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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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Ex parte State of Alabama

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS**

(In re: Melissa Reid Lang

v.

State of Alabama)

**(Jefferson Circuit Court, CC-14-2318;
Court of Criminal Appeals, CR-18-0612)**

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SHAW, Justice.¹

The writ is quashed.

In quashing the writ of certiorari, this Court does not wish to be understood as approving all the language, reasons, or statements of law in the Court of Criminal Appeals' opinion. Horsley v. Horsley, 291 Ala. 782, 280 So. 2d 155 (1973).

WRIT QUASHED.

Parker, C.J., and Bolin, Bryan, Sellers, Mendheim, and Stewart, JJ.,
concur.

Shaw, Wise, and Mitchell, JJ., concur specially.

¹This case was previously assigned to another Justice; it was reassigned to Justice Shaw.

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SHAW, Justice (concurring specially).

This Court granted the State of Alabama's petition for a writ certiorari to review the decision of the Court of Criminal Appeals in Lang v. State, [Ms. CR-18-0612, May 29, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020). The State contends, among other things, that the decision created a new rule: that the offense of solicitation² of a murder requires that the person solicited be informed of the particular person to be killed. After further review, I find that the decision of the Court of Criminal Appeals contains no such holding, and I concur to quash the writ.

The indictment of the defendant, Melissa Reid Lang, specifically charged Lang with soliciting William Pickett to "intentionally cause the death of ... Pam Nunn." Based on the language of the indictment, the State bore the burden of demonstrating that Lang actually and specifically solicited the murder of Pam Nunn. Cf. Fitch v. State, 851 So. 2d 103, 127 (Ala. Crim. App. 2001) (" ' ' '[I]f the allegation (constituting surplusage) "is descriptive of the fact or degree of the crime ..." it must be proved as alleged.' ' ' ") (quoting Hunt v. State, 659 So. 2d 933, 950 (Ala. Crim. App.

²See Ala. Code 1975, § 13A-4-1(a).

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1994)) (emphasis added)); Williams v. State, 701 So. 2d 832, 833-34 (Ala. Crim. App. 1997) ("[T]he State could properly have chosen to seek indictments on two separate counts of robbery in the first degree. By charging conjunctively the robbery of both victims, the indictment required proof of both robberies in order for the jury to reach a guilty verdict."); McCall v. State, 501 So. 2d 496, 506 (Ala. Crim. App. 1986) (" 'As early cases have held, unnecessary averments in an indictment do not impair its validity. The most that can result from them is to hold the prosecution to the proof of them. ...' ") (quoting Tomlin v. State, 443 So. 2d 47, 52 (Ala. Crim. App. 1979), *aff'd*, 443 So. 2d 59 (Ala. 1983)); Styles v. State, 474 So. 2d 185, 188 (Ala. Crim. App. 1985) (concluding, with regard to an indictment charging the defendant with illegal enticement of two named minor children, that, "to convict the [defendant] under the original indictment, the jury would have to be convinced beyond a reasonable doubt that the [defendant]" had attempted to unlawfully entice "both [children] ..., and a reasonable doubt as to one child would necessarily lead to an acquittal"); and Hayes v. State, 33 Ala. App. 178, 181, 31 So. 2d 306, 308 (1947) ("It has been definitely settled that even an unnecessary

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allegation, but which is descriptive of the identity of that which is legally essential to the charge, as here, must be proven as laid."). The trial court instructed the jurors at Lang's trial as follows:

"The indictment I read to you earlier, ladies and gentlemen, it basically alleges that the Defendant, Melissa Reid Lang, did solicit William Pickett to engage in conduct which constituted the crime of murder.

"To intentionally cause the death of another person, Pam Nunn. With the intent that said person engaged in said conduct."

(Emphasis added.)

The evidence at trial, which is recounted in the opinion of the Court of Criminal Appeals, indicated that Lang had previously experienced animosity with the Nunn family, including not just Pam but also her husband, Mark, and their son. When Lang was questioned by police, she "admitted that she may have said that she 'wish[ed] they would go away,' [but] she denied saying she wished they were 'gone.'" Lang, ___ So. 3d at ___ (emphasis added). It is true that a witness testified that Lang once said that she wanted to "Lizzie Borden" Pam, but that conversation apparently occurred a year before the solicitation. After that incident,

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Lang threatened the family generally, screamed at Mark during a telephone call, fired a pistol in Mark's direction, and sent threatening letters to the Nunn family. Pickett testified that, when Lang solicited him, she did not identify the intended victim. In sum, there was evidence of animosity between Lang and the Nunn family but no evidence that Lang's solicitation specifically sought the murder of Pam.

The Court of Criminal Appeals concluded that a solicitation to "kill someone is too indefinite to constitute a solicitation to murder Pam." ___ So. 3d at ___. This is not a holding that a solicitor must disclose the identity of the purported victim but, rather, a fact-specific holding that, because the charge was for a solicitation to murder Pam, the State was thus required to prove that Pam was the intended victim, as opposed to "someone" generally. The evidence showed that Lang wished to have someone, possibly any member of the Nunn family, killed, but it was insufficient to show that the intended victim was Pam specifically, as charged in the indictment. I therefore concur in the decision to quash the writ.

Wise, J., concurs.

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MITCHELL, Justice (concurring specially).

I agree with Justice Shaw that Lang v. State, [Ms. CR-18-0612, May 29, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020), did not set out a new rule for the offense of solicitation to commit murder, i.e., that a defendant must inform the solicitee of the intended victim. Instead, the Court of Criminal Appeals in Lang held only that the State is required to prove the allegations it sets out in an indictment. I write separately to share my view on what information is required to make an indictment for solicitation to commit murder sufficient. As Justice Shaw's special concurrence suggests, the State does not need to identify the intended victim by name in the indictment.

In Alabama, "[a]n indictment is sufficient [if it] substantially follows the language of the statute, provided the statute prescribes with definiteness the constituents of the offense." Ex parte Allred, 393 So. 2d 1030, 1032 (Ala. 1980). "The indictment ... shall be a plain, concise statement of the charge in ordinary language sufficiently definite to inform a defendant of common understanding of the offense charged and

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with that degree of certainty which will enable the court, upon conviction, to pronounce the proper judgment." Rule 13.2(a), Ala. R. Crim. P.

In determining whether an indictment is sufficient, "[t]he crucial question ... is whether the indictment sufficiently apprises the accused with reasonable certainty of the nature of the accusation made against him so that he may prepare his defense, [and] that he may be protected against a subsequent prosecution for the same offense." Ex parte Harper, 594 So. 2d 1181, 1183 (Ala. 1991) (citing Hochman v. State, 265 Ala. 1, 91 So. 2d 500 (1956)). "[I]n all criminal prosecutions, the accused has a right ... to demand the nature and cause of the accusation." Art. I, § 6, Ala. Const. 1901 (Off. Recomp.); see also Cole v. Arkansas, 333 U.S. 196, 201 (1948) ("[N]otice of the specific charge ... [is] among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal."); U.S. Const. amends. VI, XIV. Historically, in Alabama, the accused was dependent on the indictment alone for notice. See 1 Hugh Maddox, Alabama Rules of Criminal Procedure § 13.2 (5th ed. 2011). But now, under the Alabama Rules of Criminal Procedure, the accused may file a motion for a more definite statement to obtain more information,

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which "shall be granted for good cause shown."³ Rule 13.2(e), Ala. R. Crim.

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With respect to this case, § 13A-4-1(a), Ala. Code 1975, provides that "[a] person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a crime, he solicits, requests, commands or importunes such other person to engage in such conduct." As I see it, an indictment for solicitation to commit murder is sufficient if it "substantially follows" the language of § 13A-4-1(a).⁴ See Allred, 393 So. 2d at 1032 (Ala. 1980). Ford v. State, 612 So. 2d 1317, 1318 (Ala. Crim. App. 1992), and Williams v. State, 439 So. 2d 1342, 1342-43 (Ala. 1983), offer examples of such an indictment.

³Justice Maddox notes that Rule 13.2 "does not address the effect of information furnished in response to a motion for a more definite statement" and that "it would appear that any statement filed in response to such a motion should not have the effect of amending the indictment." Maddox, Alabama Rules of Criminal Procedure § 13.2.

⁴I note that Section 15-8-150, Ala. Code 1975, sets out the forms of indictments that the Legislature deems "sufficient" to provide a criminal defendant with notice. The statute lists 102 forms for various criminal charges but does not address solicitation.

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I am not alone in reaching this conclusion. Courts in other jurisdictions have held that an indictment for solicitation to commit murder does not need to identify the victim by name. See Denicolis v. State, 378 Md. 646, 662, 837 A.2d 944, 954 (2003) ("Because the crime of solicitation may arise from an incitement to commit an offense for which there may not be an identifiable victim, the name or identity of a victim is not, ordinarily, a jurisdictional prerequisite."); People v. Miley, 158 Cal. App. 3d 25, 34, 204 Cal. Rptr. 347, 353 (1984) ("A direction to kill all witnesses contemplates a specific, ascertainable class of victims. The request is no less a solicitation because [the accused] cannot name them in advance."); People v. Sabo, 179 Misc. 2d 396, 405-406, 687 N.Y.S.2d 513, 520 (Sup. Ct. 1998) ("An indictment need not always set forth the actual date of the crime charged or name the victim for each count alleged.").

To sum up, under our caselaw and our Rules of Criminal Procedure -- which provide an additional safeguard for defendants, i.e., the right to move for a more definite statement -- the State does not need to identify

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the intended victim by name for an indictment for solicitation to commit murder to be sufficient.