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# Notes: Poe v. State: The Court of Appeals of Maryland Limits the Applicability of the Doctrine of Transferred Intent

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## POE v. STATE: THE COURT OF APPEALS OF MARYLAND LIMITS THE APPLICABILITY OF THE DOCTRINE OF TRANSFERRED INTENT

### I. INTRODUCTION

The doctrine of transferred intent has been labeled everything from an “arrant, barefaced fiction”<sup>1</sup> to “something of a freak”<sup>2</sup> because it allows a person to be held criminally liable for harm done to one person as a result of an act done with the intent to harm another.<sup>3</sup> The doctrine has been viable since the early English common law.<sup>4</sup>

Today most states, including Maryland, recognize the doctrine of transferred intent because it allows a state to punish someone who unintentionally injures another in the process of intentionally attempting a criminal act. The rationale behind the doctrine is that a criminal should not escape punishment if, because of poor aim or mistaken identity, the crime was committed against the wrong person.<sup>5</sup> Maryland cases illustrate that the doctrine is both a necessary component of criminal law and that its usefulness and applicability have not been fully explored.<sup>6</sup>

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1. William L. Prosser, *Transferred Intent*, 45 TEX. L. REV. 650, 650 (1967).
  2. Ernest J. Weinrib, *The Gains And Losses Of Corrective Justice*, 44 DUKE L.J. 277, 295 n.42 (1994).
  3. See Weinrib, *supra* note 2, at 295.
  4. See *Poe v. State*, 341 Md. 523, 671 A.2d 501 (1996). The doctrine of transferred intent originated in criminal law and evolved at a time when tort damages were awarded during criminal prosecutions. See Prosser, *supra* note 1, at 652. William Prosser speculated as to why the criminal law rule carried over into tort actions. See *id.* He opined that the reason may have been that a defendant was prima facie liable as a trespasser when he caused bodily harm to another unless he was able to prove he was innocent of fault, and this would be impossible if he intended to cause injury to a third party. See *id.* at 653-54.
  5. See *Poe*, 341 Md. at 528, 671 A.2d at 503.
  6. Compare *Ford v. State*, 330 Md. 682, 714, 625 A.2d 984, 999 (1993) (holding that if a defendant intends to kill a specific person and instead wounds an unintended victim without killing either, he can only be convicted of attempted murder and transferred intent does not apply), with *Poe*, 341 Md. at 530, 671 A.2d at 504 (holding that transferred intent applies because it is needed to impose criminal liability for the murder of an unintended victim). The rationale behind the *Ford* court's holding was that the crime of attempted murder

*Poe v. State*<sup>7</sup> provided the Court of Appeals of Maryland with an opportunity to develop the doctrine of transferred intent. The primary issue in *Poe* was whether the doctrine of transferred intent applied to the death of the unintended victim, notwithstanding the fact that the defendant actually hit and wounded the intended victim.<sup>8</sup> In addressing this issue, the court also addressed whether transferred intent applies to a defendant's completed crime of attempted murder.<sup>9</sup>

The doctrine of transferred intent is commonly applied in Maryland where a defendant shoots at but misses an intended victim and instead kills an unintended victim.<sup>10</sup> In *Poe*, however, the Court of Appeals of Maryland extended the scope of the doctrine. In a case of first impression, the court held that the doctrine of transferred intent applies where a defendant, intending to kill one person, shoots and wounds that person, but the shot passes through the intended victim and kills an unintended victim.<sup>11</sup>

Part II of this Note discusses the doctrine of transferred intent in general as well as various cases in which it has been applied by several jurisdictions. Part III discusses the facts, issue, holding, and rationale in *Poe v. State*. In Part IV, this Note analyzes the court's holding and contends that the Court of Appeals of Maryland inadvertently stated that it is necessary for a death to have occurred in order to invoke the doctrine. Finally, Part IV also reports and analyzes the concurring opinion and discuss the impact *Poe* will have on Maryland law.

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was completed against the target, making transferred intent inapplicable because the doctrine is invoked only when the defendant does not complete a crime against his intended victim. *See Poe*, 341 Md. at 530 n.2, 671 A.2d at 504 n.2.

7. 341 Md. 523, 671 A.2d 501 (1996).

8. *See id.* at 530, 671 A.2d at 504.

9. *See id.*

10. *See Gladden v. State*, 273 Md. 383, 330 A.2d 176 (1974). The general rule is that whenever a person kills another intentionally, they are guilty of murder with express malice unless justified. *See WILLIAM L. CLARK & WILLIAM L. MARSHALL, A TREATISE ON THE LAW OF CRIMES* 587 (6th ed. 1958). This principle is applied when an individual kills one person but actually intended to kill another. *See id.*

11. *See Poe*, 341 Md. at 530, 671 A.2d at 504.

## II. BACKGROUND

### A. *The Doctrine of Transferred Intent In General*

Typically, the doctrine of transferred intent applies in what is called the bad-aim situation.<sup>12</sup> Suppose *A* aims at *B* but misses and hits *C* instead.<sup>13</sup> *A* is as guilty as if his aim had been accurate.<sup>14</sup> If *A* possesses a first-degree murder state of mind as to *B*, then *A* commits first degree murder as to *C* according to the majority view.<sup>15</sup> Likewise, if *A* intends to injure *B* but misses *B* and injures *C*, *A* is guilty of battery of *C*.<sup>16</sup>

These conclusions of law as to criminal liability for bad aim are founded upon transferred intent.<sup>17</sup> To be guilty of a crime against *C*, *A* must intend to harm *C*.<sup>18</sup> Because *A* intended to harm *B*, *A*'s intent is transferred from *B* to *C*.<sup>19</sup> Thus, *A*, by this reasoning, actually did intend to harm *C*, and therefore *A* is guilty of the crime against *C*.<sup>20</sup> Of course, *A* never really intended to harm *C*; it is not necessary to pretend that he did to impose criminal liability upon *A*.<sup>21</sup> What is really meant is that when *A* acts (or omits to act) with intent to harm *B*, but because of bad aim, *A* harms *C*, who he did not intend to harm, the law considers *A* as guilty as if he harmed his intended victim.<sup>22</sup> Crimes such as homicide, battery, arson, and malicious mischief only require that defendant harm some victim—an unintended victim will do just as well as an intended victim.<sup>23</sup>

Simply put, the rationale is that one who intends to kill should not escape responsibility for murder on account of the wrong per-

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12. WAYNE R. LAFAYE & AUSTIN W. SCOTT, CRIMINAL LAW 283 (2d ed. 1986).

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.* at 284.

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.* "Sometimes a statute may be worded in such a way as to require for guilt that the intended victim and the actual victim be one and the same—e.g., 'whoever with a deadly weapon commits a battery on another with intent to kill or maim *such person* is punishable . . .'" *Id.* at 284 n.46. Alternatively, transferred intent statutes make it a crime to commit a crime "upon the person of another." *Id.*

son dying by their hand.<sup>24</sup> During the nineteenth century, the Supreme Court of Ohio succinctly articulated the underlying notion of transferred intent: intention follows the bullet.<sup>25</sup> The court noted that murder is defined as "to kill another," rather than to kill a specific person.<sup>26</sup> Therefore, the act of murder is complete when any person is killed, not just when a specific person is killed.<sup>27</sup> The court stated the end of the act shall be construed by the beginning of it: "[T]he crime is as complete as though the person against whom the blow was directed had been killed."<sup>28</sup>

The doctrine of transferred intent is a product of early English common law.<sup>29</sup> At common law, courts held that the doctrine applies to cases where a third party has been fatally and non-fatally injured. The English courts' general acceptance of the theory behind transferred intent was laid out in *Regina v. Latimer*.<sup>30</sup> The theory is that a person who injures another person in the course of maliciously intending to harm a third person is guilty of general malice towards the injured person.<sup>31</sup>

### B. *The Doctrine of Transferred Intent Outside of Maryland*

Almost every jurisdiction within the United States has addressed the applicability of transferred intent in a variety of settings. For example, the District of Columbia Court of Appeals articulated its po-

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24. See *Gladden v. State*, 273 Md. 383, 392, 330 A.2d 176, 181 (1974).

25. See *Wareham v. State*, 25 Ohio St. 601, 606-07 (1874) ("The intent to kill and the malice follows the blow . . .").

26. *Id.* at 606.

27. See *id.* at 606-07.

28. *Id.* at 607.

29. See *Gladden v. State*, 273 Md. 383, 390, 330 A.2d 176, 180 (1974). In 1776, the framers of the Maryland Constitution adopted the common law of England as part of the law of the state. See MD. CODE ANN., CONST. art. 5 (1981 & Supp. 1996). Article 5 of the Declaration of Rights, which provides "[t]hat the inhabitants of Maryland are entitled to the Common Law of England," referred to the common law as it existed in England except for portions that were inconsistent with our nation's new political institutions. See *Gladden*, 273 Md. at 389, 330 A.2d at 180. Thus, with the adoption of the Maryland Constitution, the doctrine of transferred intent made the journey from England to Maryland.

30. See *Poe*, 341 Md. at 536-37, 671 A.2d at 507 (citing *Regina v. Latimer*, 17 Q.B.D. 359 (1886)); accord *State v. Thomas*, 53 So. 868 (La. 1911).

31. See *Thomas*, 53 So. at 871 (citing *Regina v. Latimer*, 17 Q.B.D. 359 (1886)). Historically, courts held that the doctrine of transferred intent applied to fatal and non-fatal injuries of bystanders. *But cf. Poe*, 341 Md. at 529, 671 A.2d at 504 (holding that transferred intent does not apply to attempted murder when there is no death).

sition on the doctrine of transferred intent in *Ruffin v. United States*.<sup>32</sup> Ruffin and others fired shots at their intended victim, Younger.<sup>33</sup> Younger was wounded, but the shots also killed Marcia Williams and injured her son.<sup>34</sup> A jury convicted Ruffin of first degree murder of Williams, as well as assault with intent to kill Younger and Williams's son.<sup>35</sup>

On appeal, the District of Columbia Court of Appeals concluded that where there are multiple victims from a single act, there is an offense for every intended and unintended victim.<sup>36</sup> Because defendant's drive-by shooting resulted in a non-fatal injury to the intended victim, a fatal injury to one bystander, and a non-fatal injury to another bystander, the court held that the defendant's conduct was sufficient to impose responsibility using transferred intent.<sup>37</sup> The court reasoned that the manner in which the defendant committed the crime against the targeted victim created a zone of danger.<sup>38</sup>

Parallel to *Ruffin*, the New Mexico Court of Appeals followed the same logic when it applied transferred intent to attempted murder in *State v. Gillette*.<sup>39</sup> In *Gillette*, the court upheld the conviction of the defendant for attempted murder of his intended victim as well as two unintended victims.<sup>40</sup> Gillette left a package containing a can of poisoned soda at his intended victim's workplace.<sup>41</sup> Subsequently, two of the intended victim's co-workers also drank from the can.<sup>42</sup> Holding that Gillette was criminally liable for attempted murder of all three people, the court reasoned that it was irrelevant that none of the victims were harmed.<sup>43</sup> The court noted that the threat to his

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32. 642 A.2d 1288 (D.C. 1994).

33. *See id.* at 1290.

34. *See id.*

35. *See id.*

36. *See id.* at 1298.

37. *See id.*

38. *See id.* (holding that defendant's reliance on *Ford* was misplaced because the *Ford* dicta did not overrule the *Wilson* holding that transferred intent applies to attempted murder of an intended victim and injured bystander).

39. 699 P.2d 626 (N.M. Ct. App. 1985).

40. *See* Elaine T. Devoe, Note, *The Use of Transferred Intent in Attempted Murder, a Specific Intent Crime: State v. Gillette*, 17 N.M. L. REV. 189, 189 (1987).

41. *See id.* at 189-90; *cf.* *People v. Gaither*, 343 P.2d 799, 801 (Cal. App. 2d 1959) (finding that a defendant sent poisoned candy to his ex-wife, but another person ate it).

42. *See* Devoe, *supra* note 40, at 190.

43. *See id.* at 194.

unintended victims was real and was proof of Gillette's ability to kill; therefore, Gillette's intent was transferred from his intended victim to the unintended victims.<sup>44</sup>

Likewise, California courts have explored the usefulness of the doctrine of transferred intent. In *People v. Pivaroff*,<sup>45</sup> the court applied transferred intent under circumstances similar to *Poe v. State*. The defendant grabbed a shotgun during an argument with his wife.<sup>46</sup> The shots he fired wounded his wife and killed their child.<sup>47</sup> Despite the absence of intent to kill his child, Pivaroff was convicted of first degree murder.<sup>48</sup> The court explained that the law transferred Pivaroff's felonious intent because he attempted to kill a person, purposely and with malice aforethought.<sup>49</sup> Thus, intent to commit first degree murder does not vanish when the assailant kills the wrong person.<sup>50</sup> More recently, the Supreme Court of California applied the doctrine of transferred intent to a drive-by shooting. The court held that the defendants could be charged under the transferred intent theory for the death of an unintended victim notwithstanding the State's decision to charge the defendants with attempted murder of their intended victim.<sup>51</sup> Consequently, California is among those jurisdictions that apply the doctrine to first degree murder when an unintended victim is killed.

Jurisdictions are split on whether the doctrine applies when the defendant kills both the intended and unintended victims.<sup>52</sup> *State v. Worlock*,<sup>53</sup> a New Jersey case, stands for the proposition that the doctrine is appropriate when the defendant kills both the intended and unintended victims.<sup>54</sup> In *Worlock*, the defendant fired shots that killed his intended victim as well as an unintended victim who "got

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44. *See id.* at 193-94.

45. 33 P.2d 44 (Cal. Dist. Ct. App. 1934).

46. *See id.* at 44.

47. *See id.*

48. *See id.* at 45.

49. *See id.*

50. *See id.*

51. *See California v. Scott*, 927 P.2d 288 (Cal. 1996).

52. *See, e.g., State v. Worlock*, 569 A.2d 1314, 1324-25 (N.J. 1990) (applying transferred intent where both the intended and unintended victims were killed); *cf. People v. Carlson*, 112 Cal. Rptr. 321, 326 (Ct. App. 1974) (stating in dicta that "the 'doctrine of transferred intent' applies even though the original object of the assault is killed as well as the person whose death was . . . accidental").

53. 569 A.2d 1314 (N.J. 1990).

54. *See id.*

in the way."<sup>55</sup> The court held that the doctrine of transferred intent applied notwithstanding that the defendant successfully killed his intended victim.<sup>56</sup> The New Jersey court reasoned that there was no reason to limit the application of the doctrine to a situation in which only the unintended victim is harmed.<sup>57</sup>

Alternatively, in *People v. Birreuta*,<sup>58</sup> a California court held that where the intended victim has been killed, the doctrine is unnecessary.<sup>59</sup> In *Birreuta*, the defendant accidentally shot and killed his wife when he shot and killed his intended victim, a neighbor.<sup>60</sup> The *Birreuta* court noted that when the intended victim is killed, the doctrine is unnecessary because there is no danger that a defendant will escape prosecution for a premeditated murder.<sup>61</sup> As for the defendant's case, he failed to escape prosecution for first degree murder, and thus the court said that the unintended death of his wife should have been prosecuted as manslaughter or second degree murder.<sup>62</sup>

Courts have also held that transferred intent is inapplicable in other circumstances. For example, where a defendant intends to kill both victims, the doctrine is of no use.<sup>63</sup> Moreover, in California, the doctrine does not apply where a defendant who is charged with attempted murder of the intended victim also injured an innocent bystander.<sup>64</sup> The California court explained that because the State charged the defendant with attempted murder, the most serious crime the defendant could be charged with under the circumstances, the doctrine was not needed for the injury to the unintended victim.<sup>65</sup> Essentially, the need for the doctrine is obviated when it is clear that the defendant will not escape responsibility for the completed crime against the intended victim.<sup>66</sup>

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55. *Id.* at 1317.

56. *See id.* at 1325.

57. *See id.*

58. 208 Cal. Rptr. 635 (Ct. App. 1984).

59. *See id.* at 639.

60. *See id.* at 637.

61. *See id.* at 639.

62. *See id.*

63. *See People v. Hunter*, 782 P.2d 608, 619-21 (Cal. 1990).

64. *See People v. Calderon*, 283 Cal. Rptr. 833 (Ct. App. 1991).

65. *See id.* at 836.

66. *See id.* In the case of mistaken identity, where a defendant kills the wrong person, transferred intent is inapplicable because the person killed is actually the intended victim. *See id.*; *see also People v. Williams*, 162 Cal. Rptr. 748, 753-54 (Ct. App. 1980); WAYNE L. LAFAVE & AUSTIN W. SCOTT, JR., BASIC PREMISES OF

Although many jurisdictions have recognized application of the doctrine of transferred intent as a legitimate way to convict a defendant of first degree murder of a person he did not intend to kill, some jurisdictions invoke other doctrines in its place.<sup>67</sup> One approach is to apply the felony murder doctrine to convict an assailant of the murder of his unintended victim.<sup>68</sup> The felony murder doctrine holds the assailant responsible for any crime committed in the course of a felony.<sup>69</sup> Since attempted murder is a felony, the assailant may be charged with the murder of his unintended victim.<sup>70</sup>

A second alternative is to charge defendants with depraved heart murder.<sup>71</sup> Depraved heart murder applies to cases where a defendant exhibits an extreme indifference for the value of human life.<sup>72</sup> Thus, depraved heart murder may be applied to convict a defendant who attempts to kill one person in the presence of a bystander and kills the bystander.<sup>73</sup>

The third alternative to transferred intent is premised upon the belief that the requisite intent to kill, necessary to convict someone of murder, is merely an intent to kill another human being, rather than an intent to kill a specific human being.<sup>74</sup> Courts reason that they are not transferring intent because it is simply present when a person commits a crime.<sup>75</sup>

Although each of these alternatives prevents a defendant from escaping criminal responsibility for the unintended consequences of his bad act, commentators and judges have noted that none of these doctrines sufficiently replace the doctrine of transferred in-

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CRIMINAL LAW § 87, at 252-55 (1972). *But see* Grandison v. State, 305 Md. 685, 506 A.2d 580 (1986). In *Grandison*, the Court of Appeals of Maryland upheld a murder conviction under the doctrine of transferred intent where a killer hired by the defendant mistakenly killed the wrong party. *See id.* at 696-97, 771-72, 506 A.2d at 585-86, 623-24.

67. *See* Symposium, *Culpability and the Law: Transferred Intent*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 65, 71 (1996) [hereinafter Symposium].

68. *See id.* at 71-72.

69. *See id.*

70. *See id.* at 72.

71. *See id.*

72. *See id.*; *see also* Model Penal Code § 210.2(1)(b) (1962).

73. *See* Symposium, *supra* note 67, at 72.

74. *See id.* at 73. For a discussion in favor of this alternative to transferred intent, *see* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 35 (2d ed. 1995). For a criticism of Dressler's "abolitionist" approach, *see* Symposium, *supra* note 67, at 74.

75. *See* Symposium, *supra* note 67, at 72-74.

tent.<sup>76</sup> Hence, transferred intent has served as the main approach for dealing with intended harm to unintended victims because it allows courts to apply punishment that is proportionate to the seriousness of the crime intended and harm incurred.<sup>77</sup>

C. *The Doctrine of Transferred Intent in Maryland*

In *Gladden v. State*,<sup>78</sup> the Court of Appeals of Maryland adopted the doctrine of transferred intent as the law of Maryland.<sup>79</sup> As such, the doctrine of transferred intent was applied to both fatal and non-fatal injuries of third parties.<sup>80</sup> The defendant wildly fired four or five shots without hitting his intended victim but instead killing a young boy.<sup>81</sup> The court held that the doctrine of transferred intent applied because the defendant possessed the state of mind to commit the crime willfully, deliberately, and with premeditation.<sup>82</sup> The court reasoned that it was immaterial that the intended act affected the wrong person.<sup>83</sup> Like the English courts, the *Gladden* court held that the defendant could not be excused from responsibility because of his own bad aim.<sup>84</sup>

In *State v. Wilson*,<sup>85</sup> the Court of Appeals of Maryland held that transferred intent applied to the crime of attempted murder.<sup>86</sup> In *Wilson*, the defendants fired shots at their intended victim, who managed to escape unscathed.<sup>87</sup> An innocent bystander, however, was shot and paralyzed, but he did not die.<sup>88</sup> The *Wilson* court held that transferred intent applies to the crime of attempted murder.<sup>89</sup>

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76. *See id.*

77. *See id.* at 92. Suppose there are two defendants. The first defendant successfully murdered his intended victim; the second defendant only attempted to murder his intended victim but, in the process, murdered the wrong person. *See id.* at 89. The level of seriousness of the two crimes is the same, and therefore transferred intent is required to ensure equal and proportionate sentences for the two murders. *See id.* at 92.

78. 273 Md. 383, 330 A.2d 176 (1974).

79. *See id.* at 405, 330 A.2d at 189.

80. *See id.*

81. *See id.* at 384-85, 330 A.2d at 177.

82. *See id.* at 404-05, 330 A.2d at 188.

83. *See id.*

84. *See id.*

85. 313 Md. 600, 546 A.2d 1041 (1988).

86. *See id.*

87. *See id.* at 601-02, 546 A.2d at 1042.

88. *See id.* at 602, 546 A.2d at 1042.

89. *See id.* at 609, 546 A.2d at 1045-46.

The court indicated that the *mens rea*<sup>90</sup> of a defendant as to his intended victim transfers over to determine his culpability for injury to the unintended victim.<sup>91</sup>

In *Wilson*, the court affirmed that transferred intent is not a doctrine reserved solely for completed homicides; the doctrine applies to fatal and non-fatal injury to third parties.<sup>92</sup> The court explained that because a defendant's intent follows the bullet, that is enough to invoke the doctrine.<sup>93</sup> The court also stated that a completed homicide is not required to apply transferred intent because a defendant's state of mind determines his guilt—he is guilty of the crime as if his aim had been more accurate.<sup>94</sup>

Nonetheless, in *Ford v. State*,<sup>95</sup> the court of appeals, in dicta, disavowed its application of transferred intent to attempted murder.<sup>96</sup> In *Ford*, the defendant was found guilty of, *inter alia*, assault with intent to disable drivers after he hurled bricks at cars.<sup>97</sup> The court found transferred intent inapplicable as to the passengers in the

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90. As an element of criminal responsibility, the term "*mens rea*" is defined as "a guilty mind; a guilty or wrongful purpose; a criminal intent." See BLACK'S LAW DICTIONARY 680 (6th ed. 1991).

91. See *Wilson*, 313 Md. at 609, 546 A.2d at 1045-46. The *Wilson* court aligned itself with several jurisdictions that have applied transferred intent to specific intent crimes such as attempted murder. See *People v. Neal*, 218 P.2d 556, 559 (Cal. 1950) (upholding a conviction for attempted murder of an unintended victim and holding that intent transfers as to non-fatal injuries); *Norris v. State*, 419 N.E.2d 129, 133-34 (Ind. 1981) (holding that transferred intent applies to attempted murder if the defendant intends to kill someone); *State v. Gillette*, 699 P.2d 626, 636 (N.M. 1985) (holding that leaving a poisoned drink for one victim is sufficient to constitute an attempted murder on each unintended victim who drank from it).

92. See *Wilson*, 313 Md. at 603-04, 546 A.2d at 1043.

93. See *id.*

94. See *id.* at 604, 546 A.2d at 1043.

95. 330 Md. 682, 625 A.2d 984 (1993).

96. See *id.* at 714, 716, 625 A.2d at 999, 1000. The *Ford* court theorized that *Wilson* actually involved concurrent intent as opposed to transferred intent. See *id.* at 716, 625 A.2d at 1000. Concurrent intent includes situations where the defendant has specific intent toward one person and creates a kill zone where the defendant places everyone within that zone in danger to ensure harm to the intended victim. See *id.* at 716-17, 625 A.2d at 1000-01. Firing several bullets from two handguns, as *Wilson* did, was sufficient to create a kill zone under the theory of concurrent intent. See *id.*; cf. *Robinson v. State*, 307 Md. 738, 743, 517 A.2d 94, 97 (1986) (noting that depraved heart murder does not require a specific intent to kill).

97. See *Ford*, 330 Md. at 690, 709, 625 A.2d at 987, 997.

cars because the crime as to the intended victims was complete.<sup>98</sup> In other words, where the crime intended has actually been committed, the court stated that transferred intent is unnecessary and should not be applied to unintended victims.<sup>99</sup> Accordingly, the *Ford* court concluded, albeit in dicta, that attempted murder was a completed crime committed on the intended victim, and hence transferred intent is inapplicable.<sup>100</sup> The majority stated that charging a defendant with attempted murder of a bystander when the State already charged the defendant with attempted murder of the intended victim duplicates the intent instead of transferring it.<sup>101</sup> The court reasoned that transferred intent should not multiply criminal liability.<sup>102</sup> Rather, it should provide an avenue to hold a defendant responsible for a crime whereby all the elements, except intent, were committed upon the wrong victim.<sup>103</sup>

In a concurring opinion, Judge McAuliffe questioned the *Ford* majority's limitation on the doctrine of transferred intent.<sup>104</sup> Judge McAuliffe opined that the doctrine should not be held inapplicable to attempted murder simply because the defendant completed a crime.<sup>105</sup> Suppose, Judge McAuliffe wrote, "[a] defendant, intending to kill A, shoots and wounds him, but the bullet passes through A and kills B."<sup>106</sup> In this particular situation, he reasoned, the majority's theory would be problematic because the defendant would be guilty of B's murder, while also guilty of the attempted murder of A.<sup>107</sup> According to the *Ford* majority, however, transferred intent is not applicable because attempted murder is a completed crime against the intended victim.<sup>108</sup> Furthermore, Judge McAuliffe asserted that if A also died, the majority's theory would require that

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98. *See id.*

99. *See id.* at 712, 625 A.2d at 998.

100. *See id.* at 714, 625 A.2d at 999. The *Ford* majority asserted that attempted murder is a completed crime because the defendant can be convicted of the attempted murder of his victim. *See id.* Therefore, the defendant has not escaped culpability for his actions, and, in a case where the unintended victim has not been killed, transferred intent is not needed to charge the defendant with a crime. *See id.*

101. *See id.*

102. *See id.*

103. *See id.* at 714, 625 A.2d at 999.

104. *See id.* at 724, 625 A.2d at 1004 (McAuliffe, J., concurring).

105. *See id.* (McAuliffe, J., concurring).

106. *Id.* at 726, 625 A.2d at 1005 (McAuliffe, J., concurring).

107. *See id.* (McAuliffe, J., concurring).

108. *See id.* at 716 n.14, 625 A.2d at 1000 n.14.

the defendant could not be convicted of the murder of *B*, but only of a lesser crime such as manslaughter.<sup>109</sup> Thus, just prior to *Poe v. State*, the court's dicta in *Ford* stood for the proposition that transferred intent does not apply to harm inflicted on an unintended victim when the crime against the intended victim is "complete."

### III. INSTANT CASE

#### A. Facts

On August 10, 1993, James Allen Poe (Poe) drove to the home of his estranged wife, Karen Poe (Ms. Poe), to visit their children.<sup>110</sup> Though they did not have a formal visitation agreement, Ms. Poe generally allowed Poe to visit the children whenever he wanted.<sup>111</sup> On that day, however, Ms. Poe refused to allow Poe to take the children because Poe intended to take them to Florida with his girlfriend.<sup>112</sup> An argument ensued in front of the house, which escalated into a fight; finally, Poe shot his wife.<sup>113</sup> The slug passed through Ms. Poe's arm and continued on through the head of a six-year-old girl named Kimberly Rice, who was standing in the background.<sup>114</sup> Ms. Poe was injured; Kimberly was killed instantly.<sup>115</sup> Poe was convicted in the Circuit Court for Cecil County of the attempted murder of Ms. Poe and the murder of Kimberly.<sup>116</sup> The Court of Special Appeals of Maryland affirmed the conviction,<sup>117</sup> and the court of appeals granted certiorari.<sup>118</sup> *Poe v. State* allowed the Court of Appeals of Maryland to address whether the doctrine of transferred intent applies to a defendant's completed crime of attempted murder and whether the doctrine applies when a bullet grazes the intended victim before mortally wounding an unintended victim.<sup>119</sup>

The facts in *Poe* unfolded just as Judge McAuliffe theorized in

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109. *See id.* at 726, 625 A.2d at 1005 (McAuliffe, J., concurring).

110. *See Poe v. State*, 341 Md. 523, 525-26, 671 A.2d 501, 502 (1996).

111. *See id.* at 525, 671 A.2d at 502.

112. *See id.* at 526, 671 A.2d at 502.

113. *See id.* The couple argued in front of the house until finally Poe retrieved his shotgun from the car. *See id.* He fired toward the doorway where Ms. Poe was standing and shouted, "Take this, bitch." *Id.* at 526, 671 A.2d at 502.

114. *See id.*

115. *See id.* at 526, 671 A.2d at 502.

116. *See id.* at 533, 671 A.2d at 505-06.

117. *See Poe v. State*, 103 Md. App. 136, 652 A.2d 1164 (1995).

118. *See Poe*, 341 Md. at 527, 671 A.2d at 503.

119. *See id.* at 525, 671 A.2d at 502.

his concurring opinion in *Ford*.<sup>120</sup> The bullet from Poe's shotgun passed through his wife's arm and continued on to kill the innocent bystander, Kimberly.<sup>121</sup> The *Poe* court held that the doctrine of transferred intent applied to a gunshot passing through an intended victim and killing an unintended victim.<sup>122</sup>

### B. *Rationale*

The court of appeals reasoned that the passing of the bullet through Ms. Poe's arm before killing Kimberly did not alter or negate the application of transferred intent.<sup>123</sup> Poe argued that all of his intent was "used up" when he completed the crime of attempted murder on his intended victim.<sup>124</sup> The court reasoned, however, that although the attempted murder was complete, Poe's intent was to murder, not to attempt to murder.<sup>125</sup> Therefore, Poe's intent to kill transferred from Ms. Poe to Kimberly in what the court called a "classic case of transferred intent."<sup>126</sup>

The *Poe* court noted that "transferred intent links a defendant's *mens rea* as to the intended victim with the killing of an unintended victim, and it effectively 'makes a whole crime out of two component halves.'"<sup>127</sup> The *Poe* court highlighted that the purpose of transferred intent is to prevent a defendant from escaping liability for a murder in which all the elements have been committed but there is an unintended victim.<sup>128</sup>

The court restated its position in *Ford* that transferred intent does not apply to attempted murder.<sup>129</sup> The court reasoned that

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120. Compare *Ford v. State*, 330 Md. 682, 726, 625 A.2d 984, 1005 (1993) (McAuliffe, J., concurring), with *Poe*, 341 Md. at 523, 671 A.2d at 501 (observing that Judge McAuliffe's hypothetical illustrated the problems the *Poe* court would face, based on its opinion in *Ford*, if a bullet passed through the intended victim, without killing that victim, only to continue on and kill a bystander). The facts in *Poe* were virtually identical to Judge McAuliffe's hypothetical. See *Poe*, 341 Md. at 526, 671 A.2d at 502.

121. See *Poe*, 341 Md. at 525-26, 671 A.2d at 502.

122. See *id.* at 530, 671 A.2d at 504.

123. See *id.* at 528-29, 671 A.2d at 503.

124. *Id.* at 528, 671 A.2d at 503. But see *State v. Hinton*, 630 A.2d 593, 597 (Conn. 1993) (holding that intent is not used up when the intended victim is killed or when there are multiple deaths).

125. See *Poe*, 341 Md. at 528, 671 A.2d at 503.

126. *Id.* at 529, 671 A.2d at 503.

127. *Id.* at 529, 671 A.2d at 503-04 (quoting *Ford v. State*, 330 Md. 682, 710, 625 A.2d 984, 997 (1993)).

128. See *id.* at 529, 671 A.2d at 504.

129. See *id.* (disapproving of the application of the doctrine of transferred intent to

transferred intent is a pure legal fiction because it imposes criminal liability for an unintended death.<sup>130</sup> In support of its position, the court drew an analogy to the doctrine of felony murder.<sup>131</sup> In homicide cases, both transferred intent and felony murder perform the function of holding a defendant liable for unintended deaths that result during the commission of a crime.<sup>132</sup> There is no crime of attempted felony murder, however, when death does not occur during the course of a felony.<sup>133</sup> Likewise, the *Poe* court concluded that the doctrine of transferred intent does not apply to attempted murder when death does not result.<sup>134</sup>

The court of appeals determined in *Ford* that if a defendant intends to kill a specific victim and instead wounds an unintended victim without killing either, transferred intent does not apply because there is no death.<sup>135</sup> The defendant can be convicted only of the attempted murder of the intended victim.<sup>136</sup> However, if the defendant intends to kill one person and instead unintentionally kills another, transferred intent does apply to the death.<sup>137</sup> Under this rationale, the *Poe* court concluded that the doctrine applied in the instant case because Poe killed an unintended victim, Kimberly.<sup>138</sup>

Finally, the *Poe* court noted that under *Gladden v. State*,<sup>139</sup> the relevant inquiry in the poor aim situation was not whether the gunshot hit or missed the intended victim, but rather what the defendant could have been convicted of had he accomplished his intended act.<sup>140</sup> Therefore, transferred intent was applicable to Kimberly's killing because Poe could have been convicted of first degree murder had he accomplished the act that he intended—the killing of his wife.<sup>141</sup>

Judge Raker wrote a concurring opinion because she disagreed with the majority's narrow interpretation of the doctrine of trans-

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attempted murder in *State v. Wilson*, 313 Md. 600, 546 A.2d 1041 (1988)).

130. *See id.*

131. *See id.*

132. *See id.*

133. *See Bruce v. State*, 317 Md. 642, 646-47, 566 A.2d 103, 105 (1989).

134. *See Poe*, 341 Md. at 529, 671 A.2d at 504.

135. *See id.* at 530, 671 A.2d at 504.

136. *See id.*

137. *See id.*

138. *See id.* at 530, 671 A.2d at 504.

139. 273 Md. 383, 330 A.2d 176 (1974).

140. *See id.* at 393, 330 A.2d at 181.

141. *See Poe*, 341 Md. at 531, 671 A.2d at 505.

ferred intent.<sup>142</sup> Judge Raker stated that transferred intent may be applied to the fatal and non-fatal injuries of a bystander; in other words, a death is not required to invoke the doctrine.<sup>143</sup>

#### IV. ANALYSIS

##### A. Critique of the Court's Holding and Rationale

The *Poe* majority found that because a death occurred, transferred intent applied where a gunshot passed through the intended victim and killed an unintended victim.<sup>144</sup> Essentially, the majority took the facts of this case and tacked on an artificial death requirement.<sup>145</sup> This logic in the *Poe* majority's reasoning exposed an incongruity in Maryland precedent. The court previously held in *Wilson*<sup>146</sup> that transferred intent applied to attempted murder of an unintended victim, rather than just completed homicides.<sup>147</sup> In *Ford*,<sup>148</sup> the court stated that the doctrine of transferred intent cannot apply when there is no death.<sup>149</sup> The *Ford* court reasoned that when a defendant attempts to murder *A* but injures *B*, there is no reason to invoke the doctrine because the defendant is not escaping criminal liability for the attempted murder of *A*.<sup>150</sup> Thus, the doctrine is not

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142. See *id.* at 534-35, 671 A.2d at 506-07 (Raker, J., concurring).

143. See *id.* at 540, 671 A.2d at 509 (Raker, J., concurring).

144. See *id.* at 530, 671 A.2d at 504.

145. See *id.* at 531 n.4, 671 A.2d at 505 n.4.

146. 313 Md. 600, 546 A.2d 1041 (1988).

147. See *id.* (applying transferred intent to attempted murder when there is no death). The *Wilson* court's position reflected the doctrine as it was carried over to the United States from England. The doctrine has always been applied "in a long array of cases in which poisoning, shooting, striking, or throwing a missile resulted in *injury* to the wrong" person. Prosser, *supra* note 1, at 652-53 (emphasis added). Historically, the question has been whether the unintended victim is injured at all, not whether a death occurred.

148. 330 Md. 682, 625 A.2d 984 (1993).

149. See *id.* at 714, 625 A.2d at 999. The purpose behind the doctrine is to prevent a defendant from escaping liability for an unintended murder in which every element has been committed. See *id.* The degree of the crime and any defenses transfer with the intent. See *Pinder v. State*, 8 So. 837 (Fla. 1891) (degree); *Mayweather v. State*, 242 P. 864 (Ariz. 1926) (defenses); *State v. Fielder*, 50 S.W.2d 1031 (Mo. 1932) (defenses); *State v. Stallings*, 33 S.W.2d 914 (Mo. 1930) (defenses).

150. See *Ford*, 330 Md. at 714, 625 A.2d at 999. The court's position is contrary to the idea of resting criminal liability upon the ground of transferred intent: "To be guilty of a crime involving a harmful result to *C*; *A* must intend to do harm to *B*; but *A*'s intent to harm *B* will be transferred to *C*; thus *A* actually did intend to harm *C*; so he is guilty of the crime against *C*." LAFAYE & SCOTT,

needed to charge the defendant with a crime.<sup>151</sup> Furthermore, the defendant remains liable for injury caused to *B*, but not under the doctrine of transferred intent.<sup>152</sup>

Had Kimberly, Poe's unintended victim, only been injured, the court would likely have declined to apply transferred intent because the court considered transferred intent not to apply to attempted murder when there is no death.<sup>153</sup> The court reasoned that just as there is no such crime as attempted felony murder, there can be no attempted crime through transferred intent.<sup>154</sup>

This reasoning is flawed. A conviction for felony murder does not require proving specific intent to kill; it requires proving the specific intent to commit the underlying felony.<sup>155</sup> Therefore, because criminal attempt is a specific intent crime, there is no crime of attempted felony murder in Maryland.<sup>156</sup> Transferred intent, on the other hand, is a specific intent crime.<sup>157</sup> Thus, a defendant who attempts to kill their intended victim but instead injures an unintended victim should be held liable under transferred intent for attempted murder of the unintended, injured victim.

Along with the analogy to felony murder, the *Poe* court built its holding from the groundwork it laid in *Ford*: "In *Ford*, we made clear that if a defendant intends to kill a specific victim and instead wounds an unintended victim *without killing* either, the defendant can be convicted only of the attempted murder of the *intended* victim and transferred intent does not apply."<sup>158</sup> Although the *Poe*

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*supra* note 12, at 284.

151. *See Ford*, 330 Md. at 716-17, 625 A.2d at 1000-01.

152. *See id.* The court's reluctance to apply transferred intent when the injury to the unintended victim is not as serious as the injury to the intended victim was contrary to general principles of criminal law. The law considers that regardless of whether the unintended victim is injured or killed, the defendant is just as guilty as if he had harmed the intended victim. *See LAFAYE & SCOTT, supra* note 12, at 284.

153. *See Poe v. State*, 341 Md. 523, 529, 671 A.2d 501, 504 (1996). For a discussion of the differences between felony murder and transferred intent, see Nelson E. Roth & Scott E. Sunby, *The Felony-Murder Rule: A Doctrine At Constitutional Crossroads*, 70 CORNELL L. REV. 446, 453-57 (1985).

154. *See Poe*, 341 Md. at 529, 671 A.2d at 504.

155. *See Bruce v. State*, 317 Md. 642, 646, 566 A.2d 103, 105 (1989).

156. *See id.*

157. Generally, transferred intent is not applicable when the defendant's state of mind to commit the act does not constitute the specific *mens rea* for the offense charged. *See ROLLINS M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW* 923 (3d. ed. 1982).

158. *Poe*, 341 Md. at 530, 671 A.2d at 504; *see also Ford v. State*, 330 Md. 682, 714,

court stated that *Ford* was inapposite to the instant case and that it only discussed *Ford* to explain why the defendant's reliance on that case was misplaced, the court followed the logic in *Ford*.<sup>159</sup> The *Poe* court reasoned that transferred intent applied because there was a death and the doctrine was needed to impose criminal liability upon Poe for that death.<sup>160</sup> Because the defendant failed to complete the crime upon the targeted victim, but instead completed it upon an unintended victim, the court concluded that transferred intent applied in *Poe*.<sup>161</sup>

As a result, the *Poe* court abandoned its holding in *Wilson* in favor of the "death requirement" proposed in *Ford*.<sup>162</sup> Under *Wilson*, the doctrine was invoked when the second crime against the unintended victim was as serious as the crime against the intended victim,<sup>163</sup> relying on the theory that intent follows the bullet.<sup>164</sup> Under *Poe*, however, the doctrine is reserved for cases where the unintended victim is killed and the intended victim is not.<sup>165</sup> Because the

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625 A.2d 984, 999 (1993). The court's limitation seems questionable when compared to the following hypothetical: If A possessed the *mens rea* necessary for a charge of attempted murder of B, but wounded C in the course of attempting to murder B, then it is permissible to charge A with the attempted murder of C because A's state of mind to do the act constituted the *mens rea* for the offense charged.

159. See *Poe*, 341 Md. at 531 n.4, 671 A.2d at 505 n.4.

160. See *id.* at 530, 671 A.2d at 504.

161. See *id.*

162. *Ford*, 330 Md. at 714, 625 A.2d at 999; see also *Poe*, 341 Md. at 530, 671 A.2d 504.

163. See *State v. Wilson*, 313 Md. 600, 609, 546 A.2d 1041, 1045 (1988) (holding that the doctrine applies to attempted murder and the defendant's *mens rea* will carry over when the conduct causes injury to an unintended victim).

164. See *id.* at 609, 546 A.2d at 1046. A well-settled rule of criminal law is that there can be no crime without criminal intent. See WILLIAM L. CLARK & WILLIAM L. MARSHALL, A TREATISE ON THE LAW OF CRIMES 77 (Herschel Bouton Lazell ed., 2d ed. 1996). At common law, an act is not considered a crime if the person doing the act possesses an innocent state of mind. See *id.* Thus, the law hesitates to punish persons who are mentally incapable of understanding the implications of their actions (e.g., children and insane people) or who are acting in good faith. See *id.* at 78. It follows that a person who purposefully commits an act shall be punished based upon his guilty state of mind to commit the crime regardless of whether that person successfully executed the crime. Generally, to constitute a criminal intent, it is not necessary that the person intended the particular results for which he is punished. See *id.* at 84.

165. Compare *Poe*, 341 Md. at 531, 671 A.2d at 505 (holding that transferred intent applies only when there is an unintended death), with CLARK & MARSHALL, *supra* note 164, at 84 ("[A] homicidal act, taking effect on a person other

court's holding limited the applicability of transferred intent to crimes where death results, Judge Raker wrote a concurring opinion to clarify what she believed the majority intended to hold.<sup>166</sup>

### 1. Alternative Approaches

Judge Raker explained why the majority's reliance on *Ford* was misguided. She considered the majority's statement that "transferred intent does not apply to attempted murder when there is no death" to be too broad.<sup>167</sup> Judge Raker opined that transferred intent should not be applied to attempted murder if no one is injured.<sup>168</sup>

To arrive at this conclusion, Judge Raker examined the court's treatment of the *Wilson*<sup>169</sup> opinion in *Ford*. She noted that in *Ford* the doctrine of transferred intent arose only as a collateral issue.<sup>170</sup> The central issue in *Ford* was whether the evidence was sufficient for a jury to find that the defendant possessed the specific intent to disable which was necessary for a conviction of assault with intent to disable.<sup>171</sup> The issue of transferred intent merely formed an alternative basis for affirming the conviction.<sup>172</sup> Accordingly, Judge Raker contended that *Ford* only questioned the rationale for the court's decision in *Wilson*, which recognized the application of the transferred intent doctrine to attempted murder.<sup>173</sup> Therefore, she noted, *Ford* could not and did not overrule *Wilson*.<sup>174</sup>

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than the one whom the slayer intended, makes [the actor] guilty of the same degree of homicide of which he would have been guilty had the person intended been slain.").

166. See *Poe*, 341 Md. at 534, 671 A.2d at 506 (Raker, J., concurring).

167. *Id.* at 535, 671 A.2d at 507 (Raker, J., concurring). Judge Raker did not interpret *Ford* to preclude transferred intent from being applied to all crimes of attempted murder. See *id.* (Raker, J., concurring).

168. Judge Raker cited persuasive authority to support her position. See *id.* at 535, 671 A.2d at 507 (Raker, J., concurring); see also *Harrod v. State*, 65 Md. App. 128, 137, 499 A.2d 959, 963 (1985); *State v. Martin*, 119 S.W.2d 298, 302 (Mo. 1938). But see *State v. Gillette*, 699 P.2d 626, 636 (N.M. 1985) (applying transferred intent to attempted murder although no one was injured).

169. 313 Md. 600, 546 A.2d 1041 (1988).

170. See *Poe*, 341 Md. at 534, 671 A.2d at 506 (Raker, J., concurring).

171. See *Ford v. State*, 330 Md. 682, 708-18, 625 A.2d 984, 996-1001 (1993).

172. See *Poe*, 341 Md. at 534, 671 A.2d at 506 (Raker, J., concurring).

173. See *id.* at 535, 671 A.2d at 506 (Raker, J., concurring).

174. See *id.* (Raker, J., concurring). Judge McAuliffe's concurring opinion described the *Ford* court's new limitation on the doctrine of transferred intent as dictum. See *Ford*, 330 Md. at 726, 625 A.2d at 1005.

Three years before *Ford* was decided, the court of appeals relied on *Wilson* for the proposition that “[t]he specific intent that is required [for attempted murder] may be a ‘transferred’ intent, that is, the *mens rea* of a defendant as to his intended victim will be transferred to an unintended victim who suffers injury as a result of the defendant’s attempt.”<sup>175</sup> *Ford* was the only Maryland case that suggested limiting the doctrine of transferred intent to cases where a death occurs.<sup>176</sup>

Furthermore, Judge Raker was unimpressed with the analogy the majority drew between felony murder and transferred intent.<sup>177</sup> The majority asserted that because felony murder and transferred intent both impose criminal liability for unintended deaths, the two concepts are interchangeable.<sup>178</sup> Thus, because felony murder is inapplicable when death does not result, the majority concluded that transferred intent is inapplicable as well when death does not result.<sup>179</sup> Judge Raker illustrated that transferred intent should not be subjected to the same limitations as felony murder because the two doctrines are not interchangeable.<sup>180</sup> Under felony murder, courts *impute* an intent on the actor committing a felony, whereas under transferred intent, courts can only *shift* the defendant’s intent from the intended victim to the unintended victim.<sup>181</sup> Consequently, transferred intent may apply to both the fatal and non-fatal injuries that an unintended victim sustains.<sup>182</sup>

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175. *State v. Earp*, 319 Md. 156, 163, 571 A.2d 1227, 1231 (1990) (citing *State v. Wilson*, 313 Md. 600, 609, 546 A.2d 1041 (1988)).

176. Understandably, the *Poe* court gave weight to the *Ford* decision because *Ford* was the most recent case interpreting Maryland’s doctrine of transferred intent. *See Poe*, 341 Md. at 529, 671 A.2d at 503.

177. *See Poe*, 341 Md. at 535, 671 A.2d at 507 (Raker, J., concurring). The majority found that felony murder and transferred intent were interchangeable; therefore, because one is not applied when there is no death, the other should not apply either. *See id.* at 529, 671 A.2d at 504.

178. *See id.* at 529, 671 A.2d at 504.

179. *See id.* at 536, 671 A.2d at 507 (Raker, J., concurring).

180. *See id.* (Raker, J., concurring).

181. *See id.* (Raker, J., concurring) (“Transferred intent can only function to ‘shift’ the defendant’s intent from one object to another, while felony murder may be used to imply an intent from the defendant’s act of committing a felony.”); *see also* *People v. Carlson*, 112 Cal. Rptr. 321, 323-24 (Ct. App. 1974) (asserting that felony murder operates to remove the issue of malice from the trier of fact, thereby relieving the trier of fact from having to find the malice element of the crime of murder); PERKINS & BOYCE, *supra* note 157, at 922-24.

182. *See State v. Wilson*, 313 Md. 600, 609, 671 A.2d 1041, 1045 (1988) (holding that transferred intent is applicable even when no death results because injury to

Additionally, Judge Raker disagreed with the majority's position that the doctrine of transferred intent should be reserved for cases where the bystander was killed.<sup>183</sup> The doctrine has been held to apply to bystanders who endured non-fatal injuries.<sup>184</sup> Judge Raker asserted that reserving transferred intent only for situations where a death occurs, as the majority held, is contrary to public policy.<sup>185</sup> Because the policy reason for transferred intent is to guarantee proportionate punishment of criminal offenses and to prevent criminals from escaping responsibility because of bad aim, it follows that courts should apply the doctrine regardless of whether the bystander's injury is fatal or non-fatal.<sup>186</sup>

For Judge Raker, the *Poe* court held that transferred intent applies to a first degree murder of a bystander, regardless of whether the defendant actually injured the intended victim.<sup>187</sup> Judge Raker's reasoning is more sound than the majority's because it does not preclude the use of the doctrine in attempted murder prosecutions.<sup>188</sup> Judge Raker's clarification was in tune with the elements of the doctrine as it is commonly applied.

#### B. *Impact of Poe v. State*

After *Poe v. State*, Maryland practitioners can expect to debate the applicability of transferred intent in cases where nobody is fatally wounded. For instance, the court will be concerned with the issue of whether the crime against the unintended victim is as serious or more serious than the completed crime against the intended victim.<sup>189</sup> Had Kimberly only been injured and not killed, the court may not have transferred Poe's intent because the court was reluctant to apply the doctrine to attempted murder when there is no death.<sup>190</sup> Also, prosecutors looking to invoke the doctrine should be prepared to demonstrate that a defendant would be escaping responsibility for a crime if transferred intent is not invoked. Essentially, the court is hesitant to apply the doctrine when it creates two

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an unintended victim, like death, is the result of the defendant's criminal intent).

183. See *Poe*, 341 Md. at 536, 671 A.2d at 507 (Raker, J., concurring).

184. See *id.* at 539, 671 A.2d at 509 (Raker, J., concurring).

185. See *id.*; see also *People v. Birreuta*, 208 Cal. Rptr. 635, 639 (Ct. App. 1984).

186. See *Poe*, 341 Md. at 539, 671 A.2d at 509 (Raker, J., concurring).

187. See *id.*

188. See *id.* at 539, 671 A.2d at 509 (Raker, J., concurring).

189. See *id.* at 529-30, 671 A.2d at 503-04.

190. See *id.*

crimes out of one act.<sup>191</sup>

Furthermore, if the majority's opinion is interpreted to preclude the doctrine in attempted murder cases, this will likely help defendants and hinder prosecutors.<sup>192</sup> For instance, suppose that *A* attempted to kill *B* but instead only injured *C* without harming *B*. The majority's holding would preclude transferring *A*'s felonious intent to murder from *B* to *C*. Rather, *A* could only be charged with a lesser crime, such as assault on *C*. Consequently, this interpretation of the law will help defendants. Transferred intent, if applied in this situation, would only provide prosecutors with a way to hold defendants liable for their intentional, illegal acts.

In the future, courts must distinguish between transferring intent and duplicating intent. Those courts that decline to invoke transferred intent when nobody is injured reason that intent would be duplicated if a defendant was charged with attempted murder of both the intended and unintended victims. Those courts applying transferred intent when the unintended victim is injured reason that the law is in fact only transferring the intent in such a situation. The attempted murder charge for the act against the unintended victim is transferred because a person who purposefully commits a crime is punished based upon their illegal intention, not on whether they successfully executed the crime.

## V. CONCLUSION

*Poe v. State* addressed whether the doctrine of transferred intent applies when a defendant, intending to kill one person, shoots and wounds that person, but the shot passes through the intended victim and kills an innocent bystander.<sup>193</sup> The majority's opinion extended Maryland law in one sense, but also limited the number of situations where transferred intent is applicable.<sup>194</sup> In holding that transferred intent applies when a bullet passes through the intended victim before killing an unintended victim, the court of appeals reaffirmed Maryland's commitment to preventing criminals

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191. *See id.* at 529, 671 A.2d at 503-04; *see also* *Ford v. State*, 330 Md. 682, 712, 625 A.2d 984, 998 (1993).

192. *See Poe*, 341 Md. at 539, 671 A.2d at 509.

193. *See id.* at 525, 671 A.2d at 502.

194. *See id.* at 531, 671 A.2d at 504-05. The doctrine was extended to apply not only when the defendant misses the intended victim, but also when the defendant hits and wounds the intended victim. *See id.* However, the majority limited applications of transferred intent to the offense of murder where there is an unintended death. *See id.*

from escaping responsibility due to poor aim.<sup>195</sup>

The court went further, precluding application of the doctrine to attempted murder when there is no death.<sup>196</sup> This presents a problem because traditionally the doctrine has applied to injured bystanders as well. Judge Raker clarified the majority's holding, stating that transferred intent should apply to attempted murder unless no one is injured.<sup>197</sup> In extending the doctrine to circumstances in which the intended victim is hit but not killed, the court inadvertently narrowed the doctrine to apply only when a death occurs. Practitioners are left to debate the ambiguous impact *Poe v. State* will have on Maryland law.

*Daniel J. Curry*

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195. *See id.* at 539, 671 A.2d at 509 (Raker, J., concurring).

196. *See id.* at 530, 671 A.2d at 504.

197. *See id.* at 534-35, 671 A.2d at 506.