

**RECEIVED**

**Aug 02 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Horry County  
Honorable Larry B. Hymann, Jr, Post Conviction Relief Judge  
Appellate Case <sup>1</sup> 2019-000533  
Unpublished Opinion No. 2023-UP-240

---

THE STATE,

Respondent,

vs.

LARRY T. CHESTNUT,

Appellant.

---

Petition for Rehearing

---

Larry T. Chestnut, the Appellant above named, hereby Petitions this Court pursuant to Rule 221(a) of the South Carolina Appellate Court Rules to rehear this matter based upon the following:

1. On May 21, 2016, Larry Chestnut, a black man, was attacked by a white man, Joey Hucks, who was yielding a knife. They were in the home of Larry Chestnut. Mr. Chestnut had to retreat to his kitchen to get a pair of kitchen scissors to defend himself against the attack. Both men were seriously injured. Mr. Hucks died as a result of the incident and Mr. Chestnut was hospitalized in ICU for approximately a month as a result of his injuries. Prior to this date the parties involved had never fought or planned to fight.
2. At the trial for murder, the defense counsel argued a strategy of self-defense, a tactic that is nullified by mutual combat, yet when mutual combat was charged to the jury, there

was no objection from trial counsel to an improper charge that was not supported by the evidence and was fatal to his supposed strategy and defense.

3. At the evidentiary hearing PCR counsel and the court had an exchange and the court stated the following:


“THE COURT: I get it. I don’t think there was any evidence in this record indicating true mutual combat. I don’t think it’s there. I agree with you for once and for all, it’s there. Okay?”

4. “The law to be charged to the jury is to be determined by the evidence at trial.” *State v. Smith*, 391 S.C. 408,413 706 S.E.2d 12,14 (2011) (citing *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834,835 (1989)). Here as the PCR court noted, there was no evidence of mutual combat. It is improper to confuse the jury with a self defense charge that includes a mutual combat charge when there is no evidence of mutual combat. “If a jury instruction is provided to the jury that does not fit the facts of the case it may confuse the jury.” *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802,804 (2002). Commingling charges on mutual combat and self defense are *ipso facto* harmful. Also, in *State v. Bowers*, the court found the mere charge as to mutual combat was prejudicial because it negated self-defense. *State v Bowers*, 428 S.C. 21,34, 832 S.E.2d 623,630 (Ct. App. 2019).

5. This Court granted Writ of Certiorari but then dismissed the case as improvidently granted. By granting Certiorari the court appeared to recognize the holdings in *Taylor* and *Bowers* that clearly apply to the matter at hand. Respectfully, in dismissing this matter as improvidently granted the Court failed to properly consider this matter in the light of *Taylor* and *Bowers* insomuch as the PCR court noted there was no evidence of mutual combat, but allowed no objection to that charge that was *ipso facto* prejudicial to go uncorrected. This ineffective

assistance of counsel should not be allowed by the PCR Court or this Court. The trial counsel did not understand that a fight is not always mutual combat, that became clear at the evidentiary hearing. The Judge at the evidentiary hearing did understand it as noted above, "THE COURT: I get it. I don't think there was any evidence in this record indicating true mutual combat. I don't think it's there. I agree with you for once and for all, it's there. Okay?" By granting the Writ of Certiorari this Court seemed cognizant of the holdings in Taylor and Bowers, by dismissing it as improvidently granted, it seems no Court cares that the law regarding mutual combat has been reduced to literally nothing, as a man that has to retreat in his own home to defend himself, who has never fought or planned to fight his attacker can have his self-defense claim muddled with a mutual combat charge.

For the above noted reasons, Larry T. Chestnut petitions the Court to Rehear this matter and issue an opinion consistent with the case law on Mutual Combat in the State of South Carolina.



STEPHEN D. GEOLY 8/2/23

227 Hampton Avenue  
Greenwood, SC 29646  
(864) 223-3352  
[geolylawfirm@yahoo.com](mailto:geolylawfirm@yahoo.com)  
S. C. Bar # 9674

Attorney for Larry T. Chestnut

Greenwood, SC  
8/2/23

**RECEIVED**

**Aug 02 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Horry County  
Honorable Larry B. Hymann, Jr, Post Conviction Relief Judge

---

Appellate Case <sup>1</sup> 2019-000533  
Unpublished Opinion No. 2023-UP-240

---

THE STATE,

Respondent,

vs.

LARRY T. CHESTNUT,

Appellant.

---

CERTIFICATE OF SERVICE

---

The undersigned attorney hereby certifies that on the date below a true copy of the Brief of Appellant and supplemental Record on Appeal in the above referenced case has been served upon Respondent.



---

STEPHEN D. GEOLY  
227 Hampton Avenue  
Greenwood, SC 29646  
(864) 223-3352  
[geolylawfirm@yahoo.com](mailto:geolylawfirm@yahoo.com)  
S. C. Bar <sup>1</sup> 9674

August 2, 2023