Richardson's testimony was obviously beneficial to the State, but as Respondent's cross-examination and closing argument suggested, he has reason to try and limit his own culpability. The record cannot irrefutably demonstrate that Richardson was "the driver" suspect, and that Campbell was the "rifle carrier" caught on camera. This Court disregards the possibility that if the jury were not convinced beyond a reasonable doubt as to which culprit on video was carrying the gun toward the scene of the crime, they need not differentiate if they were certain both men were aware of and perpetuating the crime together. The record is "equivocal" as to this point, as Richardson's various statements to police demonstrate prior dishonesty on the question of his identity. Such, *by itself*, satisfies the minuscule "any evidence standard" that would warrant the charge from the court. However, the Court of Appeals' errors did not end there.

In addition to the clear accomplice relationship between Respondent and Richardson that lacks irrefutable proof of the identity of the shooter, the record also contains Ms. Blake's eyewitness testimony. She testified to seeing an unidentified hooded individual leaving the scene of the shooting while carrying a "sporty rifle" and fleeing in a lime green car. Despite the "any evidence" and the "abuse of discretion" standards it must overcome to find reversible error by the trial court, the Court of Appeals concluded that there was no equivocal evidence that that Campbell was working in concert with the man seen by Ms. Blake. Without explicitly stating so, the Court

of Appeals appears to infer that "direct" evidence of an accomplice relationship is required to warrant an accomplice liability charge. It is not; circumstantial evidence will suffice, and there is considerably circumstantial evidence that the shooter did not act alone in this murder. See *State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963). Here, the remarkable fact that two different individuals were seen fleeing the same crime while carrying rifles, *at the precise moments following a massive shooting committed by rifle fire*, is undeniable circumstantial evidence that the two individuals could have been working together. To suggest the jury could not infer such a scenario by believing both the video evidence *and* the testimony of Ms. Blake, is to disregard the maxim that "it is always for the jury to determine the facts, and the inferences that are to be drawn from th[o]se facts. *State v. Burdette*, 427 S.C. 490, 502, 832 S.E.2d 575, 582 (2019)(quoting *State v. Cheeks*, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013)). Such an inference does not require the jury to "disbelieve" any evidence presented to them during trial, as this inference could be reached by believing *all* the evidence presented at trial. It is the jury's prerogative to establish the credibility of witnesses, and since the testimony of Ms. Blake is not incompatible with the video surveillance and testimony of Richardson, they would have had every right to reach this conclusion. If the jury had interpreted the evidence in this manner, the lack of an accomplice liability charge in this case would have left the jury with no instruction on how to articulate guilt if they believed Campbell was involved, but had help from the culprit seen by Ms. Blake.

Moreover, that particular inference – *that there were two shooters at the scene* – is corroborated by other evidence that the Court of Appeals omitted from its analysis entirely. *Two separate cell phones* were found at the location where the shooting was committed. (R. p. 157-158). This bolsters the inference that *two people were at the scene* of the crime. Additionally, the 14 recovered shell casings were not all of the same manufacturer; this bolsters the reasonable

inference that *two guns were at the scene* of the crime. (R. p. 134-135). Lastly, the evidence in the record *does not* inform the jury that these 14 rounds were all fired from the same firearm, permitting the *reasonable inference that two guns were fired* at the scene of the crime.[6]

Admittedly, there is no *direct evidence* showing an agreement between the two witnessed gunmen seen fleeing the scene, but such is not required. Circumstantial evidence can be used to establish an accomplice theory. The jury was tasked with determining whether Campbell was guilty, *not that he was solely guilty*. The Court of Appeals is confined to an "any evidence" standard, and the jury had all of the pieces to the puzzle they would need to reasonably conclude that there were two shooters at the scene of the crime that morning. To ignore the circumstantial evidence of this case is clear reversible error.

CONCLUSION

Respondent respectfully petitions this Court to grant certiorari so that the specific errors of the Court of Appeals can be corrected and so that necessary guidance can be provided to lower courts on an area of law that has come under recent and substantial confusion.

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[6] If the jury were to believe the testimony of Mr. Richardson and Ms. Blake, the Court of Appeals' decision could only be supported by the explanation that two separate shooters wanted to commit the same crime independently, but by sheer coincidence, happened to arrive at the same time to do so.

Respectfully submitted,

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Attorney General

DONALD J. ZELENKA
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Solicitor, Ninth Judicial Circuit

s/W. Joseph Maye
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ATTORNEYS FOR PETITIONER

Columbia, South Carolina
April 18, 2022

RECEIVED
Apr 18 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

PETITIONER,

v.

MONTRELLE LAMONT CAMPBELL,

RESPONDENT.

Appellate Case No. 2022-000349

PROOF OF SERVICE

I, **Donna D'Alessio**, am an employee of the Petitioner, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Writ of Certiorari, and Proof of Service has been forwarded to Respondent's counsel, Lara M. Caudy, Esq., via email today, April 18, 2022 to lcaudy@sccid.sc.gov, as well as to her assistant, EKapeluck@sccid.sc.gov.

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

This 18th day of April, 2022.

s/ Donna D'Alessio
Donna D'Alessio,
Legal Assistant to W. Joseph Maye
Assistant Attorney General