

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 19-0911

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STATE OF IOWA  
Plaintiff–Appellee,

vs.

ANTHONY ALEXANDER MONG,  
Defendant–Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY  
THE HONORABLE WILLIAM P. KELLY

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**APPLICATION FOR FURTHER REVIEW**  
**(Decision Date: February 16, 2022)**

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. Did the Jury Instructions on the Charges of Attempted Murder, Intimidation with a Dangerous Weapon, and Willful Injury Causing Bodily Injury Allow the Jury to Convict Mong under the Doctrine of Transferred Intent?**
  
- II. Is There Sufficient Evidence to Support Mong's Convictions for Attempted Murder, Intimidation with a Dangerous Weapon, and Willful Injury Causing Bodily Injury?**

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 3

STATEMENT SUPPORTING FURTHER REVIEW ..... 4

STATEMENT OF THE CASE..... 6

ARGUMENT.....15

**I. This Court Should Grant Further Review to Clarify the Manner in Which the Doctrine of Transferred Intent Should be Submitted to a Jury and to Determine Whether There is Sufficient Evidence to Support Mong’s Convictions for Attempted Murder, Intimidation with a Dangerous Weapon with Intent, and Willful Injury Causing Bodily Injury.....15**

CONCLUSION ..... 29

CERTIFICATE OF COMPLIANCE ..... 30

## **STATEMENT SUPPORTING FURTHER REVIEW**

A panel of the Court of Appeals reversed Anthony Mong's convictions for attempted murder, intimidation with a dangerous weapon, and willful injury, finding insufficient evidence to support the specific intent elements of those offenses. *See State v. Mong*, No. 19-0911, slip op. (Iowa Ct. App. Feb. 16, 2022) [hereinafter, "slip op."]. Mong was charged with firing a gun into a group of people that included Ricco Martin and Shane Woods. The State's theory of the case was that Mong's intended target was Ricco Martin but that his shot hit Shane Woods. The Marshalling instructions informed the jury of the requisite specific intent for each of the charges, instructing that the specific intent be directed was Shane Woods. A separate instruction informed the jury on the doctrine of transferred intent. The Court of Appeals read the marshalling instructions in isolation from the rest of the instructions, found that the instructions submitted to the jury required the State to prove that Mong's specific intent was directed at Shane Woods, held there was insufficient evidence to support those elements, and reversed Mong's convictions for attempted murder, intimidation with a dangerous weapon, and willful injury.

This Court should grant further review and find that the instructions submitted to Mong's jury permitted conviction based upon evidence that the requisite specific intent was directed at Ricco Martin and hold that Mong's convictions are supported by sufficient proof.

The Court should also take further review to clarify the manner in which the issue of transferred intent should be instructed and submitted to the jury. There are no uniform instructions addressing this issue. The instructions submitted by the district court in Mong's case were clear and did not confuse the jury; yet, a panel of the Court of Appeals found the instructions inadequate to permit a conviction under the prosecution's clear theory of the case and overwhelming evidence that Mong had the required specific intent directed towards Ricco Martin. This Court should find that the instructions were adequate to submit the theory of transferred intent to Mong's jury or provide clarification on how district courts should instruct on the issue of transferred intent.

## **STATEMENT OF THE CASE**

### **Nature of the Case**

The State seeks further review of a decision of the Court of Appeals. Iowa R. App. P. 6.1103.

### **Course of Proceedings**

On April 5, 2019, a jury convicted Anthony Mong of attempted murder, in violation of Iowa Code section 707.11(1) (2017), intimidation with a dangerous weapon with intent to injure or provoke fear, in violation of Iowa Code section 708.6 (2017), willful Injury causing bodily injury, in violation of Iowa Code section 708.4(1) (2017), and going armed with intent, in violation of Iowa Code section 708.8 (2017). Trial Information; Forms of Verdicts; App. 6-8, --. Mong filed a motion for a new trial, alleging that there was insufficient evidence to prove he had the requisite specific intent towards Shane Woods. Motion for New Trial; App. 70-81. The district court denied that motion. Order Denying Motion for New Trial; App. 82-83.

Mong appealed his convictions. Notice of Appeal; App. 89. Mong raised three issues: a challenge to the district court's denial of his motion to compel witness testimony, a challenge to the racial

composition of his jury pool, and a challenge to the sufficiency of the evidence to support his convictions.

Mong's appeal was routed to the Court of Appeals. On February 16, 2022, a panel of that court reversed the district court in part and affirmed in part. The panel affirmed the district court's denial of Mong's motion to compel witness testimony. However, the panel reversed Mong's convictions for attempted murder, intimidation with a dangerous weapon, and willful injury causing bodily injury, finding insufficient evidence of the specific intent required for those charges. The district court conditionally affirmed Mong's conviction for going armed with intent. The panel remanded the case to the district court for development of the record on Mong's challenge to the composition of his jury. Slip Op. The State seeks further review of that portion of the panel's decision that reversed Mong's convictions.

### **Facts**

Madison Cobb had been dating Anthony Mong but broke off their relationship in May of 2018. Mong had been jealous of Madison's friendship with Ricco Martin and had made a number of threats against him, including threats to shoot him. On June 1, 2018, Mong drove to the home where Madison lived with her family; Ricco

Martin was visiting at the time. Mong shot in the direction of Ricco Martin. Shane Woods was near Ricco at the time and was shot through the back.

Twenty-two-year-old Madison Cobb lived with her parents Heather and Todd Hines at their home at 8185 Franklin Avenue. Tr. II, 45:18-46:4. Ms. Cobb started dating Anthony Mong in early November of 2017. Tr. II, 46:16-47:13; 49:4-24. Madison and Mong's relationship was "very on and off." She broke up with Mong for the last time no more than two weeks before the date of the shooting. Tr. II, 56:7-15; 58:10-20.

Todd and Heather Hines owned a semi-pro football team in Iowa and Ricco Martin played for their team. Ricco became friends with the whole family and would go to their home on occasion. Tr. II, 47:21-49:3; 92:6-93:25. Ricco would visit Madison's parents at their home and Madison would be home when Ricco visited. The defendant was not happy about that, and he voiced his displeasure to Madison. Tr. II, 49:25-50:17.

The year before the shooting, Ricco had received thirty to forty intimidating text messages from Mong, one after the other. Ricco

changed his phone number to avoid receiving further messages from Mong. Tr. II, 96:13-98:16.

Just before June 1, Ricco and Mong had an argument during which Mong told Ricco that “he wasn’t going to fight me; he was going to shoot me.” That was the last time Ricco saw Mong before June 1. Tr. II, 94:23-95:5; 96:6-9. Madison was present when the defendant and Ricco argued and she heard Mong’s threat. Tr. II, 50:18-51:6.

Todd and Heather Hines also heard Mong make threats to Ricco. Within two weeks of June 1, Todd Hines heard Mong tell Ricco that he would not fight him; he was just going to shoot him. Tr. II, 208:21-210:4. A few weeks before the shooting, Heather Hines heard Mong threaten to beat up Ricco or just shoot him. Tr. II, 158:14-159:2, 164:7-23; 165:6-10.

Around 8:00 p.m. on June 1, 2018, Todd Hines, his nephew David Wood, David’s father Shane Wood, and Ricco Martin were outside Todd’s home. Todd’s wife and children were inside the house. Tr. II, 210:5-25. Todd noticed Mong driving down the street in a Hyundai Sonata. Tr. II, 212:7-24. Todd saw Mong drive past his house, go around the corner, turn around and make his way back to

Todd's house. Todd thought, "Oh, boy, it's going to happen now." Tr. II, 212:25-213:18.

Todd ran inside to his bedroom, got his gun, and went back outside. He had the gun tucked into the back of his waistband. Tr. II, 214:2-24. When he first walked outside with his gun, Todd saw Mong walking into his driveway. He saw that Mong had a gun in his hand. Tr. II, 218:25-219:12. Todd thought Mong was going to shoot Ricco. Tr. II, 212:25-213:18. As Mong had driven past his house, Todd thought he had heard Mong rack the gun, chamber a bullet. Tr. II, 219:13-220:10; 223:16-23.

Todd saw Mong approaching his driveway and told him, "Don't do this." He repeated that warning twice. He ran into his house when the shooting started. Todd was just inside the door and looking out when he heard Mong fire two shots. Tr. II, 215:4-8; 218:17-24; 228:21-23. Todd told Shane to run because Mong was shooting. Shane replied, "I'm hit." Tr. II, 218:4-10; 220:14-221:1.

Shane Woods was in the front yard of the Hines residence and saw that Mong was at the driveway with a gun pulled. Tr. II, 242:10-243:25, 244:1-20. Shane did not have any ongoing conflict with Mong so, when he saw that Mong had a gun, he did not run, he merely

turned around to walk back towards the house. He heard a shot and then realized he had been shot in his back. Tr. II, 243:4-13, 244:21-245:2. At the time he was shot, Shane was approximately six to eight feet from Ricco Martin. Tr. III, 25:15-27:11.

Ricco Martin saw Mong jump out of the car and run behind a tree. Then, he saw Mong's arm reach around the tree and shoot. Shane Woods was hit. Tr. II, 100:12-101:21; 114:5-13. Ricco ran to Shane's aid. Tr. II, 101:22-25. Ricco believed that Mong was trying to shoot him instead of Shane. Tr. II, 102:20-23.

David Woods saw Anthony Mong drive by in a dark blue or black Hyundai. Mong gave the men "a little stare down" as he drove by. David could see in Mong's face that something was going to happen, so he went to the garage and grabbed a ball bat. Tr. II, 174:8-177:11; 181:14-19. While David was in the garage, he heard a gunshot, heard his uncle say, "He's got a gun," then heard his dad yell, "I'm hit. I'm hit." Tr. II, 177:12-19. David immediately left the garage. He saw that his dad was bleeding, and he chased after Mong with the baseball bat. Mong got into his car and sped off. Tr. II, 177:14-179:1; 180:5-12.

Madison Hines heard a gunshot. She opened the door and saw Mong open the door to Rachael Janousek's Hyundai Sonata, get in,

and drive off. Madison was familiar with the car and had ridden in it with Mong “plenty of times.” Tr. II, 46:5-15, 51:7-55:9; 58:21-25.

Madison then noticed her uncle Shane Woods leaning up against the garage, bleeding. Tr. II, 55:10-17.

Rachael Janousek is the fiancée of the defendant. Tr. II, 75:15-77:23. On June 1, Mong and his friend Brandon Henlon dropped Janousek off at work in her Hyundai Sonata. Tr. II, 78:4-80:22; 87:17-88:1. Ms. Janousek’s boss verified that she clocked out of work at 9:47 p.m. on June 1. Tr. III, 77:8-21.

Willie Carl McClairen, Jr. was one of the attending trauma surgeons when Shane Woods was brought into the emergency room at about 9:10 p.m. Tr. III, 8:25-9:17, 11:3-8; 14:20-15:4. He testified that Shane was shot in the back of his lower left chest and the bullet traveled through his chest cavity and exited through the front. Dr. McClairen testified that there are vital organs throughout the chest – the heart, lungs, major blood vessels – and if the bullet had struck any of those Shane could have died. Tr. III, 12:3-13:7.

Anthony Mong testified at his trial. He had a red Cadillac stored at the Hines residence. While Mong and Madison were still dating, they planned to fix the Cadillac because they needed a car. Todd

Hines was going to help them. Tr. IV, 20:24-23:16. After Mong and Madison broke up, Mong wanted his car back. Tr. IV, 23:17-24. On May 31, 2018, Mong went to the Hines residence and spoke with Todd. Todd told Mong to return over the weekend to get the car. Tr. IV, 24:3-17.

Mong testified that on the evening of June 1, 2018, he and Brandon Henlon dropped Janousek off at her job, then decided to go to the Hines residence to pick up the Cadillac. Tr. IV, 25:21-28:2, 28:3-34:1. Mong saw Todd Hines, Ricco Martin, Shane Woods, and David Woods outside the Hines residence. Mong testified that he started to pull into the driveway, but then realized that would block the Cadillac in, so he drove on, turned around in a nearby school area, returned to Hines' house, and parked in front of a large tree in the Hines' yard. Tr. IV, 30:2-5; 31:25-33:16.

Mong testified that he told Henlon to stay in the car and he got out of the car. He was holding his cell phone in his hand. As he walked, Mong noticed that Todd Hines had a gun. Mong testified that he saw Ricco Martin "go for" Todd's gun and that is when Mong ducked behind the tree. Mong testified that, "I felt like I was going to get shot." Tr. IV, 33:17-37:7.

Mong stated that he heard a shot fired from the direction of the group of people in Hines' yard. Then, he heard a second shot fired from behind him. Tr. IV, 37:8-38:9; 59:2-18; 63:13-64:14. The shot came from the Hyundai Sonata that Mong drove to the scene. Tr. IV, 81:21-82:17. He testified, though, that Henlon never got out of the car. Tr. IV, 62:9-20. He also testified that he did not know that Henlon had a gun and had not seen it while the two were in the car together. Tr. IV, 90:13-91:10.

Mong testified that the group of people started to disperse, and he ran to the car, got into the driver's seat, and sped away. Tr. IV, 38:2-25. He testified that when he got into the car, he saw that Henlon had a gun in his hand. Tr. IV, 39:1-8. Mong testified that he did not see anyone get shot at the Hines residence. Tr. IV, 39:9-11.

Mong was arrested in Las Vegas two months later. During the two months he was there, he did not try to contact authorities in Iowa to report that Henlon had shot Shane because Henlon was his best friend and Mong thought that Henlon had saved his life. Tr. IV, 42:15-43:5; 79:21-80:10; 81:13-20. Henlon died in February of 2019, before trial. Mong did not tell anyone before Henlon died that it was Henlon who shot Shane Woods or that Henlon had fired the second

shot, though he did testify that he had told his lawyer. Tr. IV, 55:12-15; 85:20-90:6.

Additional facts will be discussed where relevant to the State's argument, below.

## ARGUMENT

### **I. This Court Should Grant Further Review to Clarify the Manner in Which the Doctrine of Transferred Intent Should be Submitted to a Jury and to Determine Whether There is Sufficient Evidence to Support Mong's Convictions for Attempted Murder, Intimidation with a Dangerous Weapon with Intent, and Willful Injury Causing Bodily Injury**

#### **Preservation of Error**

Mong's motions for judgment of acquittal made at the close of the State's case and at the close of all the evidence were adequate to preserve error. *See*, Tr. III, 175:6-185:23; Tr. IV, 101:23-104:7.

#### **Standard of Review**

The Court reviews a challenge to the sufficiency of the evidence for correction of errors of law. If the verdict is supported by substantial evidence, the Court will uphold a finding of guilt.

"Substantial evidence" is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *State v.*

*Henderson*, 696 N.W.2d 5, 7 (Iowa 2005); *State v. Hagedorn*, 679 N.W.2d 666, 668-69 (Iowa 2004).

## **Merits**

This Court should grant further review for three reasons. First, the Court should resolve whether the manner in which the doctrine of transferred intent was submitted to Mong's jury permitted the jury to convict Mong of the attempted murder, intimidation with a dangerous weapon, and willful injury based upon evidence that Mong intended to kill, intimidate, and injure someone other than the person whom Mong shot. Second, if the instructions on transferred intent were inadequate, the Court should take further review to clarify the proper manner to instruct on that issue. Third, the Court should grant further review to vacate the opinion of the Court of Appeals and affirm Mong's convictions<sup>1</sup>.

Mong challenges the sufficiency of the evidence to support his convictions for attempted murder, intimidation with a dangerous weapon, and willful injury causing bodily injury. He does not challenge the sufficiency of the evidence to support his conviction for going armed with intent. He challenges the sufficiency of the evidence

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<sup>1</sup> The Court of Appeals reversed Mong's convictions for attempted murder, intimidation with a dangerous weapon, and willful injury causing bodily injury, but conditionally affirmed Mong's conviction for going armed with intent. Slip Op. at 20.

to prove that he shot a firearm and to prove the specific intent elements of the three challenged convictions. The Court of Appeals reversed three of Mong's convictions on the basis that there was insufficient evidence of specific intent under the specific instructions given in this case. This Court should reverse the Court of Appeals' ruling and affirm Mong's convictions as the Court's ruling rests on an erroneous interpretation of the jury instructions submitted to Mong's jury.

Each of the challenged convictions contain a specific intent element. For purposes of the charge of attempted murder, Mong's jury was instructed that the State was required to prove that Mong specifically intended to cause the death of Shane Woods. *See*, Jury Instr. No. 17; App. 40. For purposes of the charge of intimidation with a dangerous weapon, the jury was instructed that the evidence must prove that Mong had the specific intent to injure or cause fear or anger in Shane Woods. *See*, Jury Instr. No. 23; App. 44. To prove that Mong committed willful injury, the jury was instructed that the State was required to show that Mong specifically intended to cause a serious injury to Shane Woods. *See*, Instruction No. 25; App. 46.

The prosecution's theory of the case was that Mong shot at Ricco Martin but hit Shane Woods. Accordingly, the district court also instructed the jury on the doctrine of transferred intent. *See*, Jury Instr. No. 16; App. 39.

Mong's challenge to the sufficiency of the evidence to support his convictions is based the language of the jury instructions: the marshalling instructions stated that the State was required to prove that Mong intended to act upon Shane Woods, while the evidence showed that Mong intended to act upon Ricco Martin. Mong's argument would require the Court to consider the marshalling instructions in isolation, rather than considering them in conjunction with the district court's instruction on transferred intent. A panel of the Court of Appeals did just that.

The Court reversed Mong's convictions for attempted murder, intimidation with a dangerous weapon, and willful injury causing bodily injury on the basis that the marshalling instruction required specific intent to act upon Shane Woods and the State failed to prove that Mong's specific intent was directed at Woods. The Court's ruling is erroneous. It fails to properly consider the instruction given to Mong's jury on the doctrine of transferred intent.

The district court instructed Mong's jury that,

Under the doctrine of transferred intent, once the intent to inflict harm on one victim is established, the criminal intent transfers to any other victim who is actually assaulted. A party is liable for a wrongful act, where there exists a criminal intent, although the act done, is not that which was intended. The wrongful intent to do one act, is transposed to the other, and constitutes the same offense.

Jury Instruction No. 16; App. 39.

Under the doctrine of transferred intent, Mong was properly convicted of attempted murder of Shane Woods, intimidation of Woods with a dangerous weapon, and willful injury of Woods based upon his act of shooting at Ricco Martin with the intent to kill, seriously injury, and injure or cause fear and anger in Martin. The evidence at trial showed that Mong's intended target was Ricco Martin. Mong was nursing a deep grudge against Ricco because both men had been involved with Madison Cobb. Mong had made numerous threats to shoot Ricco. The evidence shows that Mong shot at Ricco Martin but hit Shane Woods who was near Ricco at the time. That evidence is summarized as follows.

Anthony Mong and Madison Cobb had an on-and-off-again dating relationship from November of 2107 until just before the shooting on June 1, 2018. During that time, Ricco Martin and

Madison Cobb were “friends with benefits.” Tr. II, 46:16-47:13; 49:4-24; 94:3-7. Mong was not happy that Ricco would visit Madison at the family home and that Ricco would be there when he visited. Tr. II, 49:25-50:17.

Mong had threatened Ricco repeatedly. In the year before the shooting, Ricco had received thirty to forty intimidating text messages from Mong, one after the other. Ricco changed his phone number to avoid receiving further messages from Mong. Tr. II, 96:13-98:16. In the weeks before the shooting, Todd and Heather Hines also heard Mong threaten to shoot Ricco Martin. Tr. II, 163:21-23; 165:6-10. Just before June 1, 2018, Ricco and Mong had an argument, in the presence of Madison, during which Mong told Ricco that “he wasn’t going to fight me; he was going to shoot me.” That was the last time Ricco saw Mong before June 1. Tr. II, 50:18-51:6, 94:23-95:5; 96:6-9.

Around 8:00 p.m. on June 1, 2018, Todd Hines was outside in his yard with his nephew David Wood, David’s father Shane Wood, and Ricco Martin. Tr. II, 210:5-25. Todd noticed Mong driving down the street in a Hyundai Sonata. Tr. II, 212:7-24. Todd saw Mong drive

past his house, go around the corner, turn around in the circle lot at the school and drive back towards Todd's house. Tr. II, 212:25-213:18.

When Mong drove past his house the first time, Todd had heard Mong rack the gun, chamber a bullet. Tr. II, 219:13-220:10; 223:16-23. Todd ran inside to his bedroom, got his gun, and went back outside. Tr. II, 214:2-24. When he first walked outside with his gun, Todd saw Mong walking into his driveway. He saw that Mong had a gun in his hand. Tr. II, 218:25-219:12. Todd thought Mong was going to shoot Ricco. Tr. II, 212:25-213:18.

Todd told Mong, "Don't do this." He repeated the warning twice. Then, Todd ran into the house but stayed just inside the door and continued to watch what was happening outside. He heard Mong fire two shots. Tr. II, 215:4-8; 218:17-24; 228:21-23. Todd turned around and told Shane to run because Mong was shooting. Shane said, "I'm hit." Tr. II, 218:4-10; 220:14-221:1.

Shane corroborated Todd Hines' account of events. Shane saw Mong drive by, pull up in front of the yard, but then drive on. He watched as Mong went around the corner, turned around, and came back. Tr. II, 242:10-243:25. This time, Mong stopped in front of the house, got out of the car, and walked to the back of the car. Shane

heard Todd say, “Don’t Tony, don’t.” Shane looked and saw that Mong was at the driveway with a gun pulled. Tr. II, 244:1-20.

Shane “had no problems ... at all” with Mong. Tr. II, 243:4-13. When he saw that Mong had a gun, he did not run because he did not think he had a problem. Shane just turned around to walk back towards the house. Shane heard a shot and realized that he had been shot on the left side of his back. Tr. I, 244:21-245:2. At the time he was shot, Shane was approximately six to eight feet from Ricco Martin. Tr. III, 25:15-27:11; App. --.

Ricco Martin saw Mong jump out of the car, run behind a tree, and shoot. Shane was hit. Tr. II, 100:12-101:21. Ricco believed that Mong was trying to shoot him instead of Shane. Tr. II, 102:20-23.

David Woods saw Anthony Mong drive by the Hines house. Mong gave the men “a little stare down” as he drove by. David saw Mong turn around at the school, then Mong “cranked his music and came back.” Tr. II, 174:8-177:1. David could see in Mong’s face that something was going to happen, so he went to the garage and grabbed a ball bat. Tr. II, 177:3-11; 181:14-19. While David was in the garage, he heard a gunshot, heard his uncle say, “He’s got a gun,” then heard his dad yell, “I’m hit. I’m hit.” Tr. II, 177:12-19.

In his trial testimony, Mong denied that he had a gun with him, denied that he intended to shoot anyone at the Hines residence, denied that he intended to fight anyone there, and denied that he shot at anyone at the Hines residence. Tr. IV, 41:8-22. He testified that he was storing a red Cadillac at the Hines residence. Todd Hines had planned to help Mong and Madison fix up the car. After Mong and Madison broke up, Mong wanted his car back. Tr. IV, 20:16-23:24. Mong testified that after he got off work on June 1, 2018, he and Brandon Henlon went to the Hines residence to get his Cadillac. Tr. IV, 24:21-29-30:1.

Mong testified that when he got to the Hines residence, Todd Hines, Ricco Martin, and Shane and David Woods were outside. Mong pulled up in front of the house and parked behind a big tree in the yard. He told Henlon to stay in the car and then Mong got out with his cell phone in his hand. Mong testified that he saw that Todd had a gun. He saw Ricco grab the gun, so Mong ducked behind the tree. Tr. IV, 32:16-36:12; 43:6-13.

While he was behind the tree, Mong testified, he heard one shot fired from the direction of the men in the Hines' yard. Then, he heard a second shot. That shot was fired from behind Mong, from his car.

Mong ran back to the car and drove off. Tr. IV, 37:8-38:25; 82:9-17.

Mong saw that Henlon had a gun in his hand. Tr. IV, 39:1-8.

The jury was free to disbelieve Mong's testimony that Brandon Henlon fired the shot that hit Shane Woods. *Shanahan*, 712 N.W.2d at 135. By its verdict, the jury showed that it did so.

The evidence overwhelmingly proved that it was Anthony Mong who shot Shane Woods. It also overwhelmingly proved the necessary intent elements. The evidence showed that Mong was angry with Ricco Martin and threatened to shoot him. About two weeks later Mong found Ricco at Todd Hines' home and tried to carry out that threat, though his aim was off. Mong's specific intent was shown by his earlier threats and by the fact that Mong first drove by the house and glared at the men outside, then turned around, parked, and got out with a gun. Mong ignored the entreaties from Todd Hines not to shoot, stayed at the scene even when he saw Todd also had a gun, and shot his weapon in the direction of Ricco Martin and Shane Woods. Thus, even though Mong's intent to kill, seriously injure, and cause fear or anger was directed at Ricco Martin, Mong was properly convicted of attempting to murder Woods, of intimidation of Woods with a dangerous weapon, and willful injury of Woods causing bodily

injury. *State v. Harlow*, 886 N.W.2d 106 (Iowa Ct. App. 2016) (Affirming Harlow’s conviction for assault where the evidence showed Harlow inadvertently struck a baby in the face and gave the baby a black eye while assaulting the baby's mother, who was holding the baby.).

A panel of the Court of Appeals, however, found the evidence insufficient to prove the specific intent elements of attempted murder, willful injury, and willful injury causing bodily injury. That ruling was erroneous. The Court of Appeals based its ruling on the language of the marshalling instructions for those three offenses, which required proof that Mong had specific intent directed at Shane Woods. That Court correctly noted that the State’s theory of the case was that Mong intended to shoot at Ricco Martin and that the evidence at trial showed that Mong’s specific intent was directed at Ricco Martin rather than Shane Woods. The panel erred, however, in finding insufficient evidence of the requisite specific intent. In reaching its conclusion, the panel failed to properly consider the jury instruction on transferred intent.

The Court of Appeals’ ruling rests on the assumption that the marshalling instructions were required to state that “the intended

target of the offenses was *Ricco Martin* or ‘Shane Woods or another’”. Slip Op. at 19 (italics in original). Although there was no challenge to the marshalling instructions in the district court, the Court of Appeals found those instructions inadequate to permit conviction on the basis of transferred intent and, consequently, found insufficient evidence to support the jury’s verdicts for attempted murder, intimidation with a dangerous weapon, and willful injury causing bodily injury. Slip Op. at 19-20. The Court erred.

First, the State notes that there are no uniform jury instructions that might have guided the district court in instructing the jury on the issue of transferred intent and there is no guidance from our appellate courts on the proper manner of instructing on that issue. Given the lack of guidance, the district court crafted clear, understandable, instructions that permitted the jury to determine whether Mong had the required specific intent toward Ricco Martin and, if they found that he did, to apply the doctrine of transferred intent to find that Mong had specific intent to cause the death of Shane Woods, injure or cause fear or anger in Shane Woods, and cause a serious injury to Shane Woods.

The panel of the Court of Appeals erred in reading the marshalling instructions in isolation. “Jury instructions are not considered separately; they should be considered as a whole.” *State v. Kuhse*, 937 N.W.2d 622, 628 (Iowa 2020) (cleaned up). Furthermore, “the trial court has the right to choose its own language to explain applicable legal principles.” *Conner*, 241 N.W.2d at 462 (cleaned up). Although it is necessary that the marshalling instruction include all elements of an offense, it is not necessary for those elements to be defined in the same instruction. *State v. Conner*, 241 N.W.2d 447, 462 (Iowa 1976). It is not essential that a marshalling instruction contain definitions or explanations of the elements which it lists. *Conner*, 241 N.W.2d at 463.

When the marshalling instructions on attempted murder, intimidation with a dangerous weapon, and willful injury are read with the instruction on transferred intent, they adequately instructed the jury that it could convict if it found that Mong had the required intents directed at Ricco Martin. *See, Conner*, 241 N.W.2d at 462 (“When the aiding and abetting instruction is read as a whole and the marshalling instruction is read in light of the aiding and abetting instruction, we believe they adequately inform the jury it could not

find defendant aided and abetted Nowlin unless he affirmatively encouraged or assisted Nowlin in the robbery.”); *State v. Uthe*, 542 N.W.2d 810, 815 (Iowa 1996) (“It is well settled that a trial court need not instruct in a particular way so long as the subject of the applicable law is correctly covered when all the instructions are read together.”); *State v. Hensley*, 672 N.W.2d 333 (Iowa Ct. App. 2003) (the district court did not err in setting out one element of homicide by vehicle in an instruction separate from the marshalling instruction); *State v. Winfrey*, 2001 WL 725439, at \*2 (Iowa Ct. App. June 29, 2001) (Trial counsel had no duty to object to the jury instructions on second-degree murder. Although the marshalling instruction on Winfrey’s lawful-act-justification defense did not include as an element the requirement that the State prove that intent to use the provoked force as an excuse to inflict injury, that element of the defense was included in a separate instruction and the instructions as a whole adequately stated the law.). When the sufficiency of the evidence is reviewed in light of the marshalling instructions *together with* the instruction on transferred intent, the evidence sufficiently proved that Mong acted with the requisite intent. Consequently, the decision of the court of

appeals should be vacated and Mong's convictions should be affirmed.

### **CONCLUSION**

This Court should grant the application for further review, reverse the Court of Appeals, and affirm Anthony Mong's convictions for attempted murder, intimidation with a dangerous weapon, willful injury causing bodily injury, and going armed with intent.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
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