

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

AARON SCOTT YOUNG, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000011

SUPPLEMENTAL APPENDIX

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

FINAL BRIEF OF APPELLANT

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ARGUMENTS

Appellant's convictions for murder and attempted murder result from gross overcharging to the point of pushing the boundaries of South Carolina law beyond its breaking point. While Appellant may have committed a criminal act, for example by shooting Robinson's unoccupied vehicle, Appellant *did not* kill, *did not* proximately cause the death of, and *did not* attempt to kill anyone. Regardless, the Solicitor chose to charge Appellant with murder and attempted murder on legally tenuous and factually unsupported theories and forego charging Appellant with charges, for example destruction of property,¹ that may have a legal and factual relationship to Appellant's actions.

The State now incredibly asserts Appellant's convictions and the underlying distortion of South Carolina law are necessary given the "escalating urban warfare in present-day society." To the contrary, the State has not shown any "escalating urban warfare" necessitating a change in South Carolina law, and South Carolina law has adequately addressed, and will continue to adequately address, the public use of firearms and the death of bystanders through the felony murder, accomplice liability, and transferred intent theories of criminal liability.

Moreover, not only is there no need to recognize a mutual combat theory of murder in South Carolina, recognizing mutual combat as a stand-alone basis for a murder conviction for the death of a bystander creates legal problems as highlighted by the use of the theory in this case. The harms resulting from recognizing such a theory include:

- The theory would conflict with the requirement that a defendant proximately cause a death to be held criminally responsible for that death.

- The theory would conflict with the settled law of transferred intent which serves only to expand the malice element of a murder charge and does not serve to expand the criminal liability of one actor to include the results of another person's actions.

Not only is the State's attempt to expand South Carolina law unnecessary, ill-advised, and legally tenuous, the facts of this case fall outside the State's proposed theory of mutual combat. Thus, even were the State's theory legally valid, this is not the case to recognize such a theory. Appellant and Robinson never engaged in mutual combat on the day in question, much less engaged in mutual combat at the time Robinson fired the shot that killed Khalil. Therefore, even were South Carolina to recognize the State's mutual combat theory, Appellant could not be convicted for murder under such a theory.

To stretch the State's mutual combat theory to affirm Appellant's murder conviction would create absurd results. Were the facts of this case sufficient for a murder conviction under a mutual combat theory, a person could be convicted of murder regardless of the facts that the person's "combatant" hides to avoid actual combat, the combatant ambushes the person at a time and place of the combatant's choosing, and the passage of days, weeks, or months since the last interaction between the person and the combatant. In short, if ill-will and any violence or threat of violence occurs between a person and another, the State's theory would permit the person to be held criminally responsible for the other's violent acts at any future time or place.

The State may contend that a person should be held responsible for any criminal act that occurs as a result of his engaging in mutual combat, but the criminal law exists to punish offenders for prohibited conduct and harms that were the foreseeable result of such conduct. *See, e.g., 1 Wharton's Criminal Law* § 26 (15th ed.). Here, Appellant could not reasonably foresee that

¹ *See, e.g., S.C. Code Ann. § 16-11-510* (malicious injury to personal property).

Robinson would fire a weapon at him with children in the line of fire, and thus, even if engaged in mutual combat, the law should not hold Appellant criminally responsible for Robinson murdering Khalil. Appellant had no control over Robinson's actions, had no control over where and when Robinson chose to fire his weapon, and thus, had no control over Khalil's death.

Appellant, as seen in the videotaped interviews admitted at his trial, acknowledged that his actions were rash and expressed his anguish that Khalil died as a result of Robinson's actions. However, Robinson is the party responsible for Khalil's death, and he has been held accountable for his actions. Appellant may have acted foolishly and even criminally that day, but during the one instance when Appellant fired his weapon that day—when he shot Robinson's car—he knew that there were no children around the vehicle or in the direction he fired. (State's Ex. 38, Videos 1, 2, & 7; R. p. 635.) Robinson, however, chose to ambush Appellant resulting in Khalil's death. Robinson chose not only to fire at Appellant, but he chose the time and place at which to do so. Thus, even were the State's mutual combat theory a valid legal basis for a murder conviction, the facts of this case do not support a conviction under such a theory.

Finally, the State fails to point to any evidence from which a jury could reasonably conclude that Appellant attempted to murder Robinson. The State mischaracterizes Appellant's statements to the police as an admission that Appellant attempted to shoot Robinson on Bryant Road, but a full consideration of those statements shows Appellant clearly stated he never tried to shoot Robinson. The State also points to two statements Robinson made to witnesses on September 1, 2012, and to a 911 telephone call recording, but none of those items of evidence identify Appellant as firing a weapon at or even pointing a weapon at Robinson. Therefore, because there was no evidence that Appellant tried to fire a weapon at Robinson, there was no evidence from which a jury could

reasonably find Appellant attempted to murder Robinson and the trial court erred in denying Appellant's directed verdict motion on the attempted murder charge.

I. MUTUAL COMBAT ALONE DOES NOT SUPPORT A MURDER CONVICTION

Appellant asserts that South Carolina law *does not* recognize mutual combat as a basis for a murder conviction and South Carolina *should not* recognize mutual combat as such. The State contests both of these assertions, but the State's arguments on each ground are flawed.

Rather than supporting its contention that mutual combat is recognized in South Carolina as a basis to hold a defendant guilty for murder, and to the contrary, the decisions cited by the State show that South Carolina recognizes mutual combat only in relation to self-defense. As discussed in detail in Appellant's Brief, all of the decisions cited by the State employ mutual combat in its role as a bar on a claim of self-defense.

The State also cites decisions from other jurisdictions as supporting the recognition of a mutual combat theory in South Carolina, but does not address the distinctions between the use of mutual combat in other jurisdictions and the theory advanced here. The State also fails to address the problems with the theory applied by the trial court and advanced on appeal. Other jurisdictions use mutual combat as a relevant to establishing the elements of murder, whereas here the trial court used mutual combat as a *stand-alone* basis for a murder conviction.

The mutual combat theory used by the trial court and advanced by the State on appeal here is problematic in ways that the use of mutual combat by other jurisdictions as merely relevant to establishing the elements of murder is not. Recognizing the State's mutual combat theory would conflict with the proximate causation requirement for a murder conviction. *See, e.g., State v. Fields*, 314 S.C. 144, 146 n.1, 442 S.E.2d 181, 182 n.1 (1994) ("Where two persons combine to commit an unlawful act and in its execution a homicide is committed as a probable or natural consequence

thereof, all present and participating in the unlawful act are as guilty as the one who committed the fatal act.”); *State v. Des Champs*, 126 S.C. 416, —, 120 S.E. 491, 492 (1923) (“The law applicable in ascertaining and appraising the consequential damage resulting from such criminal act is the familiar law of proximate cause.”); *State v. McCall*, 304 S.C. 465, 469–70, 405 S.E.2d 414, 416 (Ct. App. 1991) (“Except in rare situations, a person committing an unlawful act is legally responsible for all natural or necessary consequences thereof.”), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). All that would be required for a murder conviction using the State’s mutual combat theory would be for two parties to engage in mutual combat and the acts of one of the two parties results in the death of a bystander. As shown by the facts of this case, this theory is problematic because it makes Appellant criminally liable for the death of a bystander even when Appellant had no control over where and when his alleged combatant fired and was not able to reasonably foresee that his alleged combatant would fire his weapon with children in the line of fire.

The State’s mutual combat theory is also problematic due to its misapplication of the doctrine of transferred intent. Under the State’s theory, the doctrine of transferred intent is absorbed into the mutual combat theory so that a mutual combatant is responsible for any death of a bystander resulting from his combatant’s actions. However, the doctrine of transferred intent operates so that “the actor’s intent to kill his intended victim is said to be transferred to his actual victim.” *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent operates to constructively shift an actor’s malice, not as a doctrine for holding an actor criminally liable for the acts of another person.

Because South Carolina does not recognize mutual combat as a basis for a murder conviction, the recognition of mutual combat as a basis for a murder charge conflicts with South Carolina law,

and South Carolina law already addresses the death of a bystander, the Court should not recognize mutual combat as a basis for Appellant's conviction and should reverse Appellant's murder conviction.

II. THERE WAS NO MUTUAL COMBAT

Even could mutual combat support a murder conviction under South Carolina law, no evidence was presented at trial from which a jury could find Appellant and Robinson engaged in mutual combat. As acknowledged by the State, for mutual combat to exist: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must be armed with deadly weapons, and (3) the parties must engage in mutual combat with deadly weapons. (State's Resp. at 24; Appellant's Br. at 13.) No evidence was introduced at trial to establish that these requirements for mutual combat existed at any time on September 1, 2012, as shown by considering the evidence presented as to each of the four incidents of that day.

A. Wild Horse Road Incident

During the first incident at Appellant's home on Wild Horse Road, Robinson confronted Appellant and his father with a pistol, but there was no evidence of any of the three elements required for mutual combat. First, there was *no* evidence that Robinson intended to and was willing to engage in mutual combat with Appellant or his father at that time. Rather, the only evidence presented was that Robinson exited the vehicle with a pistol, approached Appellant, was "argumentative" and "loud and cussing," (R. p. 377), and after regaining control of the gun from Appellant's father and firing at his feet, Robinson drove away rather seeking combat with Appellant (R. pp. 363-364). The State offers nothing further as evidence to show Robinson had an intent and willingness to engage in mutual combat. (State's Br. at 25.) There also was *no* evidence that Appellant intended to or was willing to fight with Robinson. Rather, the evidence showed only that

Appellant was standing in his yard as Robinson approached him, and the State presents nothing further. (State's Br. at 25.)

Second, there was *no* evidence that Appellant, or anyone other than Robinson, was armed with a deadly weapon at the time of this incident.

Third, there was *no* evidence that Appellant engaged in mutual combat with Robinson. Robinson approached Appellant with a pistol, Appellant's father interceded and wrestled with Robinson for control of the gun, Robinson gained control of the gun, and Robinson fired at Appellant's father's feet and fled. (R. pp. 362-378.) There is no evidence that Appellant and Robinson ever came into physical contact with or fired at the other, and the State fails to point to any such evidence. (State's Br. at 25.)

B. Bryant Road

There also was no evidence of mutual combat on Bryant Road. First, when Appellant arrived on Bryant Road, Robinson fled. (State's Ex. 38, Video 7; R. p. 635.) Robinson fleeing indicates he did *not* intend to and was *not* willing to engage in mutual combat with Appellant. Second, Appellant and Robinson did not engage in combat on Bryant Road. There is no evidence that the two, or any other person, made physical contact with or fired at the other. The State fails to point to any evidence to the contrary. (State's Br. at 25.)

C. First Allen Road Incident

Similarly, there was no evidence of mutual combat at the first incident on Allen Road. First, *no* evidence was introduced to show that Robinson was even present when Appellant fired his weapon at Robinson's car. With Robinson not present at the scene, there is no evidence that he intended to or was willing to engage in combat with Appellant at that location and time.

Second, there was *no* evidence that Appellant and Robinson engaged in combat during the

first incident on Allen Road. Again, Robinson was not present, and Appellant fired only at Robinson's vehicle. The State fails to point to any other evidence as showing mutual combat at that time. (State's Br. at 26.)

D. Second Allen Road Incident

For the second incident on Allen Road, when Robinson fired from an unobserved position at the corner of Allen Road and Marshland Road and his bullet struck and killed Khalil, there was no evidence of mutual combat. First, there was no evidence that Appellant was even aware that Robinson was present at the intersection of Allen Road and Marshland Road, and Robinson fired at Appellant's father's vehicle from a hidden position. Therefore, while Robinson may have been willing to ambush from a hidden position, Robinson did not intend to and was not willing to engage in combat with Appellant.

Second, Appellant and Robinson did not engage in mutual combat during this incident. Robinson fired at Appellant's father's truck from a hidden position as it was driving away from Allen Road. Appellant did not fire at Robinson at this time. Again, the State fails to point to any other evidence to satisfy the missing elements of mutual combat. (State's Br. at 26.)

E. There Was No Mutual Combat at Any Other Time on September 1, 2012

The State points to two items of evidence—Robinson's statement to Delaney and a 911 telephone call—presumably to support an argument that there is evidence that at some time on September 1, 2012, other than the four incidents discussed above, Robinson and Appellant engaged in mutual combat. (State's Br. at 26.) However, as discussed in relation to the attempted murder charge, these two items of evidence do not establish that Appellant fired a weapon at or otherwise engaged in mutual combat with Robinson.

Robinson told Delaney: "[Y]eah they was shootin at me so I shoot back at them." (R. p. 333.)

Robinson never identified who "they" was. He did reference a grey truck and Appellant's father's truck was grey, but Robinson did not identify the grey truck as Appellant's father's truck and did not identify who in a grey truck fired at him. Robinson also did not state when "they" allegedly shot at him. The evidence presented at trial indicated there had been previous incidents between Robinson and Appellant, and Robinson's statement to Delaney does not provide any indication as to whether he was referring to shots fired at him on September 1, 2012, or on some previous day. One logical interpretation, consistent with the evidence presented at trial, is that someone in or connected to Appellant's father's truck fired a weapon at Robinson on a previous date, and Robinson's aggression and firing a pistol on Wild Horse Road on September 1, 2012, were in response to the earlier event.

F. There Was Not One Continuous Instance of Mutual Combat

The State may suggest that the four incidents during the afternoon of September 1, 2012, constitute one continuous mutual combat between Appellant and Robinson. If this is the State's position, it too is unavailing. For there to be mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed. To the contrary and as discussed previously, at no point in time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. At every point in time that afternoon, one or more of these elements were missing. Most importantly, at no point in time did Robinson ever exhibit an intent or willingness to engage in combat with Appellant. At all times, Robinson was only willing to attack when the attack could not result in mutual combat, *i.e.*, on Wild Horse Road, Appellant and his father were not armed and Robinson fled before they could obtain a weapon, and on Allen Road, Robinson attacked from a hidden position as Appellant and his father drove away. Therefore, there was no point in time at which mutual combat could have begun and continued from, and thus, there cannot have been one continuous instance of mutual combat.

III. THE END OF MUTUAL COMBAT AS A BASIS FOR A DIRECTED VERDICT WAS PRESERVED

Appellant preserved as a basis for a reversal the argument that any mutual combat had ended at the time Robinson fired the fatal shot and thus the trial court erred in not granting Appellant a directed verdict on the murder charge.

To preserve an error at trial, a party must raise the issue to and obtain a ruling from the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However, the issue preservation rule does not require a party to use a specific phrase or exact legal terminology to raise an issue to the trial court. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 902, 907 (2007) (finding argument preserved despite not being phrased "in the exact terms" used on appeal because the objection was stated at trial with "sufficient specificity to allow the trial court to rule on the issue"); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding argument preserved despite failure to use exact words in objecting because it was clear from the record that the argument was made on that ground). A party preserves an issue for appeal whenever the trial judge would have been reasonably able to understand the nature of the error alleged. *See, e.g., Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.").

In support of his motion for a directed verdict on the murder charge, Appellant raised the argument that to the extent there was any mutual combat, it ended before Robinson fired the fatal shot:

- Appellant argued there was "no evidence of mutual combat" (R. p. 512) and "no evidence of back and forth or a running gun battle or any kind of mutual combat" (R. p. 512), thus

arguing there was no mutual combat at the time Robinson fired the fatal shot.

- Appellant also more specifically argued that at the time Robinson fired the fatal shot, Appellant did not even know Robinson was there—that “he never saw Mr. Robinson”—and that therefore there was no mutual combat at that time—“You don’t see somebody you can’t be running a gun battle.” (R. p. 513.)
- Upon the trial court rejecting Appellant’s argument that there generally was no mutual combat between Appellant and Robinson, Appellant then continued his directed verdict argument as to mutual combat. Appellant argued that even accepting the trial judge’s ruling that there was evidence of mutual combat, “the problem in the next step of [the] mutual combat” analysis “is that obviously when you begin to retreat it ends the mutual combat.” (Tr. 489.) Appellant more specifically argued: “And in this instance clearly the evidence is that [Appellant’s father and Appellant] drove the truck down Allen Road, took a left on Marshland Road and were some considerable distance away at the time the three shots were fired. . . . And therefore the mutual combat had ended.” (R. p. 518.)
- After arguing that any mutual combat ended before Robinson fired the fatal shot, the colloquy between the trial court and Appellant’s counsel blurred into a discussion of both the directed verdict motion and the jury charges to be given. However, despite the blurred discussion, the trial court found there was no evidence to support Appellant’s argument that any mutual combat had ended and therefore rejected both the directed verdict argument and the argument for a jury charge on the end of mutual combat without the trial judge ever specifying that the ruling was specifically as to either the directed verdict argument, the jury charge argument, or both. (R. pp. 519-521.)

Accordingly, Appellant raised to the trial court the argument that any mutual combat ended before Robinson fired the fatal shot, the trial court refused to grant a directed verdict on that ground, and the issue is preserved for appeal.

IV. ANY MUTUAL COMBAT ENDED BEFORE ROBINSON FIRED THE FATAL SHOT

The State conflates the legal doctrine of withdrawal *from a conflict* with an idea that any animosity between the parties or any intent to cause future harm to an adversary must have dissipated for a conflict to end. South Carolina caselaw instructs that mutual combat ends when “the defendant withdraws from the conflict,” *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); “after a withdrawal from the initial difficulty . . . if that withdrawal is communicated . . . by word or act,” *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); and when the defendant “withdraws from the conflict and communicates that decision to his adversary,” *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). Thus, while two persons may still have a personal conflict—for example, animosity towards one another or a desire to cause harm to one another—their physical conflict and combat may have come to an end for purposes of mutual combat. Despite this legal standard, the State contends Appellant and his father driving away from Allen Road was not a withdrawal but was “a continuation of the hunt for Robinson” and was part of a plan to find and attack Robinson at a later time. (State’s Br. at 36.)

The law only requires that Appellant withdrew from the conflict and that Robinson knew of the withdrawal for any mutual combat to have ended. While the State intimates that Appellant needed to verbally communicate the withdrawal to Robinson, the law does not require a statement of an intent to withdraw and a person leaving the scene with his adversary’s knowledge is sufficient for withdrawal. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322. Appellant and his father drove away

from the location of Robinson's vehicle and did not see Robinson. Thus, there was no ongoing conflict or combat at that time. Robinson was not being attacked, was safe in his hiding place, and saw Appellant and his father driving away as evidenced by him shooting. Yet Robinson decided to initiate a conflict by firing upon Appellant and his father from his hidden position.

Furthermore, the State's conception of withdrawal would render it impossible for a person to withdraw from combat in such a situation. If Appellant decided that shooting Robinson's car was enough and quit looking for Robinson after his father drove them away from Allen Road, under the State's theory this still would not constitute withdrawal, and the alleged mutual combat would be ongoing if Robinson and Appellant saw each other a week or month later and Robinson began firing a weapon at Appellant. There has to be some point at which mutual combat ends, and South Carolina law defines that point as when a combatant withdraws from the scene of combat with his adversary's knowledge of the withdrawal. Here, Robinson made the choice to ignore Appellant and his father departing from the area and his safety in a hidden position, and instead chose to fire a weapon at them while they departed. Robinson made a terrible and unnecessary choice to fire at Appellant in an area where children were in the line of fire, and Robinson, not Appellant, should be held responsible for that act.

V. THE TRIAL COURT ERRED IN REFUSING TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT

As accepted by the State, a trial court must give a requested jury charge if there is *any* evidence to support the charge and a refusal to give a charge supported by some evidence is a reversible error. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The State asserts the trial court did not err in failing to give the requested charge on the end of mutual combat on the basis that there was *no* evidence to support such a charge, but the State's brief establishes that

there was at least *some* evidence to support a charge on the end of mutual combat.

The State first argues that Appellant and his father driving away from Allen Road “was not a desire to end the fighting” and thus was not a withdrawal from the conflict. (State’s Br. at 35.) In doing so, the State implicitly acknowledges that Appellant and his father driving away from Allen Road is evidence that could support a finding of withdrawal. The State goes on to characterize the act of driving away as “a continuation of the hunt for Robinson” and states the “act of driving away must be viewed in relation to the whole incident.” (State’s Br. at 35.) Again, the State’s argument acknowledges that whether Appellant and his father leaving the scene constituted a withdrawal from and the end of mutual combat requires an assessment of their driving away in relation to the other evidence presented in the case, and thus, the State’s argument shows that this is a factual issue to be determined by the jury.

VI. THE TRIAL COURT ERRED IN DENYING APPELLANT’S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE

The State points to four items of evidence as permitting a jury to reasonably infer that Appellant attempted to murder Robinson: (1) Appellant’s statements to the police about the events on Bryant Road; (2) Robinson’s statement to Mitchell that “those M.F. was shooting at me”; (3) Robinson’s statement to Delaney that “yeah they was shootin at me so I shoot back at them”; and (4) a 911 recording. Those items of evidence are insufficient for a jury to reasonably conclude that Appellant shot at or tried to shoot at Robinson, and accordingly, the trial court erred in denying Appellant’s directed verdict motion on the attempted murder charge.

First, the State relies on a critical misstatement of the record in relation to Appellant’s statements to the police about the events on Bryant Road. The State repeatedly asserts Appellant “tried to shoot Robinson [on Bryant Road] but the gun jammed” and that “Appellant admitted he

attempted to shoot Robinson [on Bryant Road] with the gun but it jammed.” (State’s Br. at 4, 25 27, 39, 42). To the contrary, Appellant made clear in his statement to the police that the gun was jammed when he and his father were on Bryant Road and because he knew the gun was jammed *he did not point the gun at or try to shoot Robinson on Bryant Road*, as made clear by reviewing his statement:

Appellant: What you mean the first time we caught his ass? But the shit wouldn’t shoot. It wouldn’t shoot. It wouldn’t shoot.

Investigator Albertin: So you saw him on Bryant?

Appellant: That’s how we knew where he was at. Cause, alright.

Investigator Albertin: Alright, let’s try to figure this out.

...

Investigator Albertin: Did you come across him over there?

Appellant: Yeah we did, but that shit wouldn’t shoot. It wouldn’t, the gun wouldn’t shoot.

Investigator Albertin: So what were you shooting at then?

Appellant: Him, but I didn’t shoot. It didn’t go off. The gun didn’t go off.

Investigator Albertin: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?

Appellant: *I didn’t even point the gun at him.* The gun just wouldn’t go off. I knew it wasn’t, cause when you cocked it back it wouldn’t . . . It jammed up on me. So that shit was a no go. . . .

...

Appellant: The first time we went down there ain’t nothing happened cause we saw him but it didn’t go down like wanted it to. If it would have went down like that we wouldn’t even be here and nobody would know nothing cause it was a dead road and nobody would’ve knew nothing but the gun just didn’t go off.

(State's Ex. 38, Video 7; R. p. 635 (emphasis added).) Contrary to the State's assertions, Appellant's statement was that he did not attempt to shoot Robinson. While he may have wanted to shoot at Robinson, he knew the gun was jammed when he saw Robinson on Bryant Road so he did not try to shoot at Robinson and did not even point the gun at Robinson.

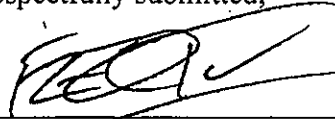
For the remaining three items of evidence the State relies on, as discussed in Appellant's brief, none of those items of evidence identify Appellant as shooting at Robinson. Robinson never identified who "those M.F." or "they" were. Additionally, the 911 caller only stated that two vehicles shot at each other and did not identify Appellant as having fired a weapon at Robinson.

CONCLUSION

For the reasons stated herein, this Court should reverse and vacate Appellant's convictions.

December 6, 2016

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 07 2016

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

SC Court of Appeals

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2012-GS-07-1932 & 2014-GS-07-1940
Appellate Case No. 2015-0000508

The State,

Respondent,

v.

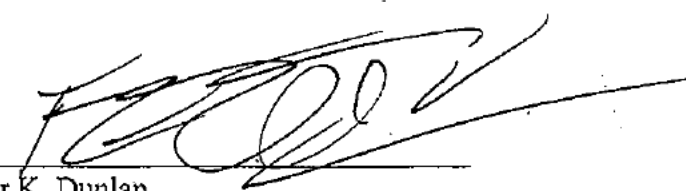
Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief of Appellant complies with Rule 211(b), SCACR.

December 6, 2016



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Thomas W. Cooper, Jr., Circuit Court Judge

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NOV 30 2016

SC Court of Appeals

THE STATE,

Respondent,

V.

AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in recognizing mutual combat as a basis for a murder charge and denying Appellant's motion for a directed verdict on the murder charge?
- II. Did the trial court err in denying Appellant's request for a jury charge on the end of mutual combat?
- III. Did the trial court err in denying Appellant's directed verdict motion on the attempted murder charge?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial judge abused his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby deny Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.
- II. Whether the trial judge abused his discretion by denying Appellant's request to charge the withdrawal from mutual combat when no evidence existed to support such a charge.
- III. Whether the trial judge abused his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant, Aaron Scott Young, Jr., in October 2014 for the murder of Khalil S. (Indictment Number 2012-GS-07-1932) and for the attempted murder of Tyrone Robinson (Indictment Number 2014-GS-07-1940).

On February 23, 2015, Appellant's case was called to trial before the Honorable Thomas W. Cooper. (R.p. 11). Roberts Vaux, Esquire, represented Appellant during the trial. (R. 12). Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean P. Thornton represented the State. (R. 12). On February 25, 2015, the jury returned verdicts of guilty on both charges. (R. 598, lines 18-21). Judge Cooper sentenced Appellant to incarceration for thirty (30) years on the murder conviction and to incarceration for thirty (30) years on the attempted murder conviction. (R. 616, line 21- p. 617, line 1). The sentences were set to run concurrently. (R. 616, line 21- p. 617, line 1).

Appellant filed a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF FACTS

On the afternoon of September 1, 2012, eight-year-old Khalil S. 's life abruptly ended. Khalil S. ¹, an innocent bystander, was shot to death in the midst of an ongoing gun battle. One of the three men responsible for taking the child's life was the Appellant, Aaron Young, Jr. Within the course of an hour, a volatile conflict between Appellant, Aaron Young, Sr., and Tyrone Robinson traversed several different locations on Hilton Head Island, eventually ending in front of a group of children jumping on a trampoline.

Jontu Singleton² and Tyrone Robinson were socializing at a mutual friend's house on September 1, 2012. (R.p. 357, line 2 – p. 358, line 12). Around 4:00 p.m., Jontu decided to ride with Robinson to the store. (R.p. 359, lines 16-17; p. 375, lines 12-13). On the way, the two stopped by the house of Aaron Young, Sr., Appellant's father, on Wild Horse Road because Jontu needed money. (R.p. 359, line 14 – p. 360, line 2). Both Appellant and Young, Sr. were outside in the yard when Jontu and Robinson drove up. (R.p. 361, lines 22-24). Robinson and Appellant had animosity towards each other due to prior altercations (State's Ex. 38, Video 4). They exited the car and Jontu spoke with Young, Sr. while Robinson approached Appellant with a .38 caliber gun in his hand. (R.p. 362, lines 2-5; State's Ex. 38, Intro Video at 2:55-3:39). After seeing Robinson with a gun, Young, Sr. moved towards Robinson and tried to take the gun away but it accidentally fired. (R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired one or two more shots into the ground near Young Sr.'s feet. (R.p. 362, line 18 – p. 363, line 12; p. 378, lines 4-6). Robinson then got into his vehicle and drove away while Jontu stayed with Appellant and Young, Sr. (R.p. 363, line 25 – p. 364, line 4).

¹ Respondent will refer to Khalil S. as "Khalil" in this section for clarity.

² Respondent will refer to Jontu Singleton as "Jontu" in this section for clarity.

Moments after Robinson left, Appellant and Young, Sr. went inside their house and emerged with a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (R.p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). The three men got into Young, Sr.'s grey truck and began searching for Robinson. (R.p. 367, lines 5-12).

Young, Sr. drove the truck while Appellant and Jontu were in the passenger seats. (R.p. 368, lines 1-4). They drove down Spanish Wells Road and veered off on Oak View Road after Young, Sr. thought he saw Robinson driving down the road. (R.p. 368, lines 6-9). Appellant then pulled the contents out of his black bag and began assembling his weapon. (R.p. 368, lines 13-25). Unable to find Robinson, they continued their search and headed towards Robinson's house on Allen Road off of Marshland Road. (R.p. 369, lines 23-25). When they arrived, Robinson was nowhere to be found. (R.p. 370, line 1). Jontu got out of the car on Allen Road to talk to his son who lived in that neighborhood but no one was home so the three men left Allen Road. (R.p. 370, line 2 – p. 372, line 9). They drove back to Young, Sr.'s house and Jontu exited the car while Appellant and Young, Sr. drove off. (R.p. 372, line 8 – p. 373, line 21).

Minutes later, Appellant and Young, Sr. finally tracked down Robinson on Bryant Road. (State's Ex. 38, Video 7 at 00:23-00:36). Appellant pulled out his weapon and tried to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson's home on Allen Road. (State's Ex. 38, Video 7 at 2:00-2:50).

While driving down Allen Road, Appellant saw a group of children playing on a trampoline a short distance away from where they spotted Robinson's car. (State's Ex. 38, Video 1 at 00:10-1:00; Video 1 at 1:39-1:41). Appellant drew his weapon and began firing bullets into Robinson's car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car

twenty times and when he was done it looked like “swiss cheese”. (State’s Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and they began to drive away down Allen Road. (State’s Ex. 38, Video 3). Within moments, Robinson fired three shots back at Appellant and Young, Sr. as they turned onto Marshland Road. (State’s Ex. 38, Video 3 at 00:45-00:55). The bullets did not hit their intended targets, but instead one found its way to eight year old Khalil. Robinson fled in his bullet-riddled car and Appellant and Young, Sr. absconded in the other direction. (R.p. 347, lines 1-6; State’s Ex. 38, Video 3). Immediately, 911 dispatch began fielding reports of the incident. (State’s Ex. 2). Khalil was struck in the chest and died within minutes. (R.p. 502, lines 12-14; p. 504, lines 20-23).

One witness that called to report the crime told the 911 dispatcher that two cars were shooting at each other near Spanish Wells Road. (State’s Ex. 2). She identified the two cars involved as a grey truck and a grey Lexus. (State’s Ex. 2). The woman told the dispatcher that the man driving the Lexus was Tyrone Robinson. (State’s Ex. 2).

Between 5:00 and 5:30 p.m. that same day, Appellant, Young, Sr., and his girlfriend, Ebony Campbell, were pulled over by police in Young, Sr.’s grey truck. (R.p. 391, lines 1-10; p. 398, lines 13-24). While on the side of the road, Officers located spent shell casings matching a 9 MM firearm in the back of the truck. (R.p. 392, lines 11-13). The two men were then taken to the police station where they were Mirandized and interviewed. (R.p. 394, line 15 – p. 396, line 15). Young, Sr. told officers where they could retrieve the black bag containing the gun and ammunition. (R.p. 401, line 24 – p. 403, line 8). Appellant gave a statement to Investigator Albertin admitting to the shootout with Robinson, firing numerous bullets into Robinson’s vehicle, and his failed attempt to kill Robinson. (R.p. 471-493; State’s Ex. 38, Introduction Video – Video 8).

After officer's located and arrested Robinson, they processed his vehicle for evidence. (R.p. 419, lines 14-24). They were able to locate numerous bullets that were lodged in Robinson's car. (R.p. 430, line 22 – p. 431, line 3). These bullets, along with Appellant's weapon and shell casings, were sent off for examination. (R.p. 431, lines 12-23). Agent Frank DeFreese, an expert of firearm's marks and ballistics with the South Carolina Law Enforcement Division, was able to determine that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (R.p. 466, line 15 – p. 467, line 6).

At Appellant's trial for the murder of Khalil, numerous witnesses testified to what they observed on September 1, 2012. Charlese Mitchell, a woman who lived in the neighborhood off Allen Road, testified that she heard three sets of gunshots around 4:00 p.m. that afternoon. (R.p. 300, line 23 – p. 329, line 15). After the first round of shots, she saw a grey truck driven by Young, Sr. speeding down the road. (R.p. 328, lines 3-21). Robinson, a relative of Mitchell's, came to her door after she heard the first round of gun shots. (R.p. 309, lines 5-17). She let him inside the house and observed a gun sticking out of his pocket. (R.p. 309, line 19 – p. 310, line 7). Robinson, who appeared scared, told Mitchell, "those M. F. was shooting at me". (R.p. 310, lines 8-11). At that point, Mitchell's fiancé, Tyrone Delaney, came home and the two men stepped outside to talk. (R.p. 310, lines 14-25). Robinson left the yard and minutes later Mitchell heard another set of rapid gunshots. (R.p. 311, lines 1-13). A few minutes after the second round of shots, Mitchell heard three more shots and again observed Young, Sr. speeding down Allen Road. (R.p. 323, line 22 – p. 325, line 14).

Tyrone Delaney testified he was driving down Spanish Wells Road between 4:00 and 5:00 p.m. on his way home when a grey truck sped towards him and forced him to pull over to the side of the road. (R.p. 330, line 20 – p. 332, line 14). When he arrived home, Robinson was

there and asked Delaney if he had seen a grey truck. (R.p. 333, lines 1-2). Delaney told Robinson of his encounter with the grey truck. (R.p. 333, lines 17-18). Robinson replied, "yeah they was shootin at me so I shoot back at them". (R.p. 333, lines 18-19). Delaney testified that he heard rapid gun shots after Robinson left their house. (R.p. 334, lines 20-25). Minutes later, he heard three gunshots that seemed to have come from a different type of weapon. (R.p. 335, lines 5-17).

The last witness to testify at Appellant's trial was Dr. Lee Tormos, the forensic pathologist who performed the autopsy on Khalil. (R.p. 500, lines 2-12). She observed that one bullet had entered into Khalil's chest, piercing his lungs and heart, before coming to rest in his arm. (R. p. 502, line 1 - p. 503, line 24). Dr. Tormos concluded that the cause of death was a gunshot wound to the left lateral chest and the manner of death was homicide. (R.p. 505, lines 15-17).

The bullet was removed and turned over to the Beaufort County Sheriff's Office for analysis. Indisputably, the bullet recovered from Khalil's body was fired from Tyrone Robinson's gun. (R.p. 281, lines 11-12; p. 568, lines 22-24).

ARGUMENT

- I. The trial judge did not abuse his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby properly denied Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.**

Notwithstanding Appellant's argument to the contrary, Respondent submits that the trial judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base a murder charge. (R.p. 266-69). Furthermore, the trial judge properly denied Appellant's motion for a directed verdict because the State presented both direct and circumstantial evidence that Appellant and Robinson were engaged in mutual combat when Khalil was killed. (R.pp. 314-518). Additionally, Appellant's argument that the mutual combat had ended, and thus a directed verdict should have been granted, is not preserved for review. Regardless, this argument is without merit since no evidence was presented that Appellant withdrew from the conflict. Accordingly, the trial judge did not abuse his discretion in denying the motion for directed verdict. This issue must be dismissed.

Relevant Facts and Proceedings

Motion to Quash the Indictment

After jury selection, Appellant made a motion to quash the murder indictment. (R.p. 211, lines 22-25). Appellant claimed the indictment provided inadequate notice and was improper because of the included language regarding mutual combat. (R.p. 212, lines 9-13). The indictment read that Appellant was engaged in mutual combat with Tyrone Robinson and thereby caused the death of Khalil S. . (R.p. 212, lines 9-18). Specifically, Appellant argued that mutual combat was not a criminal offense, but rather a bar to self-defense. (R.p. 212, lines 13-18). In response, the State argued that the indictment was sufficient under current case

law and provided more notice than what was actually required. (R.p. 219, lines 11-18). Additionally, the State argued that mutual combat was a recognized theory under which one could be charged of murder. (R.p. 219, lines 19-21; p. 220, line 8-p. 222, line 10). Citing numerous South Carolina cases³, the State asserted that mutual combat was a valid legal theory in South Carolina despite the fact it had fallen out of common use. (R.p. 221, lines 12-23). The State conceded mutual combat was a bar to a self-defense claim, but explained that the theory was not limited to that one purpose. (R.p. 222, lines 1-10). The State argued *State v. Brown* used mutual combat to convict multiple defendants for the death of one of the combatants⁴. (R.p. 220, lines 14-16). Finally, the State argued that transferred intent would be applicable to Appellant's case since an innocent bystander was killed, instead of a combatant. (R.p. 222, line 24 - p. 223, line 12).

After reviewing all the case law from the parties, the judge denied Appellant's motion to quash the indictment. (R.p. 269, lines 6-7). The judge considered three legal theories in concluding the charge was proper. (R.p. 266, line 1). The first was the theory of accomplice liability. The judge stated, "those who are aiding and abetting each other, all [are] responsible for the act of a shooter...All then are equally at fault whether they actually were the agent that caused the harm or just an accomplice to the one that did." (R.p. 266, lines 1-7). The second theory considered was transferred intent. (R.p. 266, lines 8-21). According to the trial judge, the doctrine of transferred intent would hold the shooter and the accomplices liable for the harm caused to an innocent bystander. (R.p. 266, lines 8-12). "The state of mind of the individual and not the identity of the victim controls." (R.p. 266, lines 13-15).

³ The State cited the following case law: *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Taylor*, 356 S.C. 227 (2003); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906).

⁴ *Brown*, 108 S.C. 490, 95 S.E. 61.

Finally, the judge discussed the theory of mutual combat. (R.p. 267, line 1). At the onset, the judge explained the relationship between mutual combat and self-defense. (R.p. 267, lines 8-11). "Mutual combat has its most significant application in the law in that it denies anybody who is involved in mutual combat the defense of self-defense because none of them can claim to be without fault in bringing about the incident." (R.p. 267, lines 8-11). Citing to *State v. Brown*⁵, the judge recited the current law on mutual combat⁶. (R.p. 267, lines 12-22). He then explained that if Young, Sr. had been killed, instead of an innocent bystander, the law makes clear that Appellant and Robinson would both be guilty. (R.p. 268, lines 1-8). Linking mutual combat to transferred intent, the judge illustrated Robinson's intent to shoot Appellant would transfer to Young, Sr. in this scenario. (R.p. 268, lines 8-12). The judge concluded:

"Here an innocent person, not a combatant, was killed. The question is whether the law relieves the mutual combatants of the responsibility of that. The responsibility of which had been of their's if they had killed an equally guilty party involved, are they now not responsible because an innocent party was involved. And I hold that they would be responsible."
(R.p. 268, line 19 – p. 269, line 1).

In denying Appellant's motion, the judge reiterated that "it is not the identity of the victim that controls, it is the intent, the state of mind which led to the mutual combat in the first place and the consequences that followed from that." (R.p. 269, lines 2-5).

⁵ *Brown*, 108 S.C. 490, 95 S.E. 61.

⁶ Specifically, in reciting the law on mutual combat, the judge stated:

"Everyone is presumed to know the consequences of his act and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used and death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used the deadly weapon or not and regardless of whether he was on one side or the other makes no difference. And where all are participating in the mutual combat all are equally guilty for the natural consequences."
(R.p. 267, lines 12-22).

Motion for Directed Verdict

At the close of the State's case, Appellant made a motion for a directed verdict on both charges. (R.p. 507, lines 24-25). Particularly to the murder charge, Appellant argued that no evidence was presented of a mutual combat between Appellant and Robinson. (R.p. 512, lines 2-3). Appellant claimed there was no evidence of a running gun battle. (R.p. 512, lines 9-10). In response, the State asserted that there was ample evidence of mutual combat. (R.p. 514, line 17). "Both are armed..., they both know each other is armed..., Young chases Robinson through two neighborhoods and in fact into Allen Road twice and a result of that Khalil S. is dead. I think that is exactly the language that *Brown*⁷ uses when they describe and define mutual combat." (R.p. 514, lines 17-23).

In denying Appellant's motion for a directed verdict, the judge correctly stated that he was not concerned with the weight of the evidence but only its existence. (R.p. 516, lines 8-9). The judge explained the primary evidence of mutual combat came from the combatants own statements. (R.p. 517, lines 5-14). In concluding, the judge stated that there was substantial circumstantial evidence from which the jury could conclude Appellant and Robinson were involved in a running gun battle. (R.p. 517, lines 15-19).

Jury Instructions

After the State and defense rested, the judge gave the following instruction regarding the theory of mutual combat:

And so the state seeks and ask[s] for a conviction at your hands under the theory of mutual combat. Now I tell you that mutual combat exist[s] when there is a mutual intent and willingness to fight between persons or groups of people. Mutual intent is shown by acts and conduct of the parties and circumstances attending and leading up to the combat. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting evil or ill will

⁷ *Brown*, 108 S.C. 490, 95 S.E. 61.

between the parties, or, any dispute between the parties, and whether the combatants agree to be armed because the history of ill will and an agreement to be armed are necessary before a defendant is engaged or deemed to have been engaged in mutual combat: Now if you find that mutual combat exist[s] in this particular case I tell you that everyone is presumed to know the consequences of his acts. And if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and if death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another, that is, on the side of the one who fires the shot or not, all are equally responsible for the act where all are participating in mutual combat...

...And on the question of intent, ladies and gentlemen, we deal with what we call in the law transferred intent because once again it is undisputed that Mr. Robinson fired the shot that killed Khalil S. It is also undisputed that Mr. Robinson had no intent of killing Khalil S. Mr. Robinson was found guilty of the crime under the law of transferred intent because if a defendant with malice aforethought tries to kill another person, but by mistake injures or kills a different person, the defendant still has the intent to kill. The intent to kill is merely transferred from the original person that the defendant intended to kill to the actual person who was killed or injured.

Now in this particular case you have to decide whether or not the transferred intent that followed Mr. Robinson in that case also followed to Mr. Young under the mutual combat theory that all who are involved are equally responsible for the acts of anyone. That's a decision that you, ladies and gentlemen, have to decide...

(R.p. 568, line 24 – p. 571, line 12).

Standard of Review

In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. *Id.* The court must concern itself solely with the existence of evidence from which a jury could reasonably infer guilt. *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). This objective test is founded upon reasonableness. *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to

prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury.” *State v. Weston*, 625 S.E.2d 641 (S.C. 2006).

The “any evidence” standard also requires that “the existence of ‘any direct evidence’ proving the defendant’s guilt mandates the denial of a directed verdict motion.” *State v. Phillips*, 411 S.C. 124, 133, 767 S.E.2d 444, 448 (Ct. App. 2014), *reh’g denied* (Jan. 27, 2015). Direct evidence is based on personal knowledge or observation which, “*if true*, proves a fact without inference or presumption.” *Id.* (quoting *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (internal quotation marks and citation omitted) (alteration in original)). This is because “[t]he presentation of direct evidence ‘immediately establishes the main fact to be proved.’” *Phillips* at 133, 767 S.E.2d at 448 (quoting *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n.1 (2001)).

Moreover, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. Recently, in *State v. Pearson*, our Supreme Court made it clear the State need not present evidence sufficient to exclude every other hypothesis at the directed verdict stage. *State v. Pearson*, 783 S.E.2d 802 (S.C. 2016).

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson, at 319 (second emphasis added).

Discussion

A. Mutual combat is a valid legal theory under South Carolina law to form the basis of a murder charge.

The doctrine of mutual combat has existed in South Carolina law since 1843. *Taylor*, 356 S.C. at 231. The Supreme Court in *Taylor* acknowledged the doctrine had “fallen out of common use in recent years” but still found it to be binding law. *Id.* The escalating urban warfare in present-day society has resurrected the need for the doctrine of mutual combat. Here, the State took the long-standing and viable theory of mutual combat and applied it to modern day facts. Appellant argues that the doctrine of mutual combat can only be used for the sole purpose of barring a plea of self-defense. This is an incorrect limitation of the law on mutual combat. Although mutual combat is commonly analyzed when a claim of self-defense is raised⁸, that is not its only application.

Numerous South Carolina cases have used the theory of mutual combat to hold a defendant guilty of murder. “Where two persons mutually engage in combat, and one kills the other, and at the time of the killing it be maliciously done, it is murder. If, on the other hand, it be done in sudden heat and passion on sufficient provocation without premeditation, or malice, it would be manslaughter.” *Andrews*, 53 S.E. at 424; *see also State v. Hammond*, 36 S.C.L. 91, 102 (S.C. App. L. 1850) (“Even in cases of mutual combat, if one begin the fight with a mortal

⁸ “Whether or not mutual combat exists is significant because the plea of self-defense is not available to one who kills another in mutual combat.” *Taylor*, 356 S.C. at 232; *Graham*, 260 S.C. at 450, 196 S.E.2d at 495.

weapon, it is murder..."); *State v. Turner*, 63 S.C. 548, 41 S.E. 778 (1902) ("Where there is evidence from which a jury may infer that there was mutual combat, on a trial for murder an instruction as to such combat is not error."); *State v. Mathis*, 177 S.E. 318, 319 (S.C. 1934) ("There was evidence of threats which, if true, justified a verdict of premeditated murder. There was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other. There was no error in charging and arguing the law of mutual combat.").

The 1918 case of *State v. Brown* utilized the doctrine of mutual combat to hold multiple defendants accountable for the death of one of the combatants. 108 S.C. 490, 95 S.E. 61. Much like the facts of Appellant's case, all of the defendants were held responsible for the death of the victim even though only one of them had inflicted the fatal injury. In *Brown*, many employees at a local mill began to strike and picket after the mill organized a labor union. *Id.*, 95 S.E. at 62. One morning, a fight erupted between current employees and strikers. *Id.* One of the men involved in the melee pulled out a knife and killed David Freize, another participant in the fight. *Id.* Two of the strikers and three of the employees were indicted for the murder of the Freize. *Id.* On appeal, the defendant's alleged that it was improper to charge the law of mutual combat. *Id.* at 61. The Supreme Court affirmed the convictions and held, "That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences." *Id.* at 63.

In order for the doctrine of mutual combat to be asserted and an instruction on the law given to the jury, multiple factors must be shown. In determining whether mutual combat exists, there must be evidence of a "mutual intent and willingness to fight." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003), *quoting Graham*, 260 S.C. at 450, 196 S.E.2d at 495. One looks to the "acts and conduct of the parties and circumstances attending and leading up to the combat" to determine mutual intent. *Id.* Also, there must be an antecedent agreement to fight. *Taylor*, 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of "ill-will between the parties", threats, and an "apparent willingness of each to engage in an armed encounter with the other" *Id.* The parties must also be armed and know the other to be armed. *Id.*

As discussed below in sub-issue B, the State presented evidence of all the factors for mutual combat and thus the theory was appropriately applied to this case. Appellant contends that it was error for the State to use the theory of mutual combat to prove murder. Specifically, Appellant claims that the State must prove the elements of murder in general. Respondent submits that the jury was instructed on the law of murder and they found that the State had met its burden of proof in establishing the elements of murder. The judge explained, "Murder is defined in our law as the killing of any person with malice aforethought either express or implied." (R.p. 567, lines 5-12). The judge then defined the terms "malice" and "aforethought". (R.p. 567, line 13 – p. 568, line 17). Furthermore, he instructed the jury, "the state is required to prove malice beyond a reasonable doubt". (R.p. 568, lines 19-21). Thereafter, the judge explained to the jury that the murder charge rested on the theory of mutual combat. (R.p. 568, line 24 – p. 569, line 1). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder as well.

Next, Appellant asserts that it was error for the trial judge to include the theory of transferred intent in the jury instructions. Respondent submits the trial judge properly charged the law of transferred intent during the instruction on Appellant's criminal intent. (R.p. 569, line 24 – p. 571, line 12). The law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant. Nevertheless, it is only logical that transferred intent would apply in such a situation. Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim. South Carolina recognizes that "if there was malice in [defendant's] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake." *State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent holds the defendant liable for the harm caused to an innocent bystander. *See, e.g., State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) (A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.).

The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. *People v. Sanchez*, 26 Cal. 4th 834, 29 P.3d 209 (2001). In referencing the concurring opinion's analysis of transferred intent, the majority opinion stated in a footnote:

For purposes of applying the rule of transferred intent, it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant's culpable mental state is determined as if the person harmed were the person defendant meant to harm.

26 Cal. 4th at 850, 29 P.3d at 220.

In concluding that each defendant was equally liable for the innocent bystander's death, the Court stated:

Because defendant and co-defendant, rival gang members, had equally culpable mental states and engaged in precisely the same conduct at the same time and place in exchanging shots in a gun battle, it was not unfair to hold them equally responsible for an innocent bystander's death, without regard to which of them actually fired the bullet

26 Cal. 4th at 854, 29.P.3d at 144.

Accordingly, the doctrine of transferred intent was properly applied to Appellant's case. As the trial judge stated, if Young, Sr. had been killed, then there would be no question that both Appellant and Robinson would be responsible for his death under mutual combat. Since an innocent bystander was killed rather than one of the combatants, the doctrine of transferred intent was properly utilized to transfer Appellant's and Robinson's criminal intent to the unintended victim. Hence, there was no error in charging the jury on the law of transferred intent.

Additionally, Appellant argues that the State must present evidence of some doctrine that would allow for one defendant to be responsible for another defendant's actions. Appellant's examples of such doctrines are conspiracy, accomplice liability, and felony murder. However, much like the above theories, mutual combat is a recognized doctrine in which a defendant can be held accountable for the actions of another defendant. *See Brown*, 95 S.E. at 63 (“[E]very one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not.”); see also, *Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 (“The mutual combat doctrine is triggered *when both parties contribute* to the resulting fight.”).

To further counter Appellant's argument, Respondent submits a review of other states' case law on mutual combat with relation to other theories of culpability is beneficial. *See State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) (“Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant.”); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) (“While the evidence was unclear

as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare."). See also *Reyes v. State*, 783 So.2d 1129, 1133 -1134 (Fla.App. 3 Dist. 2001) (noting *Alston* and adopting logic citing other jurisdictions with similar holdings). The logic of these cases are instructive.

In *State v. Spates*, 779 NW.2d at 772, the Supreme Court of Iowa reviewed a murder conviction where the victim had been a bystander killed "during a gun battles between rival groups...." The state court considered both theories of aiding and abetting and mutual combat. In light of the applicability of those theories, the court concluded:

We agree with those courts that have concluded participants in mutual combat encourage each other to engage in the potentially lethal conduct that leads to the injury of innocent bystanders, thereby supporting liability as an aider and abettor.

779 N.W.2d at 780.

The Iowa courts had previously reached a similar conclusion in *State v. Brown*, 589 N.W.2d 69 (Iowa App. 1998), *reversed on other grounds*, *State v. Reeves*, 636 N.W. 2d 22 (Iowa 2001). In that case, the victim was killed when she unwittingly drove between rival gangs in the midst of a shootout. However, a rival gang member, not Brown, actually fired the fatal bullet. Brown contested his second degree murder conviction as there was no evidence connecting him

personally to the fatal bullet.⁹ The appeals court, considering proximate cause, rejected Brown's assertion finding:

Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See State v. Marti*, 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the shot that killed the innocent bystander. *See id.* ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death").

589 N.W.2d 69, 74 -75.

A Maryland Court of Appeals considered similar circumstances in regard to a conviction for a "depraved murder"¹⁰ conviction, and reasoned as follows:

The "bottom line" is that when a group, or two groups, of hoodlums deliberately engage in a gang-war style of shoot-out in a crowded urban area, they collectively trigger an escalating chain reaction creating a high risk to human life. When instead of taking their gunslinging vendetta to an uninhabited island or some remote spot in the desert, they arrogantly indulge in their homicidal insanity in the middle of a crowded block of residences, each participant in such collective madness displays a wanton and depraved indifference to any human life that

⁹ Though "second degree murder," the malice requirement is substantially the same. In Iowa, "[m]alice is required for both degrees of murder. *See* Iowa Code § 707.1 (1997) ('A person who kills another person with malice aforethought either express or implied commits murder.'). However, first-degree murder requires proof of deliberation and premeditation in addition to malice aforethought. *See* Iowa Code §§ 707.1, 707.2(1). Second-degree murder, on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare* Iowa Code § 707.2(1) with § 707.3." *Reeves*, 636 N.W.2d at 25. Thus, it appears that the charge would be in definition, though not statutory structure, comparable to the murder charge in this State.

¹⁰ Again, though we have no such offense, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See Owens v. State*, 906 A.2d 989, 1026 (Md. App. 2006)(describing one way of proving second degree murder as "what has become known as depraved heart murder--a killing resulting from 'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. *Robinson v. State*, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, however, places the charge on similar footing with our requirement of malice. *State v. Wilds*, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct.App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life'").

might randomly fall within their overlapping and deadly enfilades. Should death to one of the innocent bystanders or homeowners ensue, each participant in the lethal encounter has exhibited the *mens rea* that qualifies him for depraved-heart murder.

Alston v. State, 643 A.2d 468, 469 (Md. App.1994). The affirmance was upheld on appeal, with the higher court noting: “Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare.” *Alston v. State*, 662 A.2d 247, 254 (Md. 1995). *See also Reyes*, 783 So.2d at 1133 -1134 (noting *Alston* and adopting logic citing other jurisdictions with similar holdings).

Similarly, in a 2005 case, the court in the District of Columbia, in reviewing a causation charge, reasoned that “while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a ‘gun battle’ on city streets, as in this case, is relatively new.” *Roy v. United States*, 871 A.2d 498, 507 (D.C. 2005), *cert. denied*, 547 U.S. 1162, 126 S.Ct. 2346 (2006). The court easily acknowledged the “the application of proximate cause liability to those participants who willfully choose to engage in these battles.” *Id.* In upholding the application in that specific case as reflected in the contested charge on causation, the court reasoned: “While the evidence was unclear as to whether Roy’s or Settles’ bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered.” 871 A.2d at 509.

Therefore, under the law of South Carolina and many other states, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury.

Finally, Appellant argues that South Carolina should not allow for a murder conviction to rest upon the legal theories of mutual combat and transferred intent because, if the legal theory was accepted, any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. Respondent submits that is the precise reason it can be and should be used for a murder conviction. Much like accomplice liability¹¹, both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *Reyes*, 783 So.2d at 1133-1134. Here, Appellant and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Appellant's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire of the havoc the two men created. Therefore, not to hold Appellant accountable for the death of Khalil would be an injustice, for this case and future cases.

In conclusion, the deep-rooted doctrine of mutual combat is valid theory on which to base a murder charge. Here, Appellant and Robinson mutually engaged each other in an armed conflict in which it was reasonably foreseeable that someone could be killed. The fact that an eight year old child was killed, instead of Appellant or Robinson, does not excuse the combatants of their culpability. The State properly prosecuted Appellant of murder under the theory of mutual combat and the trial judge correctly instructed the jury on that theory. Therefore, the trial

¹¹ "Under the 'hand of one is the hand of all' theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *State v. Gibson*, 701 S.E.2d 766, 769 (S.C. App. 2010).

judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base Appellant's murder charge. The motion for directed verdict was appropriately denied, and thus, this issue must be dismissed.

B. Overwhelming direct and circumstantial evidence of mutual combat was presented at trial to withstand a directed verdict motion.

Appellant argues that no evidence was produced at trial that Appellant and Robinson were engaged in mutual combat on the incident date. In failing to view the evidence in the light most favorable to the State, Appellant's argument is wholly without merit. At trial, the State produced ample direct and circumstantial evidence showing Appellant and Robinson were engaged in mutual combat on the afternoon of September 1, 2012.

As previously stated, there must be a "mutual intent and willingness to fight" to constitute mutual combat. *Taylor*, 589 S.E.2d at 3. The required mutual intent can be inferred from the parties' acts and conduct, and the circumstances of the combat. *Id.* Mutual combat also requires the combatants to be armed and know the other to be armed with deadly weapons. *Id.*; see also *State v Mathis*, 174 S.C. 344, 177 S.E. 318 (1934) (finding mutual combat charge proper based on testimony that appellant and deceased were on the lookout for each other, that each was armed in anticipation of meeting the other, and that each drew and fired his pistol at the other); *Brown*, 95 S.E. at 63 ("That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual

combat, all are equally responsible for the natural consequences.”). In finding that evidence of mutual combat existed to submit the issue to the jury, the Court in *Graham* held:

“There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.”

260 S.C at 452, 196 S.E.2d at 496.

Mutual intent and willingness to fight

The State presented direct and substantial circumstantial evidence that Appellant and Robinson mutually intended to fight. At trial, the chain of events surrounding Appellant and Robinson’s extensive armed chase were presented to the jury by numerous witnesses.

Robinson approached Appellant with a .38 caliber gun in his hand. (R.p. 362, lines 2-5; State’s Ex. 38, Intro Video at 2:55-3:39). Young, Sr. tried to take the gun away but it accidentally fired. (R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired another shot into the ground. (R.p. 362, lines 18-22). Robinson then got into his vehicle and drove away. (R.p. 363, line 25 - p. 364, line 4). Seconds after Robinson left, Appellant and Young, Sr. retrieved a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (R.p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). In Young Sr.’s grey truck, Appellant and Young, Sr. began searching for Robinson. (R.p. 367, lines 5-12).

After one failed attempt at locating Robinson, Appellant and Young, Sr. finally tracked him down on Bryant Road. (State’s Ex. 38, Video 7 at 00:23-00:36). Appellant pulled his weapon out and tried to shoot Robinson but the gun jammed. (State’s Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson’s home on Allen Road. (State’s Ex. 38, Video 7 at 2:00-2:50). After spotting

Robinson's vehicle, Appellant began firing bullets into the car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car "**twenty damn times**" and when he was done it looked like "**swiss cheese**". (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and began to drive away when Robinson fired three shots at Appellant and Young, Sr. (State's Ex. 38, Video 3 at 00:45-00:55).

Delaney testified Robinson approached him during the conflict and told him "yeah they was shootin at me so I shoot back at them". (R.p. 333, lines 18-19). A woman who called 911 dispatch reported that a grey truck and Robinson were shooting at each other. (State's Ex. 2)

Appellant and Robinson's actions and conduct that afternoon indisputably prove the required mutual intent and willingness to fight for mutual combat. This intent is further demonstrated by Appellant's own admission to participating in a gun battle with Robinson. (State's Ex. 38, Intro Video - Video 8).

Pre-existing ill will

The State presented direct evidence of Appellant and Robinson's animosity towards each other. Appellant had the following conversation with Investigator Albertin discussing his relationship with Robinson:

Investigator Albertin: When it came down to it, did you really wanna shoot Tyrone?

Appellant: Man, Tyrone tried to kill me in the gardens a couple of days ago, man...**I don't like that dude, man.**

Investigator Albertin: I've been hearing you boys have been going at it.

Appellant: He crazy. Something wrong with that boy. He think he the shit or something. I don't know. He thinks he got power around here. Cause people scared...I'm little? But I'm not scared of you big dude...Ever since I knocked him out that one time he don't like me. Me and him got in a fight, I knocked his ass out right there. I swear to God. Ask everybody. I knocked that bitch clean out.

(State's Ex. 38, Video 4).

This colloquy, coupled with the chain of events on September 1, 2012, clearly shows Appellant and Robinson had ill-will towards each other.

Armed and knew the other to be armed

The State presented direct and circumstantial evidence that Appellant was armed with a 9MM semi-automatic pistol. During Appellant's interview with Investigator Albertin, Appellant admitted to using his 9MM handgun to shoot Robinson's car. According to Appellant, **"Boy, I swiss cheese that car...I swear I did."** (State's Ex. 38, Video 3 at 00:20). Appellant bragged, **"I mean shit, I shot the car a good, what, twenty damn times."** (State's Ex. 38, Video 6 at 00:55). Additionally, Appellant admitted he attempted to shoot Robinson with the gun but it jammed. **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25). The State presented circumstantial evidence that Appellant was armed through Jontu's testimony. According to Jontu, Appellant pulled a gun out of a black bag and began assembling the weapon while they were searching for Robinson. (R.pp. 364-68). Agent DeFreese's testimony corroborated Jontu's testimony and Appellant's admission in determining that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (R.p. 466, line 15 – p. 467, line 6).

Also, the State introduced direct evidence that Appellant knew Robinson was armed with a weapon. During Appellant's interview, he discussed knowing what type of gun Robinson used during the conflict:

"Cause at the end of the day, Y'all still don't got T's shit...T's shit is a revolver, man. That's the most important gun. Fuck a automatic and a hand gun is nothing 'cause it automatically drop shells. But nigga if he got a revolver, how the fuck y'all gonna get his gun casings? ...You know how many people done got hit with a nine millimeter and ain't die, but bitch you get hit with a 38 your ass is dead."

(State's Ex. 38, Intro Video at 2:55-3:39)

Furthermore, the State produced circumstantial evidence that Appellant knew Robinson was armed. Jontu testified that Robinson approached Appellant with a gun in his hand off Wild Horse Road. (R.p. 362, lines 2-22). Robinson then fired the gun twice in front of Appellant. (R.p. 362, lines 2-22).

Natural Consequences

Additionally, the State presented direct evidence Appellant knew Khalil and the other children were playing outside. During Appellant's interview, he admitted multiple times to engaging in a gun fight with children present:

"We came down the road. There was children outside playing already..." (State's Ex. 38, Video 1 at 00:11-00:28); **"The little children was the ones who saw us 'cause they was pointing at us...they was pointing at us...I saw the trampoline and all, that's the crazy thing about it"** (State's Ex. 38, Video 1 at 1:10-1:16); **"In order to ride up the road, you gotta pass by the children"** (State's Ex. 38, Video 1 at 1:39-1:41).

While discussing seeing the children, Appellant stated, **"We got there and all hell broke loose"** (State's Ex. 38, Video 1 at 00:34-00:37). This evidence clearly demonstrated that Appellant was aware that innocent bystanders were in the vicinity. But this fact did not stop Appellant from continuing the conflict with Robinson. Accordingly, it is reasonable to presume Appellant knew the natural consequences of his actions could lead to Khalil's death.

In conclusion, overwhelming direct and circumstantial evidence was presented to the jury tending to prove Appellant was engaged in mutual combat with Robinson. The State introduced evidence Appellant and Robinson had a mutual intent to fight, they had ill-will between each other, and both came to the fight armed and knew the other to be armed. The elements of mutual combat have clearly been established. Thus, the trial court did not abuse his discretion in denying Appellant's motion for directed verdict on the murder charge, and this Court should affirm the trial court's ruling.

- C. This issue is not preserved for review since Appellant did not request a directed verdict on the basis of a withdrawal from mutual combat, but also, there was no evidence presented at trial that Appellant had withdrawn from the mutual combat that would warrant a directed verdict.**

As a preliminary matter, it appears from a review of the trial record that this issue is not preserved for review. Appellant only discussed the end of mutual combat when he requested a jury instruction on the law after he had already argued his motion for a directed verdict. The judge properly denied the request for such an instruction, which is discussed further in Issue II. Even so, this argument is easily dispatched as there was no evidence that Appellant withdrew from the conflict.

In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. *State v. Kennerly*, 503 S.E.2d 214, 221 (S.C. App. 1998), aff'd, 524 S.E.2d 837 (S.C. 1999); *State v. Jordan*, 255 S.C. 86, 177 S.E.2d 464 (1970). A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”). Here, Appellant did not argue that the mutual combat ended when he made a motion for a directed verdict. The trial judge only had the opportunity to consider this issue when Appellant asked for a jury charge on the law of withdrawal. Therefore, Appellant is barred from asserting this point as a basis for a directed verdict in his appeal.

Regardless, Appellant would not be entitled to relief even if he raised this issue at trial. In order to bring mutual combat to an end, one of the combatants must withdraw from the conflict

in good faith and make that fact known to his adversary. *Graham*, 260 S.C. at 451, 196 S.E.2d at 495–96. Here, there was no evidence presented at trial that would allow for the jury or the judge to deduce that Appellant withdrew from the conflict. This matter is discussed in much greater detail in Issue II. Appellant's action of driving away after firing multiple bullets into Robinson's car must be taken in context with entire conflict. The chain of events that unfolded on September 1, 2012, included numerous instances of Appellant and Robinson driving to and away from multiple locations. Appellant's other comings and goings were not viewed as withdrawals because they were simply in furtherance of his pursuit of Robinson. This instance should not be viewed as any different. Also, Appellant's recorded statements that were published to the jury directly show he did not intend to withdraw. When Appellant was discussing his driving away after firing shots into Robinson's car, he stated, **"the dude knew we were gonna come back for him"**. (State's Ex. 38, Video 1 at 1:10). Also, Appellant stated he told his father **"man, turn around"** after he heard Robinson's gun shots. (State's Ex. 38, Video 3 at 00:45). Both of these statements undoubtedly show Appellant's intent was not to withdraw but to continue fighting. Thus, Appellant's own words completely contradict his assertion that he withdrew from the conflict.

Therefore, this issue is not preserved for appellate review. The result would be the same had the issue been preserved because there was no evidence presented at trial that tended to prove he withdrew in good faith from the combat. This issue is without merit and must be dismissed.

II. The trial judge did not abuse his discretion in denying Appellant's request to charge withdrawal from mutual combat because no evidence existed to support such a charge.

Appellant contends the trial court erred in denying Appellant's request for a jury charge on the end of mutual combat¹². This claim is not supported by a review of the trial record. Absolutely no evidence was produced at trial tending to show that Appellant withdrew from the combat in good faith. Thus, Appellant was not entitled to a jury charge on withdrawal from mutual combat and the judge did not abuse his discretion in declining to give such an instruction.

Discussion

Motion for Jury Charge

After Appellant's directed verdict motion was denied, Appellant then requested a jury instruction on the ending of mutual combat. According to Appellant, the actions of Appellant and Young, Sr. driving down the road after shooting Robinson's car constituted an end to the mutual combat. Essentially, Appellant's position was that driving away should be viewed as a withdrawal from the conflict. The judge found there was no evidence of a withdrawal that would warrant such an instruction and denied Appellant's request. In explaining his reasoning, the judge stated:

The case law in mutual combat and ending a mutual combat requires that the ending of the combat and the breaking off be clear and unequivocal; that it be more than just an escape or trying to avoid the consequences of the continuing battle. This battle had been back and forth...

...I'm not thinking that they were necessarily at that point in time breaking off the combat, they were just going to live to fight another day because he was not there and he was not there to carry it on and they left, or they were leaving at the time the fatal shots occurred.

¹² Appellant uses the language "ending mutual combat" in his argument. However, mutual combat case law uses the term "withdraw" when discussing this issue. *See Graham*, 260 S.C. at 451, 196 S.E.2d at 495-96. Therefore, Respondent shall use "withdraw" when addressing Appellant's argument on "ending mutual combat".

I don't think leaving the scene under those circumstances indicates clear and unequivocally the breaking off of this given the extent of the chase and the level that they had gone to try to get him before then is unlikely that the shooting of the car and then leaving is a signal that they have chosen at this point in time to fold their tents and move away and that the battle is over and truce has been declared.

I don't think that the retreat ends it. I don't think that there is a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat no longer exists.

(R.p. 519, line 18 – p. 521, line 10)

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Consequently, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* "An appellate court will not reverse the trial judge's decision absent an abuse of discretion." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2008). If there is any evidence to support a charge, the circuit court should grant the request. *State v. Brandt*, 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011); *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.'" *State v. Blurton*, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). Specifically, "providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury." *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts.

Analysis

"Where a person voluntarily participates in mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict

on the ground of self-defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the homicide is committed, he **withdraws and endeavors in good faith to decline further conflict, and**, either by word or act, **makes that fact known to his adversary.**"; *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Thus, two elements must be satisfied in order to successfully withdraw from mutual combat. Here, neither of these elements have been met.

Appellant argues that he withdrew from the conflict when he drove away from the scene, thereby ending the mutual combat. However, the key component to withdrawal from a conflict is that it must be done in **good faith**. In order to actually withdraw in good faith from a conflict, the aggressor must have truly desired to withdraw from or abandon the conflict, and must not have merely paused in his assault. *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974). Thus, there is no withdrawal where he simply steps back to assume a better strategic position or if he leaves and then returns to the scene with the same threatening or hostile intentions. *Id.* An aggressor does not abandon a conflict if he merely leaves to obtain a weapon, to wait for his adversary in ambush elsewhere, or because he is convinced that he has disabled or killed his adversary. *Id.*

Although South Carolina case law maintains that a withdrawal must be done in good faith, it does not specifically address what constitutes a "good faith withdrawal". However, other states have addressed this very issue. In addressing this issue, the Supreme Court of Missouri explained the difference between a good faith withdrawal and a mere retreat. "There is a wide difference between a withdrawal and a mere retreat. A retreat may be and often is a continuance of hostilities. A withdrawal is the abandonment of the struggle by one of the parties, and such

abandonment must be perceived by the other.” *State v. Heath*, 237 Mo. 255, 141 S.W. 26, 29 (1911).

Additionally, the Kentucky Court of Appeals in *Hellard v. Commonwealth* rejected the defendant’s assertion that he withdrew from the combat in good faith. *Hellard v. Commonwealth*, 84 S.W. 329, 329 (Ky. 1905). The court held, “A retreat is not necessarily an abandonment. It may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it.” *Id.* Also, the Supreme Court of Louisiana, in *State v Kellogg*, analyzed the reinstatement of a claim of self-defense if the defendant withdrew from the combat in good faith. *State v. Kellogg*, 29 So. 285 (La. 1901). The court stated that self-defense could not be asserted under the basis of withdrawal if the conduct was “a mere momentary cessation of hostilities, with no bona fide, clearly expressed intention to withdraw from the conflict”. *Id.* at 291.

Here, there was certainly no evidence presented at trial that indicated Appellant withdrew or desired to withdraw from the conflict in good faith. Appellant’s act of driving away moments after firing multiple bullets into Robinson’s car was not a desire to end the fighting. Appellant’s actions were not a withdrawal or a retreat, but a continuation of the hunt for Robinson. His act of driving away must be viewed in relation to the whole incident. The entire conflict revolved around Appellant and Robinson chasing after each other. Appellant traveled down numerous roads and made many stops in his search for Robinson. These other comings and goings were not withdrawals but rather mere continuations of Appellant’s pursuit of Robinson. Appellant’s act of driving down the road after shooting Robinson’s vehicle should not be viewed as any different.

Additionally, Appellant’s statements introduced at trial further support that he did not withdraw in good faith. During the interview with law enforcement, Appellant disclosed that

after hearing Robinson shoot at Young, Sr.'s truck, he told his father, **"man turn around"**. (State's Ex. 38, Video 3 at 00:45). Also, when discussing driving away after shooting Robinson's car, Appellant told investigators, **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that."** (State's Ex. 38, Video 1 at 1:10). Appellant's admissions that he intended to return to the fight directly refute any intent to withdraw.

Assuming Appellant intended to withdraw, which the evidence suggests otherwise, neither his words nor actions communicated this intent to Robinson. The Court in *Graham* explained that a withdrawal must be "communicated to the victim by word or act". 260 S.C. at 451, 196 S.E.2d at 496. Appellant did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, Appellant's act of driving down the road would not have been reasonably interpreted by Robinson that Appellant intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations that did not amount to a withdrawal. It would be unreasonable to assume Robinson viewed this instance as anything different.

Therefore, since Appellant did not withdraw from the conflict in good faith or inform Robinson of an intended withdrawal, a jury instruction on the ending of mutual combat would be improper.

As stated above, a judge's refusal to give a requested charge will not be reversed unless appellant shows an abuse of discretion. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts. If, however, any error did occur, such error would be harmless in light of the remainder of the charge and specifically the carefully

crafted charge on mutual combat. *See, e.g., State v. Logan*, 405 S.C. 83, 94, 747 S.E.2d 444, 449 (2013) (“erroneous jury instructions are subject to a harmless error analysis”); *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583 (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”) (*quoting State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App. 2003)). Yet, a review of the record undoubtedly shows the requested charge was not warranted. Therefore, there was no error. Appellant’s argument to the contrary should be rejected.

III. The trial judge did not abuse his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

In this appeal, Appellant contends that the State failed to present evidence tending to prove Appellant's guilt of attempted murder. Specifically, Appellant asserts that the evidence was "scant" and merely raised a suspicion of guilt. However, Appellant's argument is without merit when not only was there significant circumstantial evidence introduced; there was direct evidence from Appellant's own admissions. As there was substantial circumstantial and direct evidence presented by the State to the jury proving Appellant's guilt, the trial court properly denied Appellant's motion for directed verdict at the conclusion of the State's case. (R.pp. 514-518).

Discussion

Directed Verdict Motion

After the State rested its case, Appellant moved for a directed verdict on the murder and attempted murder charges. With regard to the attempted murder charge, Appellant argued that there was no evidence presented that showed Appellant attempted to kill Tyrone Robinson. Specifically, Appellant argued the State offered no evidence that Appellant pointed a gun at Robinson. (R.p. 508, lines 10-13). Furthermore, Appellant alleged it was never confirmed that Robinson was referring to Appellant when he stated "those M.F. was shooting at me". (R.p. 508, lines 16-20). The State responded that there was in fact at least three pieces of evidence presented during trial proving Appellant's attempted murder of Robinson. (R.p. 514, lines 9-11). These three pieces of evidence were: (1) Robinson's statement to Mitchell, "those M.F. was shooting at me", (2) Robinson's statement to Delaney, "yeah they was shootin at me so I shoot back at them" after asking about a grey truck, and (3) the 911 call reporting a shootout between a

grey Lexus driven by Robinson and grey truck. (R.p. 513, line 20 – p. 514, line 11). The State further argued that Appellant's admission to attempting to kill Robinson but failing because the gun jammed was an important indication that Appellant intended to kill Robinson. (R.p. 514, lines 12-15).

Correctly reviewing the evidence in the light most favorable to the State, the trial judge held that there was substantial circumstantial and direct evidence introduced at trial. Specifically, the court emphasized "that the attempted murder of Mr. Robinson is borne out by [Appellant's] own statement". (R.p. 517, lines 18-19). Accordingly, the trial judge denied Appellant's motion for a directed verdict on attempted murder.

Standard of Review

As stated above, when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *Weston*, 367 S.C. at 292, 625 S.E.2d at 648. "When reviewing a denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the state." *Id.* at 292-93, 625 S.E.2d at 648. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *Id.*

"[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354.

The "any evidence" standard also requires that "the existence of 'any direct evidence' proving the defendant's guilt requires the denial of a directed verdict motion." *Phillips*, 411 S.C. at 133, 767 S.E.2d at 448. Direct evidence is based on personal knowledge or observation

which, “*if true*, proves a fact without inference or presumption.” *Id.* (quoting *Rogers*, 405 S.C. at 563, 748 S.E.2d at 270). This is because “[t]he presentation of direct evidence ‘immediately establishes the main fact to be proved.’” *Phillips* at 133, 767 S.E.2d at 448 (quoting *Salisbury*, 343 S.C. at 524 n. 1, 541 S.E.2d at 249 n.1).

Analysis

Once again, Appellant's brief fails to view the evidence in the light most favorable to the State. Furthermore, Appellant's brief completely omits reference to Appellant's statements to police that illustrate his intent to kill Robinson. Contrary to Appellant's assertion, there is ample direct and circumstantial evidence supporting the trial judge's denial of Appellant's directed verdict motion on the attempted murder charge, and his ruling should be affirmed.

Attempted murder is defined as “a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied”. S.C. Code Ann. § 16-3-29. Respondent submits that substantial circumstantial and direct evidence was presented at trial showing Appellant intended to and attempted to kill Robinson with malice aforethought. The following are the key pieces of direct and circumstantial evidence from the trial record, that when taken together, unmistakably point to Appellant's guilt of attempted murder:

Witness Testimony

- Jontu's testimony about Appellant retrieving a gun and looking for Robinson. (R.p. 364, lines 7-10; p. 367, lines 5-8).
- Jontu's testimony about Appellant assembling the gun while looking for Robinson. (R.p. 368, lines 13-25).
- Robinson's statement to Mitchell “those M.F. was shooting at me”. (R.p. 310, lines 8-11).

- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck. (R.p. 333, lines 1-19).
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck¹³. (State's Ex. 2).

Appellant's Admissions

- Appellant's statement **"Should've never moved my ass from Ridgeland. Could've killed any nigga I wanted to and nobody'd ever fucking find out."** (State's Ex. 38, Intro Video at 4:01).
- Appellant's statement when he was talking about driving away after shooting Robinson's car: **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that."** (State's Ex. 38; Video 1 at 1:10).
- Appellant's statement **"Boy, I swiss cheese that car...I swear I did."** (State's Ex. 38, Video 3 at 00:20).
- Appellant's statement to Young, Sr. after Robinson shot at them in the truck, **"man turn around"** (State's Ex. 38, Video 3 at 00:45).
- Appellant's statement **"I mean shit, I shot the car a good, what, twenty damn times."** (State's Ex. 38, Video 6 at 00:55).
- Appellant's statement **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25).
- Appellant's statement **"It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it**

¹³ Appellant argues in his brief that the caller referred to the car as a "grey Lexus", but that Robinson was driving a green Acura on the incident date. Respondent submits that this argument is meritless because the caller positively identifies the driver of the car as Tyrone Robinson. Therefore, the color of the car is insignificant.

was a dead road, nobody would've knew nothing...But the gun just wouldn't go off"

(State's Ex. 38, Video 7 at 2:11).

- Investigator Albertine's question "So what were you shooting at then?" and Appellant's response "**Him**" (State's Ex. 38, Video 7 at 1:10).

The chain of events evidences that the Appellant clearly intended and attempted to kill Tyrone Robinson with malice aforethought. Appellant's intent was unmistakably illustrated by eyewitness testimony about Appellant obsessively chasing Robinson down numerous roads in Hilton Head while armed with a semi-automatic weapon. Moreover, Appellant's admission that he attempted to kill Robinson but the gun was inoperative further supports his guilt. Even though Appellant does not specifically state he pointed the gun at Robinson, he admitted he was shooting at "**him**". (State's Ex. 38, Video 7 at 1:10). This admission constitutes direct evidence of the Appellant's involvement in the crime, "immediately" establishing his intent to murder Robinson. *Phillips, supra*. If Appellant's statements were not persuasive enough, Robinson's statements about Appellant shooting at him surely aided the jury in their determination of Appellant's guilt beyond a reasonable doubt. Although Appellant argues that Robinson's statements could have meant someone besides Appellant was shooting at him, the statements must be taken in the context of the events that afternoon. This was a question for the jury to decide and the only reasonable inference was that Robinson was referring to Appellant in his statements. Accordingly, the State did indeed present substantial direct and circumstantial evidence, when viewed in the light most favorable to the State, proving Appellant's guilt of the attempted murder of Robinson.

The Appellant's apparent reliance on various state cases is grossly misplaced. Appellant seeks to compare his case to the following cases: *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774

(2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Hepburn*, 409 S.C. 416, 753 S.E.2d 402 (2013). In each of those cases, the South Carolina Supreme Court found that a directed verdict was warranted based on the evidence presented by the State at trial. However, the instant case is distinguishable from all of those cases. *Accord State v. Bratschi*, 413 S.C. 97, 106-14, 775 S.E.2d 39, 44-48 (Ct. App. 2015).

The Court in *Bostick* and *Odems* held a directed verdict was proper because the State had failed to present evidence placing the defendant at the scene of the crime. *Bostick*, 392 S.C. at 141, 708 S.E.2d at 778; *Odems*, 395 S.C. at 592, 720 S.E.2d at 53. Here, there is no question Appellant was present at the crime. Not only do multiple witnesses place him at the scene, he places himself there by his own admission. Therefore, both of these cases cited by Appellant are inapplicable to the case at hand.

Also, Appellant's contention that his case is comparable to *Hepburn* is erroneous. The Court in *Hepburn* held that the State failed to present substantial circumstantial evidence that the defendant killed the victim, and thereby a directed verdict was warranted. *Hepburn*, 406 S.C. at 440, 753 S.E.2d at 415. The Court emphasized that while the State presented substantial evidence the defendant was at the scene, it failed to present evidence tending to prove that this defendant, rather than the codefendant, inflicted the harm on the victim. *Id.* Thus, unlike this case, the underlying issue was "who" committed the crime. Here, there is no question about "who" attempted to kill Robinson. Undoubtedly, it is known that Appellant was the person who tried to kill Robinson due to his own confessions. Appellant admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). Appellant admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates Appellant's own statements that

he was the shooter. Jontu testified Appellant was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (R.p. 368, lines 13-25). Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (R.p. 328, lines 3-21). Since the identity of the person who committed the crime is not at issue in this case, *Hepburn* is not appropriate for comparison.

Respondent submits that the evidence presented in this case is akin to evidence presented by the State in *State v. Lane*, where the South Carolina Supreme Court reversed the Court of Appeal's reversal of the trial judge's denial of the defendant's motion for a directed verdict. *State v. Lane*, 765 S.E.2d 557, 557 (S.C. 2014). In reversing the Court of Appeals decision, the Court held "in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt." *Id.* In that case, the State presented evidence of the following: eyewitness testimony observing a red Mitsubishi parked in the victim's driveway on the afternoon of the burglary, a piece of paper found in victim's driveway after the burglary that was later identified as belonging to the defendant, officer testimony that they observed a red Mitsubishi in the driveway when they went to interview the defendant at his girlfriend's house, and defendant's admission to driving a red Mitsubishi on the day of the burglary and ownership of the piece of paper. *Id.*

Here, the State presented evidence regarding Appellant's ill-will towards Robinson, Appellant and Robinson's confrontation earlier in the day, Appellant's actions in retrieving and assembling a weapon, Appellant hunting down Robinson in a grey truck, eyewitness testimony placing Young, Sr.'s grey truck near the scene, officers testimony that they pulled over Appellant in Young, Sr.'s grey truck shortly after the shooting, eyewitness testimony about a shootout between a grey truck and grey Lexus shooting at each other near the scene, Appellant's own

admission of his chasing down Robinson while riding in his father's grey truck, and Appellant's admission of his intent and attempt to shoot Robinson. (R.pp. 287-506; State's Ex. 38, Intro Video to Video 8; State's Ex. 2). Indeed, there was exceedingly more evidence presented in this case than in *Lane* to withstand a directed verdict motion.

Respondent submits that the State presented substantial circumstantial evidence in the instant case of the same caliber, if not more, as the evidence presented in *Lane*, and Respondent asks the Court to find, just as the Court did in *Lane*, that "the aforementioned evidence was sufficient to withstand Respondent's motion for a directed verdict." *Id.* Respondent submits that the State presented direct and substantial circumstantial evidence of Appellant's guilt at trial and the State further excluded other reasonable hypotheses through its presentation of the evidence. Therefore, the trial judge did not abuse his discretion in denying Appellant's motion for directed verdict on the attempted murder charge, and this Court should affirm the trial court's ruling.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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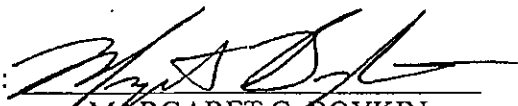
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November 30, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Thomas W. Cooper, Jr., Circuit Court Judge

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NOV 30 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


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Assistant Attorney General

November 30, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

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DEC 07 2016

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RECOGNIZING MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE AND DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE?
2. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT?
3. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE?

STATEMENT OF THE CASE

Appellant Aaron Scott Young, Jr. ("Appellant") was indicted for the offenses of murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940) in the Beaufort County Court of General Sessions. (R. P. 28.) On February 23–25, 2015, the case was tried by the Honorable Thomas W. Cooper, Jr. before a jury which found Appellant guilty on both charges. (R. P. 598.) The trial court sentenced Appellant to concurrent thirty year sentences on the murder and attempted murder charges. (R. pp. 616-617.) On March 6, 2015, Appellant served a Notice of Appeal.

FACTS

This case arises from four different incidents that occurred at four different locations on Hilton Head Island over the course of the afternoon of September 1, 2012. Viewing the evidence in the light most favorable to the State due to Appellant's challenge to the denial of his directed verdict motion, the evidence introduced regarding each of those incidents was as follows.

A. Wild Horse Road Incident

Around 3:30 to 4:00 p.m., Tyrone Robinson ("Robinson") drove his vehicle, with Jontu Singleton ("Jontu")¹ as a passenger, to Appellant's home off of Wild Horse Road. (R. pp. 359, 375.)

¹ Because the victim in this case was Khalil S. , Appellant's Brief refers to Jontu Singleton

Appellant, his father, Aaron Young, Sr. ("Young, Sr."), and Young, Sr.'s girlfriend Ebony Campbell ("Campbell") were talking in the yard as Robinson's vehicle pulled in. (R. p. 360.) Jontu exited the vehicle and spoke to Young, Sr., and Robinson exited the vehicle with a pistol in his hand, began screaming profanities at Appellant, and moved towards Appellant. (R. pp. 362, 377-378.) Young, Sr. rushed over and wrestled with Robinson for the gun, and as the two struggled, the gun fired. (R. pp. 362-363.) Young, Sr. backed away, and Robinson fired the pistol at Young, Sr.'s feet. (Tr. 334.) Robinson then got into his vehicle and drove away. (R. p. 364.)

Young, Sr. and Appellant went inside the home and returned with a black bag. (R. p. 364.) Appellant, Young, Sr., and Jontu got into Young, Sr.'s pickup truck, with Young, Sr. driving, and drove around Hilton Head Island looking for Robinson's vehicle, including driving down Spanish Wells Road, Oakview Road, Marshland Road, and Allen Road. (R. pp. 367-368.) While Young, Sr. drove, Appellant removed pieces of a gun from the black bag and began assembling the gun. (R. p. 368.) After driving for approximately ten minutes, the three stopped at Jontu's son's home on Allen Road, and Jontu exited the truck and knocked on the door, but no one answered. (R. pp. 370-372, 374, 378.) They then drove back to Young, Sr.'s home off of Wild Horse Road, where Jontu exited the truck and Campbell got into the truck, and Appellant, Young, Sr., and Campbell drove off. (R. pp. 372-374.)

B. Bryant Road

Appellant and Young, Sr. then traveled to Robinson's home on Bryant Road where they found Robinson. (State's Ex. 38, Video 7; R. p. 635.) Appellant's gun was jammed at that point, and he did not try to shoot at Robinson or even point the gun at him. (State's Ex. 38, Video 7; R. p.

and KhalilS.

by their first names.

635.) After Robinson fled, Young, Sr. drove them back to their homes on Wild Horse Road where they debated whether to continue searching for Robinson and ultimately decided to search more. (R. pp. 485-486; State's Ex. 38, Video 7; R. p. 635.)

C. First Allen Road Incident

Appellant and Young, Sr. traveled to Allen Road where they found Robinson's vehicle, but did not see Robinson. (R. p. 485; State's Ex. 38, Videos 1 & 2; R. p. 635.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the area of Allen Road. (R. pp. 300-301.) The gunshots heard were Appellant firing a magazine of bullets from his handgun into Robinson's unoccupied vehicle. (State's Ex. 38, Videos 2, 3, & 6; R. p. 635.) The windows of Robinson's vehicle were not tinted and a person could see through the windows to see if anyone was in the car. (R. pp. 488-529.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the corner of Marshland Road and Allen Road. (R. pp. 309-321, 334.) Mitchell let Robinson into her home where the two spoke, and Robinson told her that "those M F was shooting at him." (R. pp. 309-310, 321.)

Around the same time and between 4:00 and 5:00 p.m., Tyrone Delaney was driving from work to his home on Allen Road. (R. pp. 330-332.) At the intersection of Spanish Wells Road and Marshland Road, he passed a grey F-150 truck headed the opposite direction, away from Allen Road. (R. pp. 330-332.) As Delaney arrived at his home, Robinson was walking out, and the two met in the yard. (R. pp. 304, 310, 333.)

Delaney and Robinson spoke in the yard for approximately ten minutes, and during their conversation, Robinson asked Delaney if he saw a grey truck on his way home from work. (R. pp. 311, 333.) When Delaney responded that he saw a grey truck, Robinson stated: "yeah they was

shootin' at me so I shoot back at them." (R. p. 333.) Delaney observed that Robinson had a gun and asked that he leave. (R. pp. 311, 334.)

Robinson left, and ten to fifteen minutes after he left and twenty to thirty minutes after the first round of rapid gunshots, Mitchell and Delaney heard a second round of rapid gunshots. (R. pp. 301, 320, 334.) Several children playing in their yard scattered at the sound of the gunfire. (R. p. 311.)

D. Second Allen Road Incident

Approximately ten minutes after the second round of rapid gunshots, Young, Sr.'s grey truck sped down Allen Road and began turning onto Marshland Road. (R. pp. 302-303, 322-325.) As the truck reached the end of Allen Road and began to turn, Robinson fired three times from a location near the intersection of Allen Road and Marshland Road. (R. pp. 322-325, 335; State's Ex. 38, Videos 1 & 3; R. p. 635.)

A child who had been playing in Mitchell's yard ran toward his home pointing at Robinson and screaming to his step-father that Robinson shot Khalil S. (R. p. 346.) Robinson quickly got into his vehicle and drove away from Allen Road, and Khalil was found lying in the yard with a fatal gunshot wound. (R. pp. 312-314, 336-337, 505.)

E. Investigation and Interrogation

Young, Sr.'s truck was stopped by police between 5:00 and 5:30 p.m., and Appellant, Young, Sr., and Campbell were removed from the vehicle. (R. p. 391.) Appellant was taken to the police station where he was interviewed on videotape and eventually described the events of the day. (R. p. 396; State's Ex. 38; R. p. 635.) Young, Sr. was also interviewed and he directed the police to a home off of Wild Horse Road and a black bag in the home containing a handgun. (R. p. 402). The police

recovered a round lodged in Robinson's car, compared it to rounds fired from the recovered gun, and determined the round in Robinson's car was fired from the recovered gun. (R. pp. 466-467.)

F. Trial, Conviction, and Sentencing

Appellant was subsequently indicted and tried for murder and attempted murder. Prior to the jury being sworn, Appellant moved to quash the murder indictment on the grounds the indictment did not allege he shot the victim, it was undisputed that Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (R. pp. 211-237.) Appellant further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a basis for a murder conviction. (R. pp. 211-237.) The trial judge denied Appellant's motion to quash, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (R. pp. 265-269.)

The jury was sworn, and the State presented its case which included the testimony of several witnesses to the events of September 1, 2012, testimony from law enforcement officers regarding their investigation, portions of the videotaped interview of Appellant, and recordings of 911 calls related to the events. Upon the close of the State's case, Appellant moved for a directed verdict on both the murder and attempted murder charges. (R. p. 507.) As to the murder charge, Appellant asserted three bases for his directed verdict motion: (1) that Appellant did not shoot the victim and the State's mutual combat theory is legally insufficient to hold Appellant criminally responsible for Robinsons' acts; (2) that even if the State's mutual combat theory was legally valid, there was no evidence of mutual combat between Appellant and Robinson; and (3) that even if there was any mutual combat, the evidence established it had ended at the time Robinson fired the fatal shot. (R.

pp. 511-513, 518-519.) As to the attempted murder charge, Appellant asserted there was no evidence that Appellant attempted to kill Robinson. (R. pp. 508-511.) The trial judge denied the motion, and Appellant presented no additional evidence. (R. pp. 514-521, 524.)

Appellant then asked the trial judge to charge the jury on when mutual combat ends, and the judge denied this request. (R. pp. 519-521.) The judge then charged the jury on murder, mutual combat, and attempted murder. The court specifically included in its jury charge that Appellant did not fire the shot that killed the victim and could only be convicted through a mutual combat theory, charging: "Now, ladies and gentlemen, as you have heard throughout the trial of this case it is undisputed that [Appellant] did not fire the fatal bullet that killed Khalil S. . . . And so the state seeks and ask for a conviction at your hands under the theory of mutual combat." (R. p. 568.) In addition to his existing objection to the State's mutual combat theory, Appellant objected to the jury charge as erroneously stating mutual combat extends to third-party, non-combatants, and the trial judge denied Appellant's objection. (R. pp. 592-594.)

The jury convicted Appellant of murder and attempted murder. (R. p. 598.) Appellant moved to have the conviction set aside under the thirteenth juror doctrine or alternatively for a new trial, and the judge denied both motions. (R. pp. 606-607.) The judge sentenced Appellant to concurrent thirty year sentences for the two charges. (R. p. 616.)

ARGUMENTS

I. BECAUSE THE SOLE BASIS FOR APPELLANT'S MURDER CONVICTION WAS A "MUTUAL COMBAT" THEORY NOT RECOGNIZED BY SOUTH CAROLINA LAW AND NOT SUPPORTED BY THE EVIDENCE AT TRIAL, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE.²

The trial judge's denial of Appellant's motion for a directed verdict on the murder charge was erroneous and should be reversed for three reasons: (1) mutual combat is not recognized as creating criminal liability under South Carolina law; (2) even if mutual combat were a valid basis for a murder conviction, the evidence introduced at trial did not support a finding of mutual combat; and (3) even if Appellant had engaged in mutual combat, any mutual combat had ended at the time Robinson fired the fatal shot.

Appellant's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State. It is undisputed that Robinson, not Appellant, shot and killed Khalil, and the State presented no evidence or argument to suggest Appellant was engaged in any conspiracy with or otherwise aiding Robinson in his criminal acts. (R. pp. 234-235, 242.) Rather, as acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent (R. p. 518.), and the State explicitly disavowed any other legal basis for the murder charge. (R. pp. 219, 235-236.) Appellant moved for a

² Appellant also moved to quash the indictment because mutual combat is not a valid basis for a murder conviction under South Carolina law and moved for a new trial following the jury's verdict on the same grounds as his motion for a directed verdict. While Appellant submits the trial court erred in denying his motion for a directed verdict on all charges and his convictions should be reversed, Appellant further submits that the trial court erred in denying the motion to quash and motion for a new trial for the reasons set forth herein and incorporates those motions as alternative bases for relief. See *State v. Smith*, 316 S.C. 53, 56, 447 S.E.2d 175, 176 (1993) (affirming trial court's grant of a new trial based on a lack of evidence to support the jury's verdict where the

directed verdict on the murder charge at the close of the State's evidence on the grounds asserted above, and in his ruling denying the motion, the trial judge stated: "[T]he murder of course as you said comes in under the mutual combat thing. That's the only thing that ties [Appellant] to that." (R. pp. 507-521.)

On the appeal of a denial of a directed verdict motion, the Court views the evidence in the light most favorable to the State. *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625-26 (1996). Where there is no direct evidence or substantial circumstantial evidence in the record reasonably tending to prove the guilt of the accused, the trial court erred in denying the motion for a directed verdict and the defendant's conviction must be reversed. *See State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); *Copeland*, 321 S.C. at 326, 468 S.E.2d at 625-26.

A. The Trial Court Erred in Denying Appellant's Directed Verdict Motion on the Murder Charge Based on a Mutual Combat Theory that South Carolina Law Does Not, and Should Not, Recognize

South Carolina has never recognized, nor should it recognize, the mutual combat theory espoused by the State as a basis for a murder conviction. Because South Carolina law does not recognize "mutual combat" as a basis for a murder conviction and it was the sole basis for the State's murder charge, the trial court erred in denying Appellant's motion for a directed verdict on the murder charge.

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). Reviewing the common law of murder in South Carolina, our courts have never recognized mutual combat as a basis for a murder charge. Rather, the doctrine of mutual combat is a limitation on self-defense, and every South Carolina appellate court decision discussing mutual combat considered it only in

defendant failed to appeal the denial of his motion for a directed verdict).

relation to self-defense.³

As the legal basis for the mutual combat theory applied at Appellant's trial, the State and the trial judge primarily relied on language in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003), where the Court quoted language in its earlier opinion in *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906), and language in *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918). In *Taylor*, the Court quoted the following language from *Andrews*:

Where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter.

Taylor, 356 S.C. at 232, 589 S.E.2d 3–4 (quoting *Andrews*, 73 S.C. at —, 53 S.E. at 424). The State's reading of this language as suggesting the presence of mutual combat alone can support a murder conviction is misplaced. This quotation is the third and final sentence in a paragraph where it is preceded by the following two sentences that provide the necessary context for the quotation:

If the defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs. A finding that a defendant was engaged in mutual combat does not preclude the jury from convicting the defendant of manslaughter as opposed to murder.

Id. at 232, 589 S.E.2d at 3. The first sentence in the paragraph makes clear that mutual combat is a component of the doctrine of self-defense and acts to exclude certain conduct from that defense. The second sentence makes clear that because mutual combat removes the potential defense of self-

³ A search of South Carolina caselaw produced the following cases discussing "mutual combat" or its equivalent, all of which discuss it in relation to defenses to criminal charges: *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003); *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003); *State v. Porter*, 269 S.C. 618, 239 S.E.2d 641 (1977); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934); *State v. Jones*, 113 S.C. 134, 101 S.E. 647 (1919); *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906); *State v. Beckham*, 24 S.C. 283 (1886); *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Barksdale*, 311 S.C.

defense, a jury can convict a defendant engaged in mutual combat for murder or manslaughter upon a showing of the elements of those crimes. The acknowledgment that a defendant can be convicted for manslaughter clarifies that mutual combat with a death resulting from the combat does not automatically establish the crime of murder. Rather, the State still must prove the elements of murder or manslaughter to obtain a conviction on one of those charges.

In short, as recognized by the *Taylor* decision and all of the other South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State present the required proof to establish the elements of murder. Accordingly, even if Appellant was engaged in mutual combat with Robinson at the time of Robinson's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example conspiracy, aiding and abetting, or the felony murder rule—which would permit Appellant to be convicted for murder when another party undertook the fatal act.

In their reliance on the *Brown* opinion, the State and the trial judge latched onto small, select portions of a jury charge quoted in that opinion, and the trial judge treated that language as stating South Carolina law on mutual combat. (R. pp. 220, 224, 267-270, 514-515, 526-527.) However, the language relied upon in the *Brown* opinion comes from a much larger quotation of a jury charge given by the trial court, and the Court did not express any holding as to whether the quoted jury charge correctly stated South Carolina law on mutual combat. *See Brown*, 108 S.C. at —, 95 S.E. at 63. The Court's succinct holding related to the charge was that "[i]nstead of being prejudicial to the appellants, the charge was too favorable to them." *Id.* Additionally, even if the jury charge quoted in the *Brown* opinion was a correct statement of South Carolina law, the quoted charge contains

language ignored by the State and the trial judge which directly conflicts with the trial judge's understanding of mutual combat as expressed in his denial of Appellant's motion to quash and motion for a directed verdict. Specifically, the quoted charge provided:

When no conspiracy has been shown to have existed between the actual perpetrators and the one charged with aiding, it is essential to the guilt of the latter that he should not only have been present when the killing was done, but should have actually participated in the crime. Although it may be positively proven that one or two or more persons committed a crime, yet if it is uncertain which is the guilty party, all must be acquitted. No one can be convicted till it is established that he is the party who committed the offense.

Id. Finally, like all of the South Carolina caselaw on mutual combat, the jury charge in the *Brown* opinion discusses mutual combat in the context of whether a defendant can claim self-defense, stating that "[i]f one comes to the assistance of his friend . . . he enters the combat upon the same footing of the person to whose assistance he comes," "[o]ne who sees another attacked . . . has a right to interfere," and "[i]f one lawfully interferes . . . , inadvertently strikes a bystander, and death results . . . such person would not be guilty of any crime." *Id.*

Not only does South Carolina law not support the trial court's use of mutual combat as a stand-alone basis for a murder conviction, other jurisdictions around the United States recognize that the fact that two parties engaged in mutual combat is not alone sufficient to establish murder, and rather, treat mutual combat as potentially relevant to a murder charge only to the extent it supports proximate causation or an aider and abettor theory. *See State v. Spates*, 779 N.W.2d 770, 776–78 (Iowa 2010) (discussing decisions). Here, the trial court erroneously determined only that there was evidence from which a jury could find Appellant was engaged in mutual combat and failed to make any finding as to how evidence of mutual combat, or any other evidence presented at trial, established the elements of murder.

Moreover, unlike other jurisdictions that view mutual combat as potentially relevant to proximate causation or aider and abettor status, the trial court erroneously further complicated matters by tacking the concept of transferred intent onto mutual combat despite Appellant's arguments that transferred intent cannot apply in a mutual combat situation. (Tr. 194-95.) The doctrine of transferred intent holds that where a person intends to kill one person, but actually kills another, the actor's intent to kill the intended victim is transferred to the actual victim. *See, e.g., State v. Gandy*, 283 S.C. 571, 573-74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent only serves to expand the concept of malice, is limited to the malice issue, and does not expand the criminal liability of one actor to include the results of another person's actions. *See, e.g., Gandy*, 283 S.C. at 573-74, 324 S.E.2d at 67; *Horne*, 282 S.C. at 446, 319 S.E.2d at 704.

The facts of this case are a textbook example of why South Carolina law should not recognize a mutual combat combined with transferred intent theory of murder. Here, at the time Robinson fired the fatal shots, Appellant did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children. If the legal theory advanced by the State and accepted by the trial court were the law in South Carolina, any time an individual fought with an opponent, the individual would be criminally responsible for any harm caused by his opponent's conduct, even if that harm occurred at a time and place remote from the initial fight and even if the individual would not and did not chose to engage in combat at that time and place.

Therefore, because the trial court created and applied a mutual combat theory of murder not recognized by South Carolina law and relied on that theory as the sole basis for denying Appellant's

directed verdict motion, the court erred in denying Appellant's motion and Appellant's conviction should be reversed.

B. The Trial Court Erred in Denying Appellant's Directed Verdict and New Trial Motions Because There Was no Evidence From Which a Jury Could Find Appellant Engaged in Mutual Combat

Even assuming mutual combat can alone support a murder conviction under South Carolina law, no evidence was presented at trial to support a finding that Appellant and Robinson engaged in mutual combat at any time on September 1, 2012. Robinson and Appellant did not engage one another in combat during any of the four incidents that took place that day. Additionally, while Robinson attacked Appellant and Young, Sr., he then fled and acted only to ambush Appellant and his father as they left the scene, all of which evidences an *unwillingness* to engage in mutual combat.

Lacking any South Carolina caselaw on mutual combat as a basis for a murder conviction and therefore turning to South Carolina caselaw on the relationship between mutual combat and self-defense, our courts define mutual combat as requiring a "mutual agreement to fight" or "mutual intent and willingness to fight" and a "resulting fight." *Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). A mutual agreement and intent to fight "is manifested by the acts and conduct of the parties attending and leading up to the combat." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003). Jurisdictions utilizing the concept of mutual combat as relevant to establishing the elements required for a murder conviction employ the same definition, holding mutual combat requires a "mutual intention, consent or agreement preceding the initiation of hostilities," *People v. Ross*, 66 Cal. Rptr. 3d 438, 447 (Cal. Ct. App. 2007), or requires that "the combatants are armed with deadly weapons and mutually agree to fight," *Sanders v. State*, 659 S.E.2d 376, 380 (Ga. 2008).

Here, no evidence was presented from which a jury could conclude Appellant and Robinson

mutually agreed or intended to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Appellant. Appellant's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson.

While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Appellant or Young, Sr. were armed or that Appellant and Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. 227, 233, 589 S.E.2d 1, 4 (2003). There also was no evidence from which a jury could conclude that Robinson expected Appellant and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle on Wild Horse Road was between Robinson and Young, Sr., and there was no evidence that Appellant was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Appellant's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Appellant found Robinson there. No evidence introduced showed that Robinson, Appellant, or Young, Sr. engaged or attempted to engage in any combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Appellant and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Appellant and Young, Sr. arrived on Allen Road where they found Robinson's car. The uncontroverted evidence at trial showed that Robinson was not present

during this first Allen Road incident. Rather, this incident consisted solely of Appellant firing a weapon at Robinson's unoccupied car. While Appellant's actions in firing at Robinson's car were certainly destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Appellant began firing at his vehicle and did not come to the scene to fight once Appellant began firing. Appellant did not know where Robinson was, Appellant fired exclusively at Robinson's car, and Robinson did not come to the scene.

Finally, approximately ten minutes after Appellant ceased firing at Robinson's vehicle, Young, Sr., with Appellant as his passenger, sped out of Allen Road. As the truck reached the end of Allen Road, Robinson fired three shots, one of which struck and killed the victim. Again, the evidence regarding this incident would not allow a jury to conclude that there was a mutual agreement or intent to fight nor would it permit a jury to conclude Appellant engaged in combat with Robinson. The evidence shows that when Robinson fired, Appellant was leaving the scene and had no knowledge of Robinson's whereabouts. There also was no evidence presented to show that Robinson was firing at Appellant and Young, Sr. when he fired the fatal shot. Finally, there was no evidence that Appellant fired at or took any other action towards Robinson during this incident.

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Appellant only when he believed Appellant could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Appellant and Young, Sr. as they left Allen Road. Neither of these acts are indicative of an agreement or intent to engage in combat by Robinson. Moreover, Appellant never

engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Appellant ever pointed or fired a weapon at Robinson. (R. p. 487.) Appellant fired at Robinson's unoccupied vehicle which, while reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the trial court erred in denying Appellant's directed verdict motion and his conviction should be reversed.

C. The Trial Court Erred in Denying Appellant's Directed Verdict Motion Because The Evidence Established Any Mutual Combat Ended Prior to Robinson Firing the Fatal Shot

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Appellant engaged in mutual combat, Appellant was still entitled to a directed verdict because any mutual combat ended prior to Robinson firing the fatal shot. Appellant moved for a directed verdict on that ground, and the trial court erred in denying the motion based on the erroneous conclusion that there was evidence of ongoing mutual combat at the time of the fatal shot. (R. pp. 518-521.) Contrary to the trial court's ruling, all of the evidence presented at trial established that any mutual combat had ended when Robinson fired on Allen Road because Appellant and Young, Sr. were leaving Allen Road and had no knowledge that Robinson was even present in the area.

Mutual combat ends and a person's right to engage in self-defense is restored when the person withdraws from the combat and makes his withdrawal known to his adversary. *See Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Graham*, 260 S.C. 449, 451, 196 S.E.2d 495, 496 (1973); *State v. Santiago*, 370 S.C.

153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). In *Bryant*, the Court indicated that a person leaving the scene of the combat with his adversary's knowledge of his departure can satisfy both elements of withdrawing from the combat and communicating his withdrawal to his adversary. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 28. There the defendant argued he was entitled to a jury charge on self-defense because he had withdrawn from the conflict, and in support, he offered a statement he gave to the police that he dropped his knife, although without the victim's knowledge, before he then engaged in a fatal struggle with the victim. *Bryant*, 336 S.C. at 344-46, 520 S.E.2d at 321-22. The Court rejected the argument, stating that if the defendant "truly intended to withdraw he could have easily left the open parking lot," and thus, indicated that leaving the scene of the conflict would have been sufficient to establish withdrawal. *Id.* at 346, 520 S.E.2d at 322.

Here, the uncontroverted evidence presented at trial established that Appellant had withdrawn from any combat at the time Robinson fired the fatal shot and that his withdrawal was known to Robinson. A significant period of time elapsed between when Appellant fired at Robinson's vehicle and when Robinson fired the fatal shot. Witness testified that Robinson fired his weapon approximately *ten minutes after* Appellant ceased firing at Robinson's vehicle. (R. pp. 302-303, 322-325.) When Robinson fired, Appellant was in his father's truck traveling away from where Robinson's vehicle was parked and had already traveled the length of Allen Road. (R. pp. 322-325, 335; State's Ex. 38, Videos 1 & 3; R. p. 635.) If Robinson fired at Young, Sr.'s truck, he knew that Appellant and Young, Sr. were speeding away from Allen Road. No evidence was presented to show that Appellant saw Robinson in the area or had any reason to know Robinson was hiding off of Allen Road. The State's witness, Sergeant Laurel Albertin, testified that there was no evidence to

suggest Appellant saw Robinson on Allen Road, (R. p. 485), and in ruling on Appellant's directed verdict motion on this issue, the trial judge stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots," (R. p. 520). Additionally, there was no evidence presented to show that Appellant or Young, Sr. were engaged in any combative or threatening act at the time Robinson fired the fatal shot. To the contrary, the evidence presented indicated Appellant and Young, Sr. were fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road," (R. p. 302), and the trial judge acknowledged this in his statement that "they shot and they left in a hurry" (R. p. 520). Therefore, the uncontroverted evidence at trial established that any mutual combat had ended at the time Robinson fired the fatal shot because Appellant was withdrawing from the scene and Robinson knew Appellant was withdrawing and had no reason to believe Appellant was engaged in combat with him.

Not only did the trial court err in denying Appellant's directed verdict motion because all of the evidence established that the mutual combat had ended, the court also erred in denying the motion because the denial was based on an incorrect legal standard. The court denied the motion on the basis that the evidence did not show "a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat does not exist." (R. p. 521.) As previously discussed, the law requires only that a party withdraw from combat and that his opponent know of the withdrawal and does not require a "clear and unequivocal breaking of the conflict." The court also ruled that leaving the scene did not establish the end of mutual combat because Appellant was "just going to live to fight another day" and it did not show that a "truce has been declared." (R. pp. 520-521.) To the contrary, as discussed in relation to the *Bryant* decision, the law recognizes that leaving the scene can end mutual combat and there is no requirement that the parties agree that any

animosity between them has been permanently resolved. Were the law to require combatants to resolve their animosity such that they would not fight again over the same issue at a later time for mutual combat to have ended, such a rule would yield absurd results. Under such a rule, a defendant could engage in combat with another person and then cease fighting and leave the scene. If the other combatant ambushed the unaware defendant months later because the parties had not resolved their animosity towards one another and the ambush resulted in the death of a bystander, the death would be a murder for which the defendant would be criminally responsible.

In conclusion, for three reasons, any of which is alone sufficient for a reversal, the denial of Appellant's motion for a directed verdict and his murder conviction should be reversed and vacated. First, his murder conviction rests on an invalid mutual combat theory of criminal liability, and the trial court erred in not granting Appellant's motion for a directed verdict, or alternatively granting his motion to quash the indictment, on this ground. Second, even if mutual combat were a valid basis for a murder conviction, the evidence at trial established that Appellant was not engaged in mutual combat, and accordingly, the trial court erred in denying his motion for a directed verdict. Third, even if Appellant did engage in mutual combat with Robinson, any mutual combat had ended by the time Robinson fired the fatal shot. For any or all of these reasons, the trial court's denial of Appellant's directed verdict motion should be reversed and his murder conviction should be vacated.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Appellant also requested a jury charge on the end of mutual combat and the trial judge erred in refusing the request. (R. pp. 520-521.)

A trial judge must give a requested jury charge if there is any evidence to support the charge. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). A trial judge's refusal to give a requested jury charge supported by some evidence is a reversible error. *Id.*

As set forth in the previous section, the evidence presented at trial supported a conclusion that any mutual combat had ended at the time Robinson fired the fatal shot. Moreover, the trial judge acknowledged there was some evidence from which a jury could find the mutual combat had ended by stating in his ruling on the directed verdict motion: "given the extent of the chase and the level that they had gone to try to get to him before then [it] is *unlikely* that the shooting of the car and then leaving is a signal that they have chosen at this point in time to fold their tents and move away and that the battle is over and truce has been declared." (Tr. 492 (emphasis added).) Given that there was, at a minimum, some evidence to support a conclusion that any mutual combat had ended, the trial judge's failure to give the requested charge constitutes reversible error, and because Appellant's murder conviction turned on whether the parties were engaged in mutual combat, the failure to give the charge was prejudicial. Accordingly, while Appellant contends the denial of his motion for a directed verdict on the murder charge should be reversed and his conviction vacated, should the Court disagree, the error in the trial court's jury charge should result in a new trial.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE

The Supreme Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *Id.* (internal citation omitted). In this case, even

when viewed in the light most favorable to the State, the evidence presented in support of the attempted murder charge merely raises a suspicion and falls far short of reasonably tending to prove guilt. Accordingly, the trial judge erred in denying Appellant's motion for a directed verdict on the charge.

At trial, the State failed to produce a single witness who saw Appellant fire, or even point, a gun at Robinson.⁴ To the contrary, the evidence showed Appellant's gun was jammed and *he did not try to shoot at Robinson or even point the gun at him.* (State's Ex. 38, Video 7; R. p. 635.) Moreover, Sergeant Albertin testified that she had no evidence that Appellant ever pointed a gun or shot at Robinson. (R. pp. 486-487.)

Although Appellant admittedly shot at Robinson's car, the record is clear that Robinson was not in the car at the time and the car's windows were not tinted so Appellant could see that there were no occupants. (R. pp. 488-529.) Additionally, Sergeant Albertin confirmed that she had no evidence that Appellant even saw Robinson on Allen Road. (R. p. 485.)

The scant circumstantial evidence the State presented as to Appellant's guilt on attempted murder consists only of the following: (1) Robinson's statement to Mitchell that "those M F was shooting at him" (R. p. 310); (2) Robinson's statement to Delaney that "yeah they was shootin' at me so I shoot back at them" (R. p. 333); and (3) the 911 call from an unidentified woman who stated that two vehicles, a grey truck and *grey Lexus*,⁵ were shooting at each other (R. p. 624). First, although Robinson clearly knew Appellant, he never identified Appellant by name or otherwise in statements to Mitchell and Delaney. The fact that Robinson referred to "they" and "those M F" indicates he

⁴ Notably, the State chose not to call Robinson who presumably may have been the only person who could have corroborated its theory that Appellant tried to kill him.

⁵ Robinson was driving a green Acura that day. (R. pp. 312-313, 345-347, 419-420; R. p. 624; R. p. 629.)

may not have known who was shooting at him. Regardless, to conclude from that limited evidence that Robinson was referring to Appellant would require to the jury to make an unsupported inference.

The evidence did not provide any context for Robinson's statements as to when "they" or "those M F" allegedly shot at him or where the shooting took place. Without additional evidence to identify the shooter or evidence regarding when the alleged shooting took place, anyone could have been in the truck shooting at Robinson and the evidence introduced at trial established that other than Appellant, at least three other individuals were in the truck that day: Young, Sr., Jontu, and Campbell.

Second, with respect to the 911 call, the caller stated that two vehicles were shooting at each other, but the caller did not identify or provide any description of the person shooting from the grey truck. The caller also identified the two vehicles involved as a grey truck and a "grey Lexus," but Robinson was driving a green Acura. The caller also did not identify when or where the shooting occurred. Given that the evidence showed there were at least three other persons in Young, Sr.'s grey truck that day other than Appellant, the caller's statement cannot serve as substantial circumstantial evidence to support a conclusion that Appellant fired at Robinson.

As in this case, in *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001), the State presented entirely circumstantial evidence that the defendant committed murder. 392 S.C. at 140, 708 S.E.2d at 777. The trial court denied the defendant's directed verdict motion, based on the State's presentation of the following evidence: (1) the victim's personal items were found in a burn pile in a neighboring home owned by the defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified that she was afraid to use such accelerants and did not use them; (3) a pattern of gasoline was found on the defendant's shoes and

was used as an accelerant to start a fire in the victim's home after her assailant struck her; and (4) blood was found on the defendant's jeans and the DNA expert testified she could not conclusively state that the blood found on the defendant's jeans was not the victim's, even though she could exclude 99 percent of the population. *Id.* at 141-42, 708 S.E.2d at 778. On this evidence, which is far more substantial than the evidence presented against Appellant in this case, the Court reversed the trial court, finding the State had not presented substantial circumstantial evidence sufficient to submit the case to the jury. *Id.* at 142, 708 S.E.2d at 778.

Similarly, in *Odems*, the South Carolina Supreme Court reversed the trial court after it denied the defendant's directed verdict motion based on the lack of circumstantial evidence on which to base a conviction. 395 S.C. at 592, 720 S.E.2d at 53. In *Odems*, the defendant was convicted of first degree burglary, grand larceny, criminal conspiracy, and malicious injury to an electrical utility system. *Id.* at 582, 720 S.E.2d at 48. The circumstantial evidence was as follows: (1) the defendant was found in a car with the burglars and the stolen goods; (2) the defendant fled from police, and (3) the defendant "asked an uninvolved person to lie for him" to the police. *Id.* The unconvincing reason the defendant supposedly fled was because the driver told him that he had a suspended license. *Id.* at 585, 720 S.E.2d at 49. Nevertheless, the Court held the State presented no evidence that placed the defendant at the scene of the crime and reversed his conviction. *Id.* at 592, 720 S.E.2d at 53.

More recently, in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), the Court found the State did not present substantial circumstantial evidence sufficient to warrant the denial of the defendant's mid-trial directed verdict motion. In *Hepburn*, the defendant was convicted of homicide by child abuse for the death of her sixteen-month-old daughter. *Id.* at 418, 753 S.E.2d at 403. The

defendant and her co-defendant boyfriend were the only two people who could have killed the victim because they were the only people with access to the victim in the time period during which she sustained her fatal injuries. *Id.* The trial court denied the defendant's directed verdict motion based on circumstantial evidence regarding the defendant's state of mind, medical testimony, and testimony from her co-defendant. *Id.* at 440, 753 S.E.2d at 414-15. The Court, disregarding the co-defendant's testimony under the co-defendant exception to the waiver rule, held that the other circumstantial evidence did not present substantial evidence that the defendant killed the victim. *Id.* at 440, 753 S.E.2d at 415. In so holding, the Court stated that, "[w]hile undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that [*this defendant*] harmed the victim . . . [t]hus . . . the State did not put forward sufficient direct or substantial circumstantial evidence of [defendant's] guilt." *Id.* at 440, 753 S.E.2d at 415.

Here, as in *Hepburn*, if we assume Robinson's statements and the 911 call to be true, the only inference is that either Appellant or his father, who was with him in the truck, shot at Robinson. In his statements to Mitchell and Delanfey, Robinson never specifically identifies Appellant as the shooter. Instead he refers to the shooter as "they" or "those M F." Similarly, the 911 caller never identifies Appellant as the person shooting at Robinson. Instead, she merely stated that the two vehicles were shooting at each other. Thus, as the Court held in *Hepburn*, *Bostick*, and *Odems*, the State has not put forward sufficient circumstantial evidence of Appellant's guilt on the attempted murder charge. For this reason, the trial court's ruling on Appellant's directed verdict motion should be reversed.

CONCLUSION

For the reasons stated herein, this Court should reverse and vacate Appellant's convictions.

December 6, 2016

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

SC Court of Appeals

Thomas W. Cooper, Jr., Circuit Court Judge

Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940
Appellate Case No. 2015-0000508

The State,

Respondent,

v.

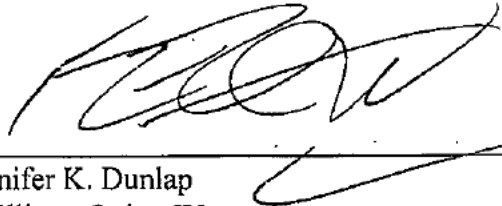
Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

December 6, 2016



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

Appellate Case No. 2015-000508

Appeal From Beaufort County
Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 5592
Heard June 6, 2018 – Filed August 22, 2018

AFFIRMED

Jennifer Kirk Dunlap and Frederick Elliotte Quinn, both of Parker Poe Adams & Bernstein, LLP, of Charleston, and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General Margaret Graham Boykin, all of Columbia, and Solicitor Isaac McDuffie Stone, III, of Bluffton, for Respondent.

HUFF, J.: Aaron Young, Jr. appeals his convictions of murder and attempted murder. On appeal, Young, Jr. argues the trial court erred in denying: (1) his motion for a directed verdict on the murder charge because the State's mutual

combat theory was not supported by South Carolina law or the evidence at trial; (2) his request for a jury charge on the end of mutual combat; and (3) his motion for a directed verdict on the attempted murder charge. We affirm.

FACTS AND PROCEDURAL HISTORY

In October 2014, Young, Jr. was indicted for the murder of Khalil S. (Victim) and the attempted murder of Tyrone Robinson. The indictment arose out of a September 1, 2012 conflict between Young, Jr. and Robinson, which culminated in the death of Victim, a minor who was playing outside on a trampoline during the incident. The State's theory of prosecution was that Young, Jr. engaged in mutual combat with Robinson and thereby caused Victim's death.¹

Prior to trial, Young, Jr. moved to quash the murder indictment, arguing mutual combat is not a criminal offense in South Carolina. Young, Jr. further argued the doctrine of transferred intent does not apply in the context of mutual combat. The trial court deferred ruling on the motion until it could "get some sensible legal theory on one side of that issue or another which makes the transferred intent doctrine applicable in mutual combat."

Jontu Singleton testified he met with Robinson on the afternoon of the incident at a house in Hilton Head. The two men decided to drive Robinson's car to the Youngs' residence. When Robinson and Singleton arrived at the house, Young, Sr. and Young, Jr. were both outside. Robinson exited his vehicle carrying a .38 caliber revolver and began yelling at Young, Jr. Young, Sr. saw the gun and immediately began to struggle with Robinson. Robinson fired the gun during the struggle, and Young, Sr. backed away; Robinson proceeded to fire one or two more shots at the ground. Robinson then returned to his vehicle and sped away; Singleton remained with the Youngs. Immediately after Robinson fled the yard, the Youngs went into their house and retrieved a semi-automatic pistol and ammunition. The Youngs and Singleton then entered Young, Sr.'s gray pickup truck and began to search for Robinson. Young, Sr. drove the truck, and Young, Jr. assembled the pistol in the passenger seat. The three men drove around their neighborhood for approximately ten minutes, but they could not find Robinson. Singleton then exited the vehicle and left the area.

Charlese Mitchell, Robinson's neighbor, testified she was home alone on the day of the incident and heard several rounds of gunshots around 4:00 p.m. After the

¹ It is undisputed that Robinson fired the shot that killed Victim.

gunfire stopped, Robinson came to her door "hyped up" and carrying a gun. Robinson entered Mitchell's trailer and stated "those [people were] shooting at me." At that time, Tyrone Delaney, Mitchell's fiancé, came home and spoke with Robinson for no more than ten minutes. Delaney told Robinson to leave, and shortly after Robinson left, Mitchell and Delaney heard another series of rapid gunfire. Mitchell testified that she saw Young, Sr. and a passenger she could not identify speeding down the road in a gray truck when she went outside to tell her son and stepsons to come inside the trailer. After retuning indoors with her children, Mitchell heard three final gunshots followed by screaming. Mitchell went outside to see Victim lying on the ground.

Delaney testified he observed the Youngs' gray truck speeding out of Mitchell's neighborhood at approximately 4:00 p.m. When Delaney arrived at Mitchell's trailer, Robinson explained he and the occupants of the truck had exchanged gunfire. At that point, Delaney asked Robinson to leave. Shortly after Robinson left, Delaney heard a burst of semi-automatic gunfire, and he and Mitchell brought their children inside. A few minutes later, Delaney heard three more gunshots, of a different type than the semi-automatic shots. When the gunfire ceased, Delaney heard Victim screaming for help.

The State also published Young, Jr.'s police interview to the jury. In his interview, Young, Jr. stated, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Later in the interview, when an investigator asked Young, Jr. who he was shooting at, he indicated Robinson was his target.

Young, Jr. did not testify in his own defense, and the jury found him guilty of both charges. The trial court sentenced Young, Jr. to concurrent terms of thirty years' imprisonment. This appeal followed.

DIRECTED VERDICT - MUTUAL COMBAT THEORY

First, Young, Jr. argues the trial court erred in denying his motion for directed verdict because South Carolina law does not support a murder conviction under a mutual combat theory. Young, Jr. asserts South Carolina does not recognize mutual combat as a basis for a murder conviction, and the law of mutual combat is only a limitation on self-defense.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, "[t]he trial [court] is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."

State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (quoting *Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127). "On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State." *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). "If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006).

"The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003). To constitute mutual combat, there must exist a mutual intent and willingness to fight. *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). The intent to fight may be manifested by the acts and conduct of the parties and the circumstances surrounding and leading up to the combat. *Id.*, 196 S.E.2d at 495-96. In addition, there must be an antecedent agreement to fight, which may be shown by evidence establishing a pre-existing dispute or ill will between the combatants. *See Taylor*, 356 S.C. at 233-34, 589 S.E.2d at 4-5. Finally, the combatants must be armed and know the other party is armed. *Id.*, 589 S.E.2d at 4-5.

In *State v. Andrews*, our supreme court upheld a jury charge which stated, "[W]here two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter." 73 S.C. 257, 260, 53 S.E.2d 423, 424 (1906).

In *State v. Brown*, our supreme court relied on the doctrine of mutual combat to uphold the manslaughter convictions of multiple defendants. 108 S.C. 490, 95 S.E.2d 61 (1918). In *Brown*, approximately ten men engaged in a fight and as a result, one of the combatants died from knife wounds. *Id.* at 494, 95 S.E.2d at 62. At least five of the combatants were charged with murder in relation to the fight. *Id.* at 490, 95 S.E.2d at 62. On appeal, three defendants argued the trial court erred in charging the jury that all combatants could be convicted under a theory of mutual combat. *Id.* at 493, 95 S.E.2d at 61. The supreme court affirmed the convictions and approved the following jury charge:

That every one is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences.

Id. at 499, 95 S.E.2d at 63.

In *State v. Mathis*, a defendant was indicted for murder. 174 S.C. 344, 345, 177 S.E.2d 318, 318 (1934). The evidence showed "the [defendant] and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and fired upon the other." *Id.* at 348, 177 S.E.2d at 319. The State proceeded on the theory of mutual combat, and the trial court instructed the jury on the law of mutual combat. *Id.* On appeal, our supreme court found there was no error because the evidence surrounding the mutual combat "justified a verdict of premeditated murder." *Id.* at 348-49, 177 S.E.2d at 319.

Although we acknowledge the doctrine of mutual combat has "fallen out of common use in recent years," we find South Carolina law still recognizes mutual combat as a basis for a murder charge. *See Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge. *See Andrews*, 73 S.C. at 260, 53 S.E. at 424 (upholding jury instructions stating "where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be

done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter."); *Mathis*, 174 S.C. at 348-49, 177 S.E.2d at 319 (holding a murder charge was proper where evidence showed the defendant and the deceased engaged in mutual combat). Specifically, in *Brown*, our supreme court upheld a trial court's ruling that multiple defendants involved in mutual combat could be charged with murder for the death of a participating party. 108 S.C. at 499, 95 S.E.2d at 63. Based on the foregoing, we find the trial court did not err in finding mutual combat a viable theory of prosecution for the murder charge.

Second, Young, Jr. argues the trial court "erroneously further complicated matters" by combining the issue of transferred intent with the theory of mutual combat. Unlike the victims in *Andrews*, *Mathis*, and *Brown*, here, Victim was an innocent bystander rather than a combatant, and thus, Young, Jr. asserts he cannot be held criminally responsible because Robinson fired the fatal shot.

We find the trial court did not err in applying the doctrine of transferred intent to Young, Jr.'s case. It is undisputed Robinson fired the final three shots at the Youngs as they fled his neighborhood for the final time; one of those three shots fatally struck Victim. Because Robinson fired at Young, Jr. with the intent to kill, this intent transferred to Victim. Thus, Robinson was criminally responsible for Victim's death under the doctrine of transferred intent. See e.g., *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984) ("If there was malice in [the actor's] heart . . . it matters not whether he killed his intended victim or a third person through mistake. . . . [T]he actor's intent to kill his intended victim is said to be transferred to his actual victim."). Furthermore, under the theory of mutual combat, all combatants are deemed "equally responsible for the natural consequences" of their actions during combat, and all may be held equally guilty of murder when a combatant dies, regardless of which combatant fired the fatal shot. See *Brown*, 108 S.C. at 499, 95 S.E.2d at 63. Therefore, despite the fact that Victim was a bystander rather than a combatant, we find Young, Jr. could still be found guilty for Victim's death as a "natural consequence" of the combat with Robinson. This is especially true under the instant facts because Young, Jr. admitted to police that he knew children were bystanders during the combat; specifically, Young, Jr. stated, "I saw the [children playing on the] trampoline and all. . . . In order to ride up the road, you [have to] pass by the children." The Youngs chased Robinson into his neighborhood while firing shots, including shots from the semi-automatic weapon Young, Jr. retrieved and assembled for use in the pursuit. Robinson fired his shots at the Youngs as they fled when Young, Jr.'s weapon jammed—after Young, Jr.'s rapid firing of some twenty shots to "swiss cheese" Robinson's car. Accordingly, we find the trial court did not err in allowing

the State to proceed under the theory of mutual combat even where Young, Jr. did not fire the shot that killed Victim, a bystander.

Finally, Young, Jr. argues no evidence at trial supported a finding of mutual combat. Here, Young, Jr. asserts there was no mutual agreement or willingness to fight, but rather a string of shootings over the course of approximately one hour, in which Young, Jr. and Robinson never engaged in combat at the same time. We find the State presented direct and substantial circumstantial evidence of each of the necessary elements of mutual combat. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

To constitute mutual combat, there must exist a mutual intent and willingness to fight. *See Graham*, 260 S.C. at 450, 196 S.E.2d at 495. The intent to fight may be manifested by the acts and conduct of the parties and the circumstances surrounding and leading up to the combat. *Id.* at 450, 196 S.E.2d at 495-96. We find there was evidence of a mutual intent and willingness to fight. Robinson first fired two or three shots at the Youngs' feet, and the Youngs retrieved a weapon and gave chase. Although Young, Jr. did not shoot Robinson during the conflict, he did shoot Robinson's parked vehicle approximately twenty times. Moreover, Robinson admitted to Mitchell and Delaney that he shot back at the Youngs as they pursued him in their vehicle. Robinson also fired the final three shots at the Youngs' vehicle as they fled the neighborhood for the final time. Based on these circumstances, we find there was evidence showing Robinson and Young, Jr. had a mutual intent to engage in combat.

In addition, there must be an antecedent agreement to fight, which may be shown by evidence establishing a pre-existing dispute or ill will between the combatants. *See Taylor*, 356 S.C. at 233-34, 589 S.E.2d at 4-5. In the police interview, Young, Jr. explained he and Robinson did not like each other and had been involved in numerous previous altercations. Young, Jr. specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict. Viewing Young, Jr.'s admissions in a light most favorable to the State, we find this second element satisfied.

Finally, the combatants must be armed and know the other party is armed. *Id.* Here, the evidence showed both Young, Jr. and Robinson were armed and knew the other to be armed. Singleton testified Robinson carried a .38 caliber revolver, which he shot at the Youngs' feet. Soon after, Young, Jr. retrieved a semi-

automatic pistol and ammunition. Mitchell and Delaney each testified Robinson excitedly told them that he and the Youngs exchanged gunfire as the Youngs drove their truck around in search of Robinson. Young, Jr. admitted he was armed with the semi-automatic pistol when he cornered Robinson on a dead-end road and later shot Robinson's vehicle. Young, Jr. further stated he was aware Robinson fired three shots in his direction as the Youngs fled the scene for the final time. Viewing this testimony in a light most favorable to the State, we find this third element satisfied.

Accordingly, because the doctrine of mutual combat is a proper basis for a murder charge and the State presented substantial circumstantial evidence showing Young, Jr. engaged in mutual combat, we find the trial court properly submitted the case to the jury. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

JURY CHARGE - END OF MUTUAL COMBAT

Young, Jr. argues the trial court erred in denying his request for a jury charge on the end of mutual combat. Young, Jr. asserts the evidence at trial supported such a charge because Young, Jr. fled the scene after shooting Robinson's vehicle, and the jury could have found this ended the mutual combat. We disagree.

Where a person voluntarily participates in . . . mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self defense . . . unless, before the homicide is committed, *he withdraws and endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary*

Graham, 260 S.C. at 451, 196 S.E.2d at 495-96 (emphasis added) (quoting 40 C.J.S. Homicide § 122, p. 496).

We find the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion.").

First, the evidence did not show Young, Jr. withdrew from the conflict and in good faith declined further conflict. Young, Jr. and Robinson engaged in a shoot-and-flee conflict that began when Robinson fired several shots at the ground in the Youngs' yard. The conflict continued as the Youngs drove around two neighborhoods searching for Robinson. Over the course of the search, Young, Jr. cornered Robinson on a dead-end road but did not shoot him because Young, Jr.'s weapon jammed; Young, Jr. also shot Robinson's unoccupied vehicle over twenty times while Robinson hid nearby. Moreover, both Mitchell and Delaney testified Robinson excitedly told them he shot back at the Youngs during this time period. Furthermore, Young, Jr. admitted in his police interview that he intended to continue the conflict, stating, "[Robinson] knew we were [going to] come back for him. He already knew. I know he knew.... He know[s] me. I don't play like that." Young, Jr. further told Young, Sr. to "turn around" after hearing Robinson fire the final three shots toward their vehicle. Based on the unique nature of the shoot-and-flee conflict Young, Jr. and Robinson engaged in, we find the evidence did not show Young, Jr. withdrew from the combat by fleeing the neighborhood before Robinson fired the fatal shots.

Second, no evidence suggested Young, Jr. made his withdrawal known to Robinson, either by word or act. Here, no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs' yard. Moreover, because we find the combat did not end when Young, Jr. fled the scene after shooting Robinson's unoccupied vehicle, we similarly find Young, Jr.'s act of fleeing before Robinson fired the fatal shots did not make known to Robinson any intent to withdraw.

Because the evidence did not show Young, Jr. withdrew from the combat in good faith or make any withdrawal known to Robinson, we find a charge on the end of mutual combat was not warranted. *See State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) ("The law to be charged must be determined from the evidence presented at trial."). Accordingly, we find no abuse of discretion by the trial court.

DIRECTED VERDICT - ATTEMPTED MURDER

Young, Jr. argues the trial court erred in denying his motion for a directed verdict on the attempted murder charge. Young, Jr. asserts the State failed to produce substantial circumstantial evidence showing he attempted to murder Robinson. Specifically, Young, Jr. asserts the evidence at trial showed Robinson was not

present when Young, Jr. shot Robinson's car, and there was no evidence Young, Jr. ever pointed his gun at or tried to shoot Robinson. Young, Jr. therefore concludes the trial court should have granted his motion for a directed verdict. We disagree.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *McHoney*, 344 S.C. at 97, 544 S.E.2d at 36. In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

The trial court properly denied Young, Jr.'s motion for a directed verdict on the attempted murder charge because the State presented substantial circumstantial evidence demonstrating Young, Jr.'s guilt. *See State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999) ("On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State."); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

Here, Singleton testified after Robinson first fired his revolver at the ground near the Youngs, the Youngs went into their house and retrieved a semi-automatic pistol. Thereafter, Singleton and the Youngs drove around their neighborhood searching for Robinson, and Young, Jr. assembled the pistol during the search. Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him. Delaney also testified Robinson told him about an exchange of gun fire with the Youngs. Moreover, the State published Young, Jr.'s police interview to the jury. In the interview, Young, Jr. explained, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Young, Jr. also clarified Robinson was his intended target. Viewing this evidence in the light most favorable to the State, we find there was substantial circumstantial evidence tending to prove Young, Jr. attempted to murder Robinson. *See Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial [court] is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (quoting *Mitchell*, 341 S.C. at 409,

535 S.E.2d at 127)). Thus, we find the trial court properly denied Young, Jr.'s motion for a directed verdict.

CONCLUSION

Accordingly, Young Jr.'s convictions are

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

RECEIVED
SEP 06 2018
SC Court of Appeals

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Aaron Scott Young, Jr. respectfully petitions the Court for a rehearing of its Opinion No. 5592, filed on August 22, 2018, based upon the following points overlooked or misapprehended by the Court:

I. THE DECISION MISAPPREHENDS SOUTH CAROLINA LAW IN HOLDING THAT "SOUTH CAROLINA LAW STILL RECOGNIZES MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE."

Mutual combat is only a component of the doctrine of self-defense, and the Court misapprehends South Carolina law in relying on *State v. Brown*, *State v. Mathis*, *State v. Taylor*, and *State v. Andrews* as supporting mutual combat serving as a stand-alone basis for a murder conviction. All of the decisions relied on by the Court discuss mutual combat in relation to *defenses* to criminal charges and *not* as a basis for a murder charge.

Appellant does not dispute that an individual engaged in mutual combat can be convicted of murder or manslaughter for the death of one of the participants in the mutual combat. Rather,

the issue in this case, and the issue overlooked by the Court, is that the State must still prove the elements of murder or manslaughter in such an instance. The fact that mutual combat exists serves only to remove the defense of self-defense. As made clear by the decisions relied on by the Court, the existence of mutual combat does not alone establish guilt for murder or manslaughter.

II. THE DECISION MISAPPREHENDS AND OVERLOOKS SOUTH CAROLINA LAW ON TRANSFERRED INTENT AND MUTUAL COMBAT.

In relation to transferred intent, the Court first overlooks that transferred intent only relates to the malice element and does not expand the criminal liability of one actor to include the results of another person's actions. *See State v. Gandy*, 283 S.C. 571, 573–74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). The Court combines Robinson's intent toward Appellant and Robinson shooting the victim with language from mutual combat decisions referring to mutual combatants being responsible for the "natural consequences" of the combat. However, the Court overlooks that those decisions referring to mutual combatants being responsible for the "natural consequences" are referring to the death of one of the combatants as the "natural consequences." Those decisions do not address the death of an innocent, unintended bystander.

Moreover, not only has South Carolina law on mutual combat not been extended, through the use of transferred intent or otherwise, to include the death of an innocent, unintended bystander within the "natural consequences" of mutual combat, South Carolina law should not recognize such as one of the "natural consequences" of mutual combat. If mutual combat existed between Robinson and Appellant here, which Appellant contests, the facts of this case are a perfect example of why the death of an innocent, unintended bystander is not one of the "natural consequences" of mutual combat for which all mutual combatants are responsible. Here, Robinson chose to fire shots at Appellant at a time and place of his choosing. Robinson chose to fire shots at a location

where children were playing in his line of fire. Appellant had no control over and no role in Robinson firing shots at that location. Therefore, Appellant cannot be held responsible for the death of the victim as a "natural consequence" of his actions. Appellant had no way to foresee or control whether his actions would result in Robinson firing with children in the line of fire.

III. THE DECISION MISAPPREHENDS THE EVIDENCE AND MISAPPLIES SOUTH CAROLINA LAW ON MUTUAL COMBAT IN HOLDING THAT MUTUAL COMBAT EXISTED BETWEEN APPELLANT AND ROBINSON.

The Court acknowledges that the three elements of mutual combat are: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must each be armed with and know the other party is armed with a deadly weapon, and (3) the parties must engage in mutual combat with the deadly weapons. *See Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). However, the Court overlooked that for there to have been mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed.

There was no such point in time. At no time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. The Court holds that there was a *mutual* intent and willingness to fight evidenced by: (1) Robinson firing at the Youngs' feet on Wild Horse Road, (2) Appellant shooting Robinson's car, (3) Robinson stating he shot at the Youngs, and (4) Robinson firing at the Youngs as they left Allen Road. However, none of those incidents evidences a *mutual* intent and willingness to fight. At the most basic level, each incident evidences that Robinson had *no* intent to engage in mutual combat and instead wanted only to ambush the Youngs. When Robinson fired at the Youngs' feet on Wild Horse Road, Robinson fled when the Youngs responded. Robinson then remained hidden through when he fired the fatal shots as the Youngs left Allen Road. A person who is hiding from his supposed "combatants" cannot be said to have a willingness to fight. Hiding from your opponent is the antithesis of being willing to fight.

Additionally and for similar reasons, the Court's decision overlooks that Robinson and Appellant never engaged in mutual combat with deadly weapons. On Wild Horse Road, Robinson approached the Youngs, he was the only person armed at that time, and he fled when the Youngs tried to defend themselves. Thereafter and until when he fired the fatal shots, Robinsons fled and remained hidden from the Youngs. As stated previously, hiding from your opponent is the antithesis of engaging in combat with your opponent. When Robinson fired the fatal shot, it was not in response to any act of combat by the Youngs. At that time, the Youngs were leaving Allen Road, the Youngs did not know where Robinson was, and Robinson was in a hidden position. Therefore, there was no time that day at which Robinson and Appellant had a mutual intent to fight, were both armed, and engaged in combat.

Furthermore, the Court's decision overlooks the distinction between circumstances where parties engage in mutual combat and circumstances where two parties have ill will towards one another and one attacks and kills the other in an act of murder. Under the Court's holdings in this decision, mutual combat would always exist when two persons have animus towards one another and one attacks the other. For a viable distinction between murder, self-defense, and mutual combat to exist, the facts of this case cannot constitute mutual combat. Were the facts of this case to constitute mutual combat, any incident in which one person attacks another who shares feelings of ill will and in which the two parties then exchange gunfire would be mutual combat. However, that clearly is not the case under South Carolina law. If one person attacks another, the person attacked has a right to engage in self-defense, even if there was a pre-existing ill will between the persons.

IV. THE DECISION OVERLOOKS AND MISAPPLIES SOUTH CAROLINA LAW ON THE CESSATION OF MUTUAL COMBAT.

Even if the facts were sufficient to establish mutual combat existed at some point on the day in question, the Court overlooks South Carolina law establishing that any such mutual combat ended prior to when Robinson fired the fatal shot. South Carolina caselaw makes clear that the withdrawal from difficulty and communication of that withdrawal necessary to end mutual combat are both satisfied by leaving the scene of the difficulty. See *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). South Carolina law establishes that the key to whether mutual combat ended, or in the related context whether the right to self-defense has been restored, is whether the adversary is placed in a safe position in which there is no imminent threat of further violence.

The Court here acknowledges that Appellant was “fleeing the neighborhood before Robinson fired the fatal shots” and had “fled the scene.” However, the Court holds that Appellant doing so was not sufficient to constitute a withdrawal because of the “unique nature of the shoot-and-flee conflict.” The Court’s holding overlooks that South Carolina law only requires that an adversary leave the scene and place his opponent in a safe position. Here, Appellant left the scene and left Robinson in a safe, hidden position. Given that he did not know where Robinson was and that Robinson was hiding, Appellant could not do anything more to withdraw from the conflict than what Appellant did by leaving the scene. The Court also did not find, nor is there any evidence that would support a finding, that Robinson could reasonably expect that further violence was imminent. To the contrary, Robinson was able to call the police from his position. If an adversary is able to call the police and involve law enforcement in the process of ending a conflict, the law cannot reasonably expect that anything more be done to end a conflict. Were the law to be otherwise, mutual combat would never end and a mutual combatant could be held responsible for

the acts of his opponent when his opponent unilaterally reinitiates violence days, weeks, or months after the combatant previously withdrew from the scene of combat.

V. THE DECISION MISAPPLIES THE STANDARD ON WHEN A FAILURE TO GIVE A JURY CHARGE IS REVERSIBLE ERROR AND OVERLOOKS THE EVIDENCE WHICH REQUIRED THE TRIAL COURT TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT.

The decision applies an abuse of discretion standard to the issue of whether the trial court erred in not giving a requested jury charge on the end of mutual combat and holds that “the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat.” In support, the Court cites to *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010), and language therein holding that a trial court’s decision regarding a jury charge will be reversed on appeal only when there is an abuse of discretion.

However, *Mattison* provides the standard where a party requests specific jury charge language and the trial court declines the request but uses other language addressing the issue of law the requested charge was to address. See *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583–84 (“However, if the trial judge refuses to give a *specific* charge, there is no error *if the charge actually given covers the substance of the request*. . . . Failure to give requested jury instructions is not prejudicial error *where the instructions given afford the proper test for determining the issues*. (emphasis added and internal quotations and citations omitted)). In other words, the abuse of discretion standard set forth in *Mattison* applies to the *content* of a jury charge a trial court gives on a particular point of law. That scenario is not the issue before the Court. The issue before the Court in this case is the trial court’s refusal to give *any* charge on when mutual combat ends.

The standard governing a trial court’s refusal to give *any* charge on a particular point of law is the standard supplied by *State v. Burriss*: “It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it

should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). In *Burriss*, the Court applied that standard to reverse the appellant’s conviction because the trial court refused to charge on the law of accident and involuntary manslaughter, *i.e.*, refused to give a jury charge on a point of law, and some evidence was presented at trial that supported the appellant’s claims as to accident and involuntary manslaughter. Accordingly, the abuse of discretion standard applied in the Court’s decision is not the proper standard for assessing whether the trial court erred in giving a jury charge on the end of mutual combat as requested by Appellant. Rather, the proper analysis is whether any evidence was presented at trial to support a charge on the end of mutual combat.

Applying the any evidence standard set forth in *Burriss*, there was at a minimum some evidence to support a charge on the end of mutual combat. As discussed previously herein, the Court’s decision acknowledges that Appellant was fleeing the scene at the time Robinson fired the fatal shots. The evidence that Appellant was fleeing and was not firing at or engaged in any other violence at the time Robinson fired the fatal shots is some evidence from which a jury could conclude that any mutual combat had ended and which supports giving a charge on the end of mutual combat.

VI. THE DECISION OVERLOOKS SOUTH CAROLINA LAW ON THE LEVEL OF CIRCUMSTANTIAL EVIDENCE REQUIRED TO OVERCOME A MOTION FOR A DIRECTED VERDICT AND MISAPPREHENDS THE LACK OF SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE IN RELATION TO THE ATTEMPTED MURDER CHARGE.

The decision holds that substantial circumstantial evidence existed to support the charge that Appellant attempted to murder Robinson based solely on:

- (1) the Youngs armed themselves and searched for Robinson,
- (2) Robinson’s statements to Mitchell and Delaney, and

(3) Appellant's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence, that Appellant shot at or attempted to shoot Robinson.

As set forth in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001); a trial court must grant a directed verdict when there is no evidence to support an element of a charge or only evidence which "merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50. South Carolina's appellate courts have found insufficient to overcome a directed verdict motion evidence significantly more substantial than the evidence relevant to the attempted murder charge here. See *Hepburn*, 406 S.C. 416, 753 S.E.2d 402; *Odems*, 395 S.C. 582, 720 S.E.2d 48; *Bostick*, 392 S.C. 134, 708 S.E.2d 774.

Appellant arming himself and searching for Robinson is not an act of attempted murder. Similarly, while Appellant made statements to the police regarding being armed and his desire to harm Robinson, Appellant stated that he never shot at or attempted to shoot at Robinson.

Finally, the decision misapprehends the evidence regarding Robinson's statements to Mitchell and Delaney. First, the decision states that "Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him." This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that Appellant was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.) The decision also states that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Again, this statement misapprehends the evidence. Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Appellant specifically. Instead, Delaney testified that Robinson asked if Delaney had seen a grey

truck, and when Delaney responded that he had seen a grey truck, Robinson responded: "yeah they was shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Appellant by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Appellant and his father were driving around in a grey truck, he did not identify the grey truck as the Youngs' truck, much less identify who was in the grey truck at the time he was referring to.

Additionally, Robinson's statements to Mitchell and Delaney do not provide the context necessary for a jury to make anything more than an unsupported inference from those statements. Robinson's statements do not identify when or where the purported shooting took place. The evidence at trial established that there had been previous confrontations between Robinson and Appellant as acknowledged by the Court's decision stating: "Young, Jr. specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Appellant fired at Robinson's car or to some other instance of gun fire that day.

In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no evidence to conclude that the appellant rather than the other person caused the victim's death, there was not substantial circumstantial evidence to overcome a directed verdict motion. *Hepburn*, 406 S.C. 416, 440, 753 S.E.2d 402, 415. Similarly, even were the necessary context available to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence makes clear there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Appellant rather than one of the other occupants fired any shots at Robinson.

For the reasons set forth herein, Appellant respectfully requests rehearing in this case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies on September 5, 2018, he caused a copy of the foregoing Petition for Rehearing to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

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September 5, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
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RECEIVED
SEP 06 2018
SC Court of Appeals

Re: State v. Aaron Young, Jr.
Appellate Case No.: 2015-000508

Dear Ms. Kitchings,

Enclosed for filing please find an original and one copy of the Petition for Rehearing of Appellant in connection with the above-referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

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FEQ/EQ
Enclosures (as stated)

Cc: Alan M. Wilson
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The South Carolina Court of Appeals

The State, Respondent,

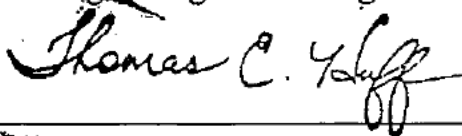
v.

Aaron Scott Young, Jr., Appellant.

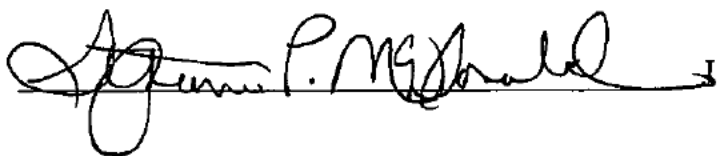
Appellate Case No. 2015-000508

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

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Robert Michael Dudek, Esquire
Jennifer Kirk Dunlap, Esquire
Frederick Elliotte Quinn, IV, Esquire
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FILED

Sept. 20, 2018

Margaret Graham Boykin, Esquire
Isaac McDuffie Stone, III, Esquire
Melody Jane Brown, Esquire
The Honorable Thomas W. Cooper, Jr.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

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Aaron Scott Young, Jr.,

Petitioner.

BRIEF OF PETITIONER

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S.C. SUPREME COURT

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ISSUES PRESENTED

- I. Did the Court of Appeals err in holding that mutual combat alone is recognized by South Carolina law as a sufficient basis for a murder conviction, holding that the evidence supported finding mutual combat, and affirming Petitioner's murder conviction on these grounds?
- II. Did the Court of Appeals err in holding the trial court properly refused to give a jury charge on the end of mutual combat?
- III. Did the Court of Appeals err in affirming the denial of Petitioner's motion for a directed verdict on the attempted murder charge?

STATEMENT OF THE CASE

After Petitioner Aaron Scott Young, Jr. ("Petitioner") was indicted for murder and attempted murder, his trial was held February 23–25, 2015, before a jury with the Honorable Thomas W. Cooper, Jr. presiding. The jury found Petitioner guilty on both charges, and the trial court sentenced Petitioner to concurrent thirty year sentences. On March 6, 2015, Petitioner served a Notice of Appeal. On August 22, 2018, the Court of Appeals affirmed Petitioner's convictions. *State v. Young*, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018). Petitioner filed a petition for rehearing, and the Court of Appeals denied the petition. Petitioner filed a petition for writ of certiorari to the Court of Appeals, and this Court granted the petition on May 9, 2019.

STATEMENT OF FACTS

This case arises from four different incidents at four different locations on Hilton Head Island over the course of one afternoon.

A. Wild Horse Road Incident

Around 3:30 to 4:00 p.m., Tyrone Robinson ("Robinson") drove his vehicle, with Jontu Singleton ("Jontu")¹ as a passenger, to Petitioner's home off of Wild Horse Road. (R. 359, 375.) Petitioner, his father, Aaron Young, Sr. ("Young, Sr."), and Young, Sr.'s girlfriend Ebony Campbell ("Campbell") were talking in the yard as Robinson's vehicle pulled in. (R. 360.) Jontu exited the vehicle and spoke to Young, Sr., and Robinson also exited with a pistol in his hand, and began screaming and moving towards Petitioner. (R. 362, 377–78.) Young, Sr. wrestled with Robinson for the gun, and the gun fired. (R. 362–63.) Young, Sr. backed away, and Robinson fired the pistol at Young, Sr.'s feet. (R. 364.) Robinson then got into his vehicle and drove away. (R. 364.)

¹ Because the victim in this case was Khalil S. , Petitioner refers to Jontu and Khalil by their first names.

Young, Sr. and Petitioner went inside the home and returned with a black bag. (R. 364.) Petitioner, Young, Sr., and Jontu got into Young, Sr.'s pickup truck, with Young, Sr. driving, and drove around Hilton Head Island looking for Robinson's vehicle. (R. 367-68.) While riding around, Petitioner removed a gun from the black bag and began assembling it. (R. 368.) The three eventually returned to Wild Horse Road where Jontu exited the truck and Campbell got in. (R. 372-74.)

B. Bryant Road

Petitioner and Young, Sr. then traveled to Robinson's home on Bryant Road where they found Robinson. (State's Ex. 38, Video 7; R. 635.) The gun was jammed at that time, and Petitioner did not try to shoot at or even point the gun at Robinson. (State's Ex. 38, Video 7; R. 635.) Robinson fled, and Young, Sr. drove Petitioner and Campbell back to Wild Horse Road where they debated whether to continue looking for Robinson and ultimately decided to do so. (R. 485-86, 635; State's Ex. 38, Video 7.)

C. First Allen Road Incident

Petitioner and Young, Sr. drove to Allen Road where they found Robinson's car, but did not see Robinson. (R. 485, 635; State's Ex. 38, Videos 1 & 2.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the Allen Road area. (R. 300-01). The gunshots were Petitioner firing into Robinson's unoccupied car. (R. 635; State's Ex. 38, Videos 2, 3, & 6.) The windows of Robinson's vehicle were not tinted, and a person could see through the windows that no one was in the car. (R. 488-529.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants' pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the

video, and he described the events of the day. (R. 396, 635; State's Ex. 38.) Young, Sr. was also interviewed and directed the police to a home off of Wild Horse Road and a handgun inside a black bag in the home. (R. 402.)

F. Trial, Conviction, and Sentencing

Petitioner was indicted and tried for murder and attempted murder—the murder of Khalil and the attempted murder of Robinson. Prior to the jury being sworn, Petitioner moved to quash the indictment on the grounds it did not allege he shot the victim, it was undisputed Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (R. 211–37.) Petitioner further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a basis for a murder conviction. (R. 211–37.) The trial judge denied Petitioner's motion, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (R. 265–69.)

Upon the close of the State's case, Petitioner moved for a directed verdict on both the murder and attempted murder charges. (R. 507.) As to the murder charge, Petitioner asserted three bases for the motion: (1) Petitioner did not shoot the victim, and the State's mutual combat theory is legally insufficient to hold Petitioner criminally responsible for Robinson's acts; (2) even if the State's mutual combat theory was legally valid, there was no evidence of mutual combat between Petitioner and Robinson; and (3) even if there was any mutual combat, the evidence established it had ended at the time Robinson fired the fatal shot. (R. 511–13, 518–19.) As to the attempted murder charge, Petitioner asserted there was no evidence that he attempted to

kill Robinson. (R. 508-11.) The judge denied the motion, and Petitioner presented no additional evidence. (R. 514-21, 524.)

Petitioner then requested a jury charge on when mutual combat ends, and the trial judge denied the request. (R. 519-21.) The judge charged the jury on murder, mutual combat, and attempted murder. The judge specifically included in the charges that Petitioner did not fire the shot that killed the victim and could only be convicted through a mutual combat theory, charging: "it is undisputed that [Petitioner] did not fire the fatal bullet that killed Khalil S. . . And so the State seeks and asks for a conviction at your hands under the theory of mutual combat." (R. 568.) In addition to his existing objection to the State's mutual combat theory, Petitioner objected to the jury charge as erroneously stating mutual combat extends to third-party non-combatants, and the judge denied the objection. (R. 592-94.)

The jury convicted Petitioner on both counts, and Petitioner moved to set aside the convictions under the thirteenth juror doctrine or alternatively, for a new trial, and the judge denied both motions. (R. 598-607.) The judge sentenced Petitioner to concurrent thirty year sentences on the two charges. (R. 616.)

ARGUMENT

I. THE COURT OF APPEALS ERRED IN HOLDING THAT MUTUAL COMBAT ALONE IS RECOGNIZED BY SOUTH CAROLINA LAW AS A SUFFICIENT BASIS FOR A MURDER CONVICTION AND THAT THE EVIDENCE SUPPORTED FINDING MUTUAL COMBAT.

The Court of Appeals erred in affirming the denial of Petitioner's motions for a directed verdict, to quash the indictment, and for a new trial on the murder charge.² The Court of

² Petitioner moved for a directed verdict, to quash the indictment, and for a new trial on the same grounds that the State's mutual combat theory was insufficient for a murder conviction and that the evidence did not support the State's mutual combat theory. Petitioner focuses on the denial of his motion for a directed verdict and submits his convictions should be reversed on that basis. Should the Court disagree with his arguments as to the directed verdict motion, Petitioner

Appeals and the trial court concede that the sole basis for the murder charge was the theory of mutual combat. The Court of Appeals and trial court erred and the murder charge should be reversed for three reasons: (1) mutual combat alone is not recognized by South Carolina law as a legal basis for a murder charge; (2) even if mutual combat were a valid basis for a murder charge, the evidence introduced at trial did not support a finding of mutual combat; and (3) even if Petitioner did engage in mutual combat, which Petitioner denies, any mutual combat had ended at the time Robinson fired the fatal shot.

Petitioner's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State in this case. It is undisputed that Robinson, not Petitioner, shot and killed Khalil, and the State presented no evidence or argument to suggest that Petitioner engaged in any conspiracy with or otherwise aided Robinson. (R. 234-35, 242.) Rather, as acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent, and the State explicitly disavowed any other legal basis for the murder charge. (R. 219, 235-36, 518.)

On the appellate review of a denial of a directed verdict motion, the Court views the evidence in the light favorable to the State. *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625-26 (1996). Where there is no direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court erred in denying the motion for a directed verdict and the defendant's conviction must be reversed. *See State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); *Copeland*, 321 S.C. at 326, 468 S.E.2d at 625-26.

submits the Court of Appeals and trial court erred in denying the motion to quash and motion for a new trial for the same reasons and incorporates those motions as alternative bases for relief. *See State v. Smith*, 316 S.C. 53, 56, 447 S.E.2d 175, 176 (1993) (affirming trial court's grant of a new trial based on a lack of evidence to support the jury's verdict where the defendant failed to appeal the denial of his motion for a directed verdict).

A. The Court of Appeals Erred in Affirming the Denial of Petitioner's Directed Verdict Motion Based on a Mutual Combat Theory that South Carolina Law Does Not, and Should Not, Recognize.

South Carolina has never recognized, nor should it recognize, the mutual combat theory espoused by the State as a basis for a murder conviction. Because South Carolina law does not recognize "mutual combat" as a basis for a murder conviction and it was the sole basis for the State's murder charge, the Court of Appeals erred in affirming the denial of Petitioner's motion for a directed verdict on the murder charge.

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). South Carolina courts have never recognized mutual combat as a basis for murder. Rather, the doctrine of mutual combat is a limitation on self-defense, and every South Carolina appellate decision discussing mutual combat considered it only in relation to self-defense.³ As recognized in all of the South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State also present the required proof to establish the elements of murder. Accordingly, even if Petitioner was engaged in mutual combat with Robinson at the time of Khalil's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example: conspiracy, aiding and abetting, or the felony murder rule—

³ A search of South Carolina caselaw produced the following cases discussing "mutual combat" or its equivalent, all of which discuss it in relation to *defenses* to criminal charges: *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003); *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003); *State v. Porter*, 269 S.C. 618, 239 S.E.2d 641 (1977); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934); *State v. Jones*, 113 S.C. 134, 101 S.E. 647 (1919); *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906); *State v. Beckham*, 24 S.C. 283 (1886); *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Barksdale*, 311 S.C. 210, 428 S.E.2d 498 (1993).

The facts of Petitioner's case are a textbook example of why South Carolina law should not recognize a mutual-combat-combined-with-transferred-intent theory of murder. Here, at the time Robinson fired the fatal shots, Petitioner did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children. By accepting the legal theory advanced by the State, the Court of Appeals effectively made South Carolina law provide that any time an individual fights with an opponent, the individual is criminally responsible for any harm caused by his opponent's conduct, even if that harm occurred at a time and place remote from the initial fight and even if the individual would not and did not choose to engage in combat at that time and place.

The Court of Appeals failed to address the distinction between the doctrine of mutual combat serving as a limitation on self-defense which is recognized by South Carolina law versus mutual combat serving as a stand-alone basis for a murder conviction as used in Petitioner's case and which is not recognized by South Carolina law. The Court of Appeals merely reviewed those cases using mutual combat as a limitation on self-defense and held: "Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge." *Young*, 818 S.E.2d at 491.

Therefore, because the Court of Appeals and trial court created and applied a mutual combat theory of murder not recognized by South Carolina law and relied on it as the sole basis for denying Petitioner's directed verdict motion, the Court of Appeals and trial court erred, and the denial of the directed verdict motion and Petitioner's murder conviction should be reversed.

B. There Was No Evidence from Which a Jury Could Find Petitioner Engaged in Mutual Combat.

Even if mutual combat alone could support a murder conviction under South Carolina law, no evidence was presented at trial to support a finding that Petitioner and Robinson engaged

in mutual combat at any time on the day in question. Therefore, the trial court erred in denying Petitioner's directed verdict motion, and the Court of Appeals erred in affirming that denial.

Turning to South Carolina caselaw on the relationship between mutual combat and self-defense for guidance due to absence of South Carolina caselaw analyzing mutual combat as a basis for a murder conviction, South Carolina courts define mutual combat as requiring a "mutual agreement to fight" or "mutual intent and willingness to fight" and a "resulting fight." *Taylor*, 356 S.C. at 232-35, 589 S.E.2d at 3-5. A mutual agreement and intent to fight "is manifested by the acts and conduct of the parties attending to and leading up to the combat." *Jackson*, 355 S.C. at 571, 586 S.E.2d at 563. Jurisdictions utilizing the concept of mutual combat as relevant to establishing the elements required for a murder conviction employ the same definition, holding mutual combat requires a "mutual intention, consent or agreement preceding the initiation of hostilities." *People v. Ross*, 66 Cal. Rptr. 3d 438, 447 (Cal. Ct. App. 2007), or requires that "the combatants are armed with deadly weapons and mutually agree to fight," *Sanders v. State*, 659 S.E.2d 376, 380 (Ga. 2008).

Here, no evidence was presented from which a jury could conclude Petitioner and Robinson *mutually agreed or intended* to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Petitioner. Petitioner's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson. While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Petitioner or

Young, Sr. were armed or that Petitioner or Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4. There also was no evidence from which a jury could conclude Robinson expected Petitioner and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle was between Robinson and Young, Sr., and there was no evidence that Petitioner was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Petitioner's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Petitioner found Robinson there. The State did not introduce any evidence that Robinson, Petitioner, or Young, Sr. engaged or attempted to engage in combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Petitioner and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Petitioner and Young, Sr. arrived on Allen Road where they found Robinson's car. The uncontroverted evidence at trial showed Robinson was not present during this incident. Rather, this incident consisted solely of Petitioner firing a weapon at Robinson's unoccupied car. While Petitioner's actions in firing at Robinson's car were destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Petitioner began firing at his vehicle and did not come to the scene to fight once Petitioner began firing. Petitioner did not know

where Robinson was, Petitioner fired exclusively at Robinson's car, and Robinson did not come to the scene.

Finally, approximately ten minutes after Petitioner ceased firing at Robinson's vehicle, Young, Sr., with Petitioner as his passenger, sped down Allen Road. As the truck reached the end of Allen Road, Robinson fired three shots, one of which struck and killed the victim. Again, the evidence regarding this incident would not allow a jury to conclude that there was a mutual agreement or intent to fight, nor would it permit a jury to conclude Petitioner engaged in combat with Robinson. The evidence shows that when Robinson fired, Petitioner was leaving the scene and had no knowledge of Robinson's whereabouts. There was no evidence that Petitioner fired at or took any other action towards Robinson during this incident.

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Petitioner only when he believed Petitioner could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Petitioner and Young, Sr. at they left Allen Road. Neither of these acts are indicative of an agreement or intent to engage in combat by Robinson. Moreover, Petitioner never engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Petitioner ever pointed or fired a weapon at Robinson. (R. 487.) Petitioner fired at Robinson's unoccupied vehicle which, while reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the Court of Appeals erred in affirming the denial of Petitioner's directed verdict motion.

C. Any Mutual Combat Ended Prior to When Robinson Fired the Fatal Shot.

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Petitioner engaged in mutual combat, there must be a beginning and end to mutual combat. Contrary to the Court of Appeal's holding, the evidence in this case established any mutual combat ended prior to Robinson firing the fatal shot, and therefore, the trial court should have granted Petitioner's directed verdict motion on the murder charge.

Mutual combat ends and a person's right to engage in self-defense is restored when the person withdraws from the combat and makes his withdrawal known to his adversary. *See Taylor*, 356 S.C. at 232, 589 S.E.2d at 3; *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *Graham*, 260 S.C. at 451, 196 S.E.2d at 496; *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). In *Bryant*, the Court indicated that a person leaving the scene of the combat with his adversary's knowledge of his departure can satisfy both elements of withdrawing from the combat and communicating his withdrawal to his adversary. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 28.

In Petitioner's case, the uncontroverted evidence presented at trial established that Petitioner had withdrawn from any combat at the time Robinson fired the fatal shot and his withdrawal was known to Robinson. At the time the fatal shot was fired, Petitioner was fleeing the area, Robinson was in a hidden position, Petitioner had no knowledge of Robinson hiding nearby, a significant amount of time had elapsed since Petitioner ceased firing at Robinson's vehicle, and Robinson fired the fatal shot at a different location from where Petitioner had been firing at Robinson's vehicle. Specifically, the State's witness, Sergeant Laurel Albertin, testified that there was no evidence to suggest Petitioner saw Robinson on Allen Road, (R. 485), and in ruling on Petitioner's directed verdict motion, the trial judge stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots," (R. 520).

Additionally, there was no evidence presented to show Petitioner or Young, Sr. were engaged in any combative or threatening act at the time Robinson fired the fatal shot. To the contrary, the evidence indicated Petitioner and Young, Sr. were fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road," (R. 302), and the trial judge acknowledged this, stating: "they shot [Robinson's car] and they left in a hurry," (R. 520). A significant period of time elapsed between when Petitioner fired at Robinson's car and when Robinson fired the fatal shot as established by witness testimony that Robinson fired his weapon approximately *ten minutes after* Petitioner ceased firing at Robinson's vehicle. (R. 302-303, 322-325). Therefore, the uncontroverted evidence at trial established that any mutual combat had ended prior to when Robinson fired the fatal shot because Petitioner was withdrawing from the scene and Robinson knew Petitioner was withdrawing and had no reason to believe Petitioner was engaged in mutual combat with him.

The Court of Appeals acknowledged Petitioner was "fleeing the neighborhood before Robinson fired the fatal shots" and had "fled the scene." *Young*, 818 S.E.2d at 493. However, the Court of Appeals held Petitioner doing so was not sufficient to constitute a withdrawal because of the "unique nature of the shoot-and-flee conflict." *Id.* The Court of Appeals' holding directly conflicts with prior decisions establishing that to withdraw, a combatant only must leave the scene and place his opponent in a safe position. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 27. Here, Petitioner left the scene and left Robinson in a safe, hidden position. Given that he did not know where Robinson was and Robinson was hiding, Petitioner could not have done anything more to withdraw from the conflict than what Petitioner did by leaving the scene. The Court of Appeals did *not* find, nor could the Court of Appeals have found from the evidence, that Robinson reasonably could have

expected any harm was imminent. To the contrary, Robinson was in a hidden position, safe from harm, and able to call the police. If an adversary is able to call the police and involve law enforcement, the law cannot reasonably expect anything more occur for a conflict to have ended. Were the law otherwise, mutual combat would never end and a mutual combatant could be held responsible for the acts of his opponent when his opponent unilaterally reinitiates violence days, weeks, or months after the combatant previously withdrew from the scene of combat.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF PETITIONER'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT.

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Petitioner requested a jury charge on the end of mutual combat, and the trial court denied the request. (R. 520-21.) Not only did the Court of Appeals err in affirming the trial court's refusal to give the requested charge, the Court of Appeals erred by applying the wrong standard of review.

First, as to the standard of review, the Court of Appeals applied an abuse of discretion standard to the refusal to give the charge, holding that "the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat" and in support citing to *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010). However, South Carolina law provides that a trial judge must give a requested jury charge if there is any evidence to support the charge. See *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). A trial judge's refusal to give a requested jury charge supported by some evidence is a reversible error. *Id.* Therefore, the standard for reviewing the refusal to give a requested jury charge is whether any evidence supports the requested charge, not an abuse of discretion standard.

The *Mattison* decision cited by the Court of Appeals for the standard of review does apply an abuse of discretion standard in relation to requested jury charges, but the *Mattison*

decision applies when an appellant argues the content of a charge on a particular issue should have been different, not when the trial judge refuses to give any charge on a particular legal element as occurred here. Specifically, *Mattison* provides the standard where a party requests specific jury charge language, and the trial court declines the request but uses other language addressing the issue of law the requested charge was to address. *See Mattison*, 388 S.C. at 479, 697 S.E.2d at 583–84 (“However, if the trial judge refuses to give a *specific* charge, there is no error *if the charge actually given covers the substance of the request*. . . . Failure to give requested jury instructions is not prejudicial error *where the instructions given afford the proper test for determining the issues*.” (emphasis added and internal quotations and citations omitted)). That scenario is not the issue in this case.

The issue here is the trial court’s refusal to give *any* charge on when mutual combat ends; an issue governed by the “any evidence” standard set forth in *Burriss*. The *Burriss* decision is clear that: “It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *Burriss*, 334 S.C. at 262, 513 S.E.2d at 108.

Second, applying the correct legal standard, the Court of Appeals erred in affirming the refusal to give a jury charge on the end of mutual combat. While Petitioner contends the evidence is uncontroverted that any mutual combat had ended at the time Robinson fired the fatal shot, there was at a minimum some evidence that any mutual combat had ended such that it was error for the trial court to refuse to give a charge on the end of mutual combat. The Court of Appeals’ opinion states that Petitioner “fled the scene after shooting Robinson’s unoccupied vehicle.” *Young*, 818 S.E.2d at 493. Petitioner fleeing from the scene, combined with the fact

that he was not firing at or engaged in any other violence at the time Robinson fired the fatal shot is some evidence from which a jury could conclude that any mutual combat had ended and which supports giving a charge on the end of mutual combat.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF PETITIONER'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE.

Petitioner moved for a direct verdict on the attempted murder charge on the ground that there was no evidence that he ever fired or even pointed a weapon at Robinson. This Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The Court of Appeals here erroneously held three items of evidence constitute substantial circumstantial evidence sufficient to submit the attempted murder charge to the jury:

- (1) Petitioner and Young, Sr. armed themselves and searched for Robinson;
- (2) Robinson's statements to Mitchell and Delaney; and
- (3) Petitioner's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence that Petitioner shot at or attempted to shoot Robinson.

As set forth in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001), a trial court must grant a directed verdict when there is no evidence to support an element of a charge or only evidence which "merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50. South Carolina's appellate courts have found *insufficient* to overcome a directed verdict motion evidence significantly more substantial than the evidence presented here as to attempted murder.

Petitioner arming himself and searching for Robinson is not an act of attempted murder. Similarly, while Petitioner made statements to the police regarding being armed and his desire to harm Robinson, Petitioner stated he never shot at or attempted to shoot at Robinson. A desire to harm someone is not evidence of an act constituting attempted murder, and the issue raised by Petitioner is that there was no evidence presented that he took any act that could constitute attempted murder.

At trial, the State failed to produce a single witness who saw Petitioner fire, or even point, a gun at Robinson. To the contrary, the evidence showed that the one time that Robinson and Petitioner were present at the same location when Petitioner was armed, Petitioner's gun was jammed and he did not try to shoot at Robinson or even point the gun at him. (State's Ex. 38, Video 7; R. 635.) Moreover, Sergeant Albertin testified she had no evidence that Petitioner ever pointed a gun at or shot at Robinson. (R. 486-87.)

Finally, the Court of Appeals misapprehended the evidence regarding Robinson's statements to Mitchell and Delaney. First, the Court of Appeals' decision states that "Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him." *Young*, 818 S.E.2d at 493. This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that *Petitioner* was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.)

The Court of Appeals' decision also misconstrues the evidence in stating that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Petitioner specifically. Instead, Delaney testified that Robinson asked if Delaney had seen a grey truck, and when Delaney responded that he had seen a grey truck, Robinson responded: "yeah they was

shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Petitioner by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Petitioner and his father were driving around in a grey truck, he did not identify the grey truck as the Youngs' truck, much less identify who was in the grey truck at the time he was referring to.

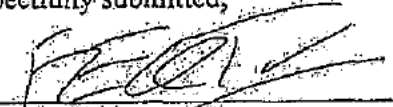
Additionally, Robinson's statements to Mitchell and Delaney do not provide the context necessary for a jury to make anything more than an unsupported inference from those statements. Robinson's statements do not identify when or where the purported shooting took place. The evidence at trial established there had been previous confrontations between Robinson and Petitioner as acknowledged by the Court's decision stating: "[Petitioner] specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." *Young*, 818 S.E.2d at 492. Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Petitioner fired at Robinson's car or to some other instance of gun fire.

In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no evidence to conclude that the appellant rather than the other person caused the victim's death, there was not substantial circumstantial evidence to overcome a directed verdict motion. *Hepburn*, 406 S.C. at 440, 753 S.E.2d at 415. Similarly here, even were the necessary context available for a jury to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence is that there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Petitioner rather than one of the other occupants fired any shots at Robinson.

CONCLUSION

For the reasons set forth herein, the Court should reverse and vacate Appellant's convictions.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

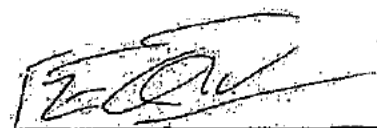
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STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

AUG 06 2019

S.C. SUPREME COURT

*On Certiorari to the South Carolina Court of Appeals
Opinion No. 5592 (Ct.App. filed August 22, 2018)
(Former Appellate Case No. 2015-000508)*

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

Appellate Case No. 2018-001861

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PETITIONER'S ISSUES PRESENTED

- I. Did the Court of Appeals err in holding that mutual combat is alone recognized by South Carolina law as a sufficient basis for a murder conviction, holding that the evidence supported finding mutual combat, and affirming Petitioner's murder conviction on these grounds?
- II. Did the Court of Appeals err in holding the trial court properly refused to give a jury charge on the end of mutual combat?
- III. Did the Court of Appeals err in affirming the denial of Petitioner's motion for a directed verdict on the attempted murder charge?

(Brief of Petitioner, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES PRESENTED

- I. Did the Court of Appeals err in finding the trial court properly denied the defense's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory with transferred intent?
- II. Did the Court of Appeals err in holding there was no abuse of discretion in denying Petitioner's request to charge withdrawal from mutual combat when no evidence existed to support such a charge?
- III. Did the Court of Appeals err in holding there was no abuse of discretion in denying Petitioner's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense?

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Petitioner, Aaron Scott Young, Jr., in October 2014 for the murder of Khalil S. (Indictment Number 2012-GS-07-1932) and for the attempted murder of Tyrone Robinson (Indictment Number 2014-GS-07-1940).

On February 23, 2015, Young's case was called to trial before the Honorable Thomas W. Cooper. Roberts Vaux, Esquire, represented him during the trial. Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean P. Thornton represented the State. On February 25, 2015, the jury returned verdicts of guilty on both charges. (App. p. 602; Tr. p. 598). Judge Cooper sentenced Young to thirty (30) years imprisonment on the murder conviction and thirty (30) years, concurrent, on the attempted murder conviction. (App. pp. 620-21; Tr. pp. 616-17). Petitioner filed a timely notice of appeal.

On December 7, 2016, Petitioner filed a Final Brief of Appellant in the South Carolina Court of Appeals. (App. p. 645; FBOA, p. 1). Petitioner also filed his final reply brief that same day. (App. pp. 722-741). The State had previously filed its Final Brief of Respondent on November 30, 2016. (App. pp. 671- 72).

After argument on June 6, 2018, the Court of Appeals issued an unpublished opinion on August 22, 2018 and affirmed the convictions and sentence. (App. pp. 742-752). On September 6, 2018, Petitioner sought rehearing, (App. pp. 753-762), which the Court of Appeals denied on September 20, 2018, (App. p. 765). On October 18, 2018, Petitioner filed a petition for certiorari review in this Court. Respondent filed a return to the petition on November 29, 2018.

On May 9, 2019, this Court granted the petition. Petitioner filed his Brief of Petitioner on June 6, 2019. This Brief of Respondent follows.

RESPONDENT'S STATEMENT OF FACTS

In the afternoon of September 1, 2012, eight-year-old Khalil S. was shot to death in the midst of an ongoing gun battle. One of the three men responsible for taking the child's life was Petitioner, Aaron Young, Jr. Within the course of an hour, a volatile conflict between Petitioner, his father, Aaron Young, Sr., and Tyrone Robinson traversed several different locations on Hilton Head Island, eventually ending in front of a group of children jumping on a trampoline. It was there Khalil was shot.

The Court of Appeals summarized the basic facts of the crime as follows:

In October 2014, Young, Jr. was indicted for the murder of Khalil S. (Victim) and the attempted murder of Tyrone Robinson. The indictment arose out of a September 1, 2012 conflict between Young, Jr. and Robinson, which culminated in the death of Victim, a minor who was playing outside on a trampoline during the incident. The State's theory of prosecution was that Young, Jr. engaged in mutual combat with Robinson and thereby caused Victim's death. [FN 1]

[FN 1] It is undisputed that Robinson fired the shot that killed Victim.

Prior to trial, Young, Jr. moved to quash the murder indictment, arguing mutual combat is not a criminal offense in South Carolina. Young, Jr. further argued the doctrine of transferred intent does not apply in the context of mutual combat. The trial court deferred ruling on the motion until it could "get some sensible legal theory on one side of that issue or another which makes the transferred intent doctrine applicable in mutual combat."

Jontu Singleton testified he met with Robinson on the afternoon of the incident at a house in Hilton Head. The two men decided to drive Robinson's car to the Youngs' residence. When Robinson and Singleton arrived at the house, Young, Sr. and Young, Jr. were both outside. Robinson exited his vehicle carrying a .38 caliber revolver and began yelling at Young, Jr. Young, Sr. saw the gun and immediately began to struggle with Robinson. Robinson fired the gun during the struggle, and Young, Sr. backed away; Robinson proceeded to fire one or two more shots at the ground. Robinson then returned to his vehicle and sped away; Singleton remained with the Youngs. Immediately after Robinson fled the yard, the Youngs went into their house and retrieved a semi-automatic pistol and ammunition. The Youngs and Singleton then entered Young, Sr.'s gray pickup truck and began to search for Robinson. Young, Sr. drove the truck, and Young, Jr. assembled the pistol in the passenger seat. The three men drove around their

neighborhood for approximately ten minutes, but they could not find Robinson. Singleton then exited the vehicle and left the area.

Charlese Mitchell, Robinson's neighbor, testified she was home alone on the day of the incident and heard several rounds of gunshots around 4:00 p.m. After the gunfire stopped, Robinson came to her door "hyped up" and carrying a gun.

Robinson entered Mitchell's trailer and stated "those [people were] shooting at me." At that time, Tyrone Delaney, Mitchell's fiancé, came home and spoke with Robinson for no more than ten minutes. Delaney told Robinson to leave, and shortly after Robinson left, Mitchell and Delaney heard another series of rapid gunfire. Mitchell testified that she saw Young, Sr. and a passenger she could not identify speeding down the road in a gray truck when she went outside to tell her son and stepsons to come inside the trailer. After retuning indoors with her children, Mitchell heard three final gunshots followed by screaming. Mitchell went outside to see Victim lying on the ground.

Delaney testified he observed the Youngs' gray truck speeding out of Mitchell's neighborhood at approximately 4:00 p.m. When Delaney arrived at Mitchell's trailer, Robinson explained he and the occupants of the truck had exchanged gunfire. At that point, Delaney asked Robinson to leave. Shortly after Robinson left, Delaney heard a burst of semi-automatic gunfire, and he and Mitchell brought their children inside. A few minutes later, Delaney heard three more gunshots, of a different type than the semi-automatic shots. When the gunfire ceased, Delaney heard Victim screaming for help.

The State also published Young, Jr.'s police interview to the jury. In his interview, Young, Jr. stated, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Later in the interview, when an investigator asked Young, Jr. who he was shooting at, he indicated Robinson was his target.

(App. pp. 742-44).

However, the record shows the even greater detail of evidence submitted to the jury which may be described as follows:

Jontu Singleton and Tyrone Robinson were socializing at a mutual friend's house on September 1, 2012. (App. pp. 358-59; R.p. 357, line 2 – p. 358, line 12). Around 4:00 p.m., Jontu decided to ride with Robinson to the store. (App. pp. 360 and 376; R.p. 359, lines 16-17; p.

375, lines 12-13). On the way, the two stopped by the house of Aaron Young, Sr., Petitioner's father, on Wild Horse Road because Jontu needed money. (App. pp. 360-61; R.p. 359, line 14 – p. 360, line 2). Both Petitioner and Young, Sr. were outside in the yard when Jontu and Robinson drove up. (App. p. 362; R.p. 361, lines 22-24). Robinson and Petitioner had animosity towards each other due to prior altercations (State's Ex. 38, Video 4). They exited the car and Jontu spoke with Young, Sr. while Robinson approached Petitioner with a .38 caliber gun in his hand. (App. p. 363; R.p. 362, lines 2-5; State's Ex. 38, Intro Video at 2:55-3:39). After seeing Robinson with a gun, Young, Sr. moved towards Robinson and tried to take the gun away but it accidentally fired. (App. p. 363; R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired one or two more shots into the ground near Young Sr.'s feet. (App. pp. 363-64 and p. 379; R.p. 362, line 18 – p. 363, line 12; p. 378, lines 4-6). Robinson then got into his vehicle and drove away while Jontu stayed with Petitioner and Young, Sr. (App. pp. 364-65; R.p. 363, line 25 - p. 364, line 4). Moments after Robinson left, Petitioner and Young, Sr. went inside their house and emerged with a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (App. pp. 365 and 412-14; R.p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). The three men got into Young, Sr.'s grey truck and began searching for Robinson. (App. p. 368; R.p. 367, lines 5-12).

Young, Sr. drove the truck while Petitioner and Jontu were in the passenger seats. (App. p. 369; R.p. 368, lines 1-4). They drove down Spanish Wells Road and veered off on Oak View Road after Young, Sr. thought he saw Robinson driving down the road. (App. p. 369; R.p. 368, lines 6-9). Petitioner then pulled the contents out of his black bag and began assembling his weapon. (App. p. 369; R.p. 368, lines 13-25). Unable to find Robinson, the continued their search and headed towards Robinson's house on Allen Road off of Marshland Road. (App. p.

370; R.p. 369, lines 23-25). When they arrived, Robinson was nowhere to be found. (App. p. 371; R.p. 370, line 1). Jontu got out of the car on Allen Road to talk to his son who lived in that neighborhood but no one was home so the three men left Allen Road. (App. pp. 371-73; R.p. 370, line 2 – p. 372, line 9). They drove back to Young, Sr.'s house and Jontu exited the car while Petitioner and Young, Sr. drove off. (App. pp. 373-74; R.p. 372, line 8 – p. 373, line 21).

Minutes later, Petitioner and Young, Sr. finally tracked down Robinson on Bryant Road. (State's Ex. 38, Video 7 at 00:23-00:36). Petitioner pulled out his weapon and tried to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson's home on Allen Road. (State's Ex. 38, Video 7 at 2:00-2:50).

While driving down Allen Road, Petitioner saw a group of children playing on a trampoline a short distance away from where they spotted Robinson's car. (State's Ex. 38, Video 1 at 00:10-1:00; Video 1 at 1:39-1:41). Petitioner drew his weapon and began firing bullets into Robinson's car. (State's Ex. 38, Video 2 at 00:10-00:21). Petitioner boasted that he shot the car twenty times and when he was done it looked like "swiss cheese." (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Petitioner got back into the truck and they began to drive away down Allen Road. (State's Ex. 38, Video 3). Within moments, Robinson fired three shots back at Petitioner and Young, Sr. as they turned onto Marshland Road. (State's Ex. 38, Video 3 at 00:45-00:55). The bullets did not hit their intended targets, but instead one found its way to eight year old Khalil. Robinson fled in his bullet-riddled car and Petitioner and Young, Sr. absconded in the other direction. (App. p. 348; R.p. 347, lines 1-6; State's Ex. 38, Video 3). Immediately, 911 dispatch began fielding reports of the incident. (State's Ex. 2). Khalil was

struck in the chest and died within minutes. (App. pp. 506 and 508; R.p. 502, lines 12-14; p. 504, lines 20-23).

One witness that called to report the crime told the 911 dispatcher that two cars were shooting at each other near Spanish Wells Road. (State's Ex. 2). She identified the two cars involved as a grey truck and a grey Lexus. (State's Ex. 2). The woman told the dispatcher that the man driving the Lexus was Tyrone Robinson. (State's Ex. 2).

Between 5:00 and 5:30 p.m. that same day, Petitioner, Young, Sr., and his girlfriend, Ebony Campbell, were pulled over by police in Young, Sr.'s grey truck. (App. pp. 392 and 399; R.p. 391, lines 1-10; p. 398, lines 13-24). While on the side of the road, Officers located spent shell casings matching a 9 MM firearm in the back of the truck. (App. p. 393; R.p. 392, lines 11-13). The two men were then taken to the police station where they were Mirandized and interviewed. (App. pp. 395-97; R.p. 394, line 15 – p. 396, line 15). Young, Sr. told officers where they could retrieve the black bag containing the gun and ammunition. (App. pp. 405-407; R.p. 401, line 24 – p. 403, line 8). Petitioner gave a statement to Investigator Albertin admitting to the shootout with Robinson, firing numerous bullets into Robinson's vehicle, and his failed attempt to kill Robinson. (App. pp. 475-97; R.p. 471-493; State's Ex. 38, Introduction Video – Video 8).

After officer's located and arrested Robinson, they processed his vehicle for evidence. (App. p. 423; R.p. 419, lines 14-24). They were able to locate numerous bullets that were lodged in Robinson's car. (App. pp. 434-35; R.p. 430, line 22 – p. 431, line 3). These bullets, along with Petitioner's weapon and shell casings, were sent off for examination. (App. p. 435; R.p. 431, lines 12-23). Agent Frank DeFreese, an expert of firearm's marks and ballistics with the South Carolina Law Enforcement Division, was able to determine that the bullets in Robinson's

car originated from Petitioner's 9 MM semi-automatic pistol. (App. pp. 470-71; R. p. 466, line 15 – p. 467, line 6).

At Petitioner's trial for the murder of Khalil, numerous witnesses testified to what they observed on September 1, 2012. Charlese Mitchell, a woman who lived in the neighborhood off Allen Road, testified that she heard three sets of gunshots around 4:00 p.m. that afternoon. (App. pp. 301-330; R.p. 300, line 23 – p. 329, line 15). After the first round of shots, she saw a grey truck driven by Young, Sr. speeding down the road. (App. p. 329; R.p. 328, lines 3-21). Robinson, a relative of Mitchell's, came to her door after she heard the first round of gun shots. (App. p. 310; R.p. 309, lines 5-17). She let him inside the house and observed a gun sticking out of his pocket. (App. pp. 310-311; R. p. 309, line 19 – p. 310, line 7). Robinson, who appeared scared, told Mitchell, "those M. F. was shooting at me." (App. p. 311; R.p. 310, lines 8-11). At that point, Mitchell's fiancé, Tyrone Delaney, came home and the two men stepped outside to talk. (App. p. 311; R.p. 310, lines 14-25). Robinson left the yard and minutes later Mitchell heard another set of rapid gunshots. (App. p. 312; R.p. 311, lines 1-13). A few minutes after the second round of shots, Mitchell heard three more shots and again observed Young, Sr. speeding down Allen Road. (App. pp. 324-26; R.p. 323, line 22 – p. 325, line 14).

Tyrone Delaney testified he was driving down Spanish Wells Road between 4:00 and 5:00 p.m. on his way home when a grey truck sped towards him and forced him to pull over to the side of the road. (App. pp. 331-33; R.p. 330, line 20 – p. 332, line 14). When he arrived home, Robinson was there and asked Delaney if he had seen a grey truck. (App. p. 334; R.p. 333, lines 1-2). Delaney told Robinson of his encounter with the grey truck. (App. p. 334; R.p. 333, lines 17-18). Robinson replied, "yeah they was shootin at me so I shoot back at them." (App. p. 334; R.p. 333, lines 18-19). Delaney testified that he heard rapid gun shots after Robinson left

their house. (App. p. 335; R.p. 334, lines 20-25). Minutes later, he heard three gunshots that seemed to have come from a different type of weapon. (App. p. 336; R. p. 335, lines 5-17).

The last witness to testify at Petitioner's trial was Dr. Lee Tormos, the forensic pathologist who performed the autopsy on Khalil. (App. p. 504; R.p. 500, lines 2-12). She observed that one bullet had entered into Khalil's chest, piercing his lungs and heart, before coming to rest in his arm. (App. pp. 506-507; R. p. 502, line 1 - p. 503, line 24). Dr. Tormos concluded that the cause of death was a gunshot wound to the left lateral chest and the manner of death was homicide. (App. p. 509; R.p. 505, lines 15-17).

The bullet was removed and turned over to the Beaufort County Sheriff's Office for analysis. Indisputably, the bullet recovered from Khalil's body was fired from Tyrone Robinson's gun. (App. pp. 282 and 572; R.p. 281, lines 11-12; p. 568, lines 22-24).

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Consequently, an appellate court is bound by the circuit court’s factual findings unless they are clearly erroneous. *Id.* “An appellate court will not reverse the trial judge’s decision absent an abuse of discretion.” *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2008). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017).

Directed Verdict Review

In reviewing the denial of a motion for a directed verdict, the evidence is viewed in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). When considering a motion for directed verdict, the trial court must be concerned with “the existence or nonexistence of evidence, not its weight.” *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). If there is any direct evidence, or if there is substantial circumstantial evidence, reasonably tending to prove the defendant’s guilt, a reviewing court must find the case was properly submitted. *State v. Brown*, 402 S.C. 119, 124, 740 S.E.2d 493, 495 (2013). A court “should grant a directed verdict motion” only in cases where “the evidence merely raises a suspicion the accused is guilty.” *Id.*, 402 S.C. at 124-25, 740 S.E.2d at 495.

Where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. Circumstantial evidence is considered as a whole, not in isolation. *See State v. Frazier*, 386 S.C. 526, 532-33, 689 S.E.2d 610, 613-14 (2010). A reviewing court must consider the evidence and all reasonable inferences

in the light most favorable to the State. *State v. Pearson*, 415 S.C. 463, 473, 783 S.E.2d 802, 808 (2016). The State need not, though, “present evidence sufficient to exclude *every* other hypothesis.” *Id.*, 415 S.C. at 474, 783 S.E.2d at 808. (emphasis in original).

Jury Charge Issue

If there is any evidence to support a charge, the circuit court should grant the request. *State v. Brandt*, 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011). When a request is made for a charge that “states a sound principle of law when that principle applies to the case at hand,” it is error to refuse to given the charge. *Id.*, 393 S.C. at 549-50, 713 S.E.2d at 603 (internal quotation marks omitted) (quoting *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App.2005)). “The purpose of a jury instruction is ‘to enlighten the jury and to aid it in arriving at a correct verdict,’” consequently, “[i]t is error to give instructions which are calculated to confuse or mislead the jury.” *State v. Bhurton*, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). “Providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury.” *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989).

“To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)). “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603 (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App.2003)). “A jury charge which is substantially correct and covers the law does not require reversal.” *Id.* (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996)).

ARGUMENT

I.

The Court of Appeals did not err in finding the trial court properly denied the defense's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory along with transferred intent.

The Court of Appeals properly found the established doctrine of mutual combat, along with transferred intent, correctly applied to this ongoing gun battle and the death of an innocent young bystander. Petitioner submits, though, the Court of Appeals erred in three ways: 1) in recognizing mutual combat; 2) in applying it factually; and 3) if applicable factually, failing to recognize evidence of withdrawal from the combat. (Brief of Petitioner at 7). However, the Court properly rejected Petitioner's position that mutual combat is "not recognized by South Carolina law and not supported by the evidence at trial...." (See App. p. 651, FBOA, p. 7). It resolved:

Although we acknowledge the doctrine of mutual combat has "fallen out of common use in recent years," we find South Carolina law still recognizes mutual combat as a basis for a murder charge. *See Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge. *See Andrews*, 73 S.C. at 260, 53 S.E. at 424 (upholding jury instructions stating "where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter."); *Mathis*, 174 S.C. at 348-49, 177 S.E.2d at 319 (holding a murder charge was proper where evidence showed the defendant and the deceased engaged in mutual combat). Specifically, in *Brown*, our supreme court upheld a trial court's ruling that multiple defendants involved in mutual combat could be charged with murder for the death of a participating party. 108 S.C. at 499, 95 S.E.2d at 63. Based on the foregoing, we find the trial court did not err in finding mutual combat a viable theory of prosecution for the murder charge.

(App. pp. 756-47). In short, the Court of Appeals acknowledged and applied long standing precedent from this Court to the facts presented in the case before it. There is no error to correct.

Petitioner additionally argues error in applying transferred intent to the instant facts. (See Petition, pp. 8-9; see also App. pp. 753-56, petition for rehearing to the Court of Appeals). He suggests that use of the doctrine in these facts "expand[s] the criminal liability of one actor to include the results of another person's actions." (Brief of Petitioner at 9; Petition, p. 9). In support of his argument, Petitioner submits "other jurisdictions around the United States recognize the fact that two parties engaged in mutual combat is not alone sufficient to establish murder..." (Brief of Petitioner at 9; Petition, p. 8), and complains, "...at the time Robinson fired the fatal shots, Petitioner did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children." (Brief of Petitioner at 10; Petition, p. 9). Petitioner's argument fails to acknowledge the malice aforethought in the very act of engaging in continuing gun battle in a residential area. The Court of Appeals correctly reasoned:

We find the trial court did not err in applying the doctrine of transferred intent to Young, Jr.'s case. It is undisputed Robinson fired the final three shots at the Youngs as they fled his neighborhood for the final time; one of those three shots fatally struck Victim. Because Robinson fired at Young, Jr. with the intent to kill, this intent transferred to Victim. Thus, Robinson was criminally responsible for Victim's death under the doctrine of transferred intent. See e.g., *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984) ("If there was malice in [the actor's] heart . . . it matters not whether he killed his intended victim or a third person through mistake. . . . [T]he actor's intent to kill his intended victim is said to be transferred to his actual victim."). Furthermore, under the theory of mutual combat, all combatants are deemed "equally responsible for the natural consequences" of their actions during combat, and all may be held equally guilty of murder when a combatant dies, regardless of which combatant fired the fatal shot. See *Brown*, 108 S.C. at 499, 95 S.E.2d at 63. Therefore, despite the fact that Victim was a bystander rather than a combatant, we find Young, Jr. could still be found guilty for Victim's death as a "natural consequence" of the combat with Robinson. This is especially true under the instant facts because Young, Jr. admitted to police that he knew children were bystanders during the combat; specifically, Young, Jr. stated, "I saw the [children playing on the] trampoline and all. . . . In order to rid up the road, you [have to] pass by the children." The Youngs chased Robinson into his neighborhood while firing shots, including shots from the semi-automatic weapon Young, Jr. retrieved and assembled for use

in the pursuit. Robinson fired his shots at the Youngs as they fled when Young, Jr.'s weapon jammed - after Young, Jr.'s rapid firing of some twenty shots to "swiss cheese" Robinson's car. Accordingly, we find the trial court did not err in allowing the State to proceed under the theory of mutual combat even where Young, Jr. did not fire the shot that killed Victim, a bystander.

(App. pp. 747-48).

Respondent submits that the jury was instructed on the law of murder and they found that the State had met its burden of proof in establishing the elements of murder. The judge explained, "Murder is defined in our law as the killing of any person with malice aforethought either express or implied." (App. p. 571; R. p. 567). The judge then defined the terms "malice" and "aforethought." (App. pp. 571-72; R. pp. 567-68). Furthermore, he instructed the jury, "the state is required to prove malice beyond a reasonable doubt." (App. p. 572; R. p. 568). Thereafter, the judge explained to the jury that the murder charge rested, in part, on evidence of mutual combat. (App. pp. 572-73; R. pp. 568-69). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder, as well. The trial judge also properly charged the law of transferred intent. (App. pp. 574-75; R. pp. 570-71). This Court has apparently not specifically addressed the law on mutual combat in the factual circumstance presented here (*i.e.*, the death of an innocent bystander in mutual combat scenarios).¹ Nevertheless, it is only logical that transferred intent would apply in such a situation.

Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim: "If there was malice in appellant's heart, he was guilty of the crime charged, it

¹ The Court of Appeals has at least twice been presented this scenario – in the instant case, and also in a Richland County murder conviction affirmed in April 2013. *State v. Boone*, No. 2013-UP-155, 2013 WL 8507863, at *1 (S.C. Ct. App. Apr. 17, 2013). Respondent noted in the return that Aaron Young Sr.'s appeal was then pending in the Court of Appeals with a similar issue. Appellate Case no. 2016-000873. (Return p. 10 n. 1). It has now been decided in an unpublished opinion that cites to the Court of Appeals decision in this case. *See State v. Young, Sr.*, Unpublished Opinion No. 2019-UP-233 (S.C.Ct.App. filed June 26, 2019). The Westlaw cite for the unpublished opinion is 2019 WL 2616762 (S.C.Ct. App. June 26, 2019).

matters not whether he killed his intended victim or a third person through mistake.” *State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent allows for holding a defendant liable for the harm caused to an innocent bystander. *See, e.g., State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) (a person who, acting with malice, unleashes a deadly force should anticipate that the law will require him to answer fully for injury to intended or unintended victims). The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting, *People v. Sanchez*, 29 P.3d 209 (Cal. 2001). In referencing the concurring opinion’s analysis of transferred intent via footnote, the majority opinion reflects:

...“For purposes of applying the rule of transferred intent, it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant’s culpable mental state is determined as if the person harmed were the person defendant meant to harm.”

29 P.3d at 220 n. 9 (quoting concurring opinion, 29 P.3d at pp. 223-224). The Court concluded each of the rival gang members could be guilty of murder. 29 P.3d at 220. (“Although it could not be determined who fired the fatal bullet, since sufficient evidence established that defendant and Gonzalez premeditated the murder of one another, and that the unlawful conduct of each was a substantial concurrent, and hence proximate, cause of [... the...] death, both could be convicted of the first degree murder ... by operation of the doctrine of transferred intent.”). *See also State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) (“Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant.”); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) (“While the evidence was unclear as to whether Roy’s or Settles’ bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun

battle where it was clearly foreseeable that others would be endangered.”); *Reyes v. State*, 783 So. 2d 1129, 1133 (Fla. Dist. Ct. App. 2001) (“... each participant in a mutually-agreed-to-gun battle in a public place may be held accountable for any death or injury to an innocent person which results from that confrontation”); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) (“Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare.”).

Therefore, under the law of South Carolina, consistent with holdings in other states faced with similar circumstances, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury. This Court should reject Petitioner’s argument South Carolina should not allow a murder conviction to rest upon the legal theories of mutual combat and transferred intent for fear that any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent’s conduct. (See Brief of Petitioner at 10; Petition 9). That is the precise reason it can be and should be used for a murder conviction. Much like accomplice liability,² both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants’ activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *See Reyes*, 783 So.2d at 1133-1134.

² “Under the ‘hand of one is the hand of all’ theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.” *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 766, 769 (Ct. App. 2010) (quoting *State v. Thompson*, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct. App. 2007) (internal quotations and citations)).

Here, Petitioner and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Petitioner's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire. The proximate cause was the battle. Therefore, not to hold Petitioner accountable for the death of Khalil would be an injustice. Petitioner, though, moved to quash the indictment and later for a direct verdict based upon the State's use of mutual combat in this context. These were properly denied.

The indictment read that Petitioner was engaged in mutual combat with Tyrone Robinson and thereby caused the death of Khalil S. (App. p. 213; R. p. 212, lines 9-18). Citing numerous South Carolina cases³, the State asserted that mutual combat was a valid legal theory in South Carolina. (App. pp. 222; R. p. 221, lines 12-23). The State conceded mutual combat was a bar to a self-defense claim, but explained that the theory was not limited to that one purpose. (App. p. 223; R. p. 222, lines 1-10). The State argued *State v. Brown* used mutual combat to convict multiple defendants for the death of one of the combatants⁴. (App. p. 221; R.p. 220, lines 14-16). Finally, the State argued that transferred intent would be applicable to Petitioner's case since an innocent bystander was killed, instead of a combatant. (App. p. 223; R. p. 222, line 24-p. 223, line 12). The judge considered the relationship between mutual combat and self-defense. (App. p. 268; R. p. 267, lines 8-11). He noted: "Mutual combat has its most significant application in the law in that it denies anybody who is involved in mutual combat the defense of self-defense because none of them can claim to be without fault in bringing about the

³ The State cited the following case law: *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Taylor*, 356 S.C. 227 (2003); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906).

⁴ *Brown*, 108 S.C. 490, 95 S.E. 61.

incident.” (App. p. 268; R. p. 267, lines 8-11). Citing to *State v. Brown*,⁵ the judge recited the current law on mutual combat.⁶ (App. p. 268; R. p. 267, lines 12-22). He explained:

Here an innocent person, not a combatant, was killed. The question is whether the law relieves the mutual combatants of the responsibility of that. The responsibility of which had been of their's if they had killed an equally guilty party involved, are they now not responsible because an innocent party was involved. And I hold that they would be responsible.

(App. pp. 269-70; R.p. 268, line 19 – p. 269, line 1). He reiterated that “it is not the identity of the victim that controls, it is the intent, the state of mind which led to the mutual combat in the first place and the consequences that followed from that.” (App. p. 270; R. p. 269, lines 2-5). The judge then denied the motion to quash the indictment. (App. p. 270; R. p. 269, lines 6-7).

Then, at the close of the State's case, Petitioner made a motion for a directed verdict on both charges. (App. p. 511; R.p. 507, lines 24-25). Particularly to the murder charge, Petitioner argued that no evidence was presented of a mutual combat between Petitioner and Robinson. (App. p. 516; R.p. 512, lines 2-3). The State asserted in response: “Both are armed..., they both know each other is armed..., Young chases Robinson through two neighborhoods and in fact into Allen Road twice and a result of that Khalil S. is dead. I think that is exactly the

⁵ *Brown*, 108 S.C. 490, 95 S.E. 61.

⁶ Specifically, in reciting the law on mutual combat, the judge stated:

“Everyone is presumed to know the consequences of his act and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used and death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used the deadly weapon or not and regardless of whether he was on one side or the other makes no difference. And where all are participating in the mutual combat all are equally guilty for the natural consequences.”

(App. p. 268; R. p. 267, lines 12-22).

language that *Brown*⁷ uses when they describe and define mutual combat.” (App. p. 518; R.p. 514, lines 17-23). In denying the motion, the judge correctly stated that he was not concerned with the weight of the evidence but only its existence. (App. p. 520; R. p. 516, lines 8-9). The judge explained evidence of mutual combat came from Petitioner’s own statements. (App. p. 521; R.p. 517, lines 5-14). He denied the motion in light of the evidence. (App. pp. 521-522; R. p. 517, line 15- p. 518, line 8). He later charged the jury on mutual combat. (App. pp. 572-75; R.p. 568, line 24 – p. 571, line 12). The case law and record support the trial court did not err.

A. Mutual combat is a valid legal theory under South Carolina law to form the basis of a murder charge.

The doctrine of mutual combat has existed in South Carolina law since 1843. *State v. Taylor*, 356 S.C. 227, 231, 589 S.C. 227, 3 (2003). This Court in *Taylor* acknowledged the doctrine had “fallen out of common use in recent years” but still found it to be binding law. *Id.* The escalating urban warfare in present-day society has resurrected the need for the doctrine of mutual combat. Here, the State took the long-standing and viable theory of mutual combat and applied it to modern day facts. Petitioner argues that the doctrine of mutual combat can only be used for the sole purpose of barring a plea of self-defense. (See Brief of Petitioner at 8). This is an incorrect limitation of the law on mutual combat. Although mutual combat is commonly analyzed when a claim of self-defense is raised,⁸ that is not its only application.

Numerous South Carolina cases have used the theory of mutual combat to hold a defendant guilty of murder. “Where two persons mutually engage in combat, and one kills the other, and at the time of the killing it be maliciously done, it is murder. If, on the other hand, it be

⁷ *Brown*, 108 S.C. 490, 95 S.E. 61.

⁸ “Whether or not mutual combat exists is significant because the plea of self-defense is not available to one who kills another in mutual combat.” *Taylor*, 356 S.C. at 232; *Graham*, 260 S.C. at 450, 196 S.E.2d at 495.

done in sudden heat and passion on sufficient provocation without premeditation, or malice, it would be manslaughter.” *Andrews*, 53 S.E. at 424; *see also State v. Hammond*, 36 S.C.L. 91, 102 (S.C. App. L. 1850) (“Even in cases of mutual combat, if one begin the fight with a mortal weapon, it is murder...”); *State v. Turner*, 63 S.C. 548, 41 S.E. 778 (1902) (“Where there is evidence from which a jury may infer that there was mutual combat, on a trial for murder an instruction as to such combat is not error.”); *State v. Mathis*, 177 S.E. 318, 319 (1934) (“There was evidence of threats which, if true, justified a verdict of premeditated murder. There was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other. There was no error in charging and arguing the law of mutual combat.”).

The 1918 case of *State v. Brown* utilized the doctrine of mutual combat to hold multiple defendants accountable for the death of one of the combatants. 108 S.C. 490, 95 S.E. 61. Much like the facts of Petitioner’s case, all of the defendants were held responsible for the death of the victim even though only one of them had inflicted the fatal injury. In *Brown*, many employees at a local mill began to strike and picket after the mill organized a labor union. *Id.*, 95 S.E. at 62. One morning, a fight erupted between current employees and strikers. *Id.* One of the men involved in the melee pulled out a knife and killed David Freize, another participant in the fight. *Id.* Two of the strikers and three of the employees were indicted for the murder of the Freize. *Id.* On appeal, the defendant’s alleged that it was improper to charge the law of mutual combat. *Id.* at 61. This Court affirmed the convictions and held, “... everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly

weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences.” *Id.* at 63.

In order for the doctrine of mutual combat to be asserted and an instruction on the law given to the jury, multiple factors must be shown including there must be evidence of a “mutual intent and willingness to fight.” *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) (quoting *Graham*, 260 S.C. at 450, 196 S.E.2d at 495). One looks to the “acts and conduct of the parties and circumstances attending and leading up to the combat” to determine mutual intent. *Id.* Also, there must be an antecedent agreement to fight. *Taylor*, 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of “ill-will between the parties,” threats, and an “apparent willingness of each to engage in an armed encounter with the other” *Id.* Additionally, the parties must be armed and know the other to be armed. *Id.* These factors fit into the question of murder which was before the jury in this case.

Here, the jury found that the State met its burden of proof in establishing the elements of murder. The judge explained, “Murder is defined in our law as the killing of any person with malice aforethought either express or implied.” (App. p. 571; R. p. 567, lines 5-12). The judge then defined the terms “malice” and “aforethought.” (App. pp. 571-72; R. p. 567, line 13 – p. 568, line 17). Furthermore, he instructed the jury, “the state is required to prove malice beyond a reasonable doubt.” (App. p. 572; R.p. 568, lines 19-21). The elements of murder were correctly charged. Thereafter, the judge explained to the jury that the murder charge rested on the theory of mutual combat. (App. pp. 572-73; R.p. 568, line 24 – p. 569, line 1). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder as well.

The trial judge also properly charged within the instruction on criminal intent the law of transferred intent. (App. pp. 573-75; R. p. 569, line 24 – p. 571, line 12). Again, the jury was given the proper law to resolve the case.

Respondent agrees the law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant in a published case. Nevertheless, it is only logical that transferred intent would apply in such a situation. Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim. South Carolina recognizes that “if there was malice in [defendant’s] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake.” *State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent holds the defendant liable for the harm caused to an innocent bystander. *See, e.g., State v. Fennell*, 340 S.C. 266, 276, 531 S.E.2d 512, 517 (2000) (“A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.”).

As noted above, the California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. In *People v. Sanchez*, 26 Cal. 4th 834, 29 P.3d 209 (2001), the majority opinion underscored that “...it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant’s culpable mental state is determined as if the person harmed were the person defendant meant to harm.” 29 P.3d at 220 (quoting concurring opinion).

In concluding that each defendant was equally liable for the innocent bystander’s death, the Court stated:

Because defendant and co-defendant, rival gang members, had equally culpable mental states and engaged in precisely the same conduct at the same time and place in exchanging shots in a gun battle, it was not unfair to hold them equally responsible for an innocent bystander's death, without regard to which of them actually fired the bullet

26 Cal. 4th at 854, 29 P.3d at 144.

For these same reasons, transferred intent was properly applied to Petitioner's case. As the trial judge stated, if Young, Sr. had been killed, then there would be no question that both Petitioner and Robinson would be responsible for his death under mutual combat. Since an innocent bystander was killed rather than one of the combatants, the doctrine of transferred intent was properly utilized to transfer Petitioner's and Robinson's criminal intent to the unintended victim. Hence, there was no error in charging the jury on the law of transferred intent.

Additionally, Petitioner argues that the State must present evidence of some doctrine that would allow for one defendant to be responsible for another defendant's actions. Petitioner's examples of such doctrines are conspiracy, accomplice liability, and felony murder. (See Brief of Petitioner at 8). However, much like the above theories, mutual combat is a recognized doctrine in which a defendant can be held accountable for the actions of another defendant. *See Brown*, 95 S.E. at 63 ("[E]very one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not."); *see also Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered *when both parties contribute* to the resulting fight.") (emphasis added).

To further counter Petitioner's argument, Respondent submits a listing of other states' case law on mutual combat with relation to other theories of culpability is beneficial. *See State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) ("Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant."); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) ("While the evidence was unclear

as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare."). *See also Reyes v. State*, 783 So.2d 1129, 1133 -1134 (Fla.App. 3 Dist. 2001) (noting *Alston* and adopting logic citing other jurisdictions with similar holdings). The logic of these cases are instructive.

In *State v. Spates*, 779 NW.2d at 772, the Supreme Court of Iowa reviewed a murder conviction where the victim had been a bystander killed "during a gun battles between rival groups...." The state court considered both theories of aiding and abetting and mutual combat. In light of the applicability of those theories, the court concluded:

We agree with those courts that have concluded participants in mutual combat encourage each other to engage in the potentially lethal conduct that leads to the injury of innocent bystanders, thereby supporting liability as an aider and abettor.

779 N.W.2d at 780.

The Iowa courts had previously reached a similar conclusion in *State v. Brown*, 589 N.W.2d 69 (Iowa App. 1998), *reversed on other grounds*, *State v. Reeves*, 636 N.W. 2d 22 (Iowa 2001). In that case, the victim was killed when she unwittingly drove between rival gangs in the midst of a shootout. However, a rival gang member, not Brown, actually fired the fatal bullet. Brown contested his second degree murder conviction as there was no evidence connecting him

personally to the fatal bullet.⁹ The appeals court, considering proximate cause, rejected Brown's assertion finding:

Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See State v. Marti*, 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the shot that killed the innocent bystander. *See id.* ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death").

589 N.W.2d 69, 74 -75.

A Maryland Court of Appeals considered similar circumstances in regard to a conviction for a "depraved murder"¹⁰ conviction, and reasoned as follows:

The "bottom line" is that when a group, or two groups, of hoodlums deliberately engage in a gang-war style of shoot-out in a crowded urban area, they collectively trigger an escalating chain reaction creating a high risk to human life. When instead of taking their gunslinging vendetta to an uninhabited island or some remote spot in the desert, they arrogantly indulge in their homicidal insanity in the middle of a crowded block of residences, each participant in such collective madness displays a

⁹ Though "second degree murder," the malice requirement is substantially the same. In Iowa, "[m]alice is required for both degrees of murder. *See Iowa Code § 707.1* (1997) ('A person who kills another person with malice aforethought either express or implied commits murder.'). However, first-degree murder requires proof of deliberation and premeditation in addition to malice aforethought. *See Iowa Code §§ 707.1, 707.2(1)*. Second-degree murder, on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare Iowa Code § 707.2(1) with § 707.3.*" *Reeves*, 636 N.W.2d at 25. Thus, it appears that the charge would be in definition, though not statutory structure, comparable to the murder charge in this State.

¹⁰ Again, though we have no such offense, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See Owens v. State*, 906 A.2d 989, 1026 (Md. App. 2006) (describing one way of proving second degree murder as "what has become known as depraved heart murder—a killing resulting from 'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. *Robinson v. State*, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, however, places the charge on similar footing with our requirement of malice. *State v. Wilds*, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct.App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life'").

wanton and depraved indifference to any human life that might randomly fall within their overlapping and deadly enfilades. Should death to one of the innocent bystanders or homeowners ensue, each participant in the lethal encounter has exhibited the *mens rea* that qualifies him for depraved-heart murder.

Alston v. State, 643 A.2d 468, 469 (Md. App.1994).

The affirmance was upheld on appeal, with the higher court noting: "Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare." *Alston v. State*, 662 A.2d 247, 254 (Md. 1995). See also *Reyes*, 783 So.2d at 1133 -1134 (noting *Alston* and adopting logic citing other jurisdictions with similar holdings).

Similarly, in a 2005 case, the court in the District of Columbia, in reviewing a causation charge, reasoned that "while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a 'gun battle' on city streets, as in this case, is relatively new." *Roy v. United States*, 871 A.2d 498, 507 (D.C. 2005), cert. denied, 547 U.S. 1162, 126 S.Ct. 2346 (2006). The court easily acknowledged the "the application of proximate cause liability to those participants who willfully choose to engage in these battles." *Id.* In upholding the application in that specific case as reflected in the contested charge on causation, the court reasoned: "While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered." 871 A.2d at 509.

Therefore, under the law of South Carolina and many other states, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury.

Finally, Petitioner argues that South Carolina should not allow for a murder conviction to rest upon the legal theories of mutual combat and transferred intent because, if the legal theory was accepted, any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. (See Brief of Petitioner at 9). Again, Respondent submits that is the precise reason it can be and should be used for a murder conviction. Much like accomplice liability,¹¹ both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *Reyes*, 783 So.2d at 1133-1134. Here, Petitioner and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Petitioner's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire of the havoc the two men created. Therefore, not to hold Petitioner accountable for the death of Khalil would be an injustice, for this case and future cases.

B. Overwhelming direct and circumstantial evidence of mutual combat was presented at trial to withstand a directed verdict motion.

There must be a "mutual intent and willingness to fight" to constitute mutual combat. *Taylor*. 589 S.E.2d at 3. However, the required mutual intent can be inferred from the parties' acts and conduct, and the circumstances of the combat. *Id.* In finding that evidence of mutual combat existed to submit the issue to the jury, the Court in *Graham* held:

"There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an

¹¹ "...one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Gibson*, 701 S.E.2d at 769.

armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.”

260 S.C at 452, 196 S.E.2d at 496.

Here, the State presented direct and substantial circumstantial evidence that Petitioner and Robinson mutually intended to fight. The evidence showed Robinson approached Petitioner with a .38 caliber gun in his hand. (App. p. 363; R.p. 362, lines 2-5; State’s Ex. 38, Intro Video at 2:55-3:39). Young, Sr. tried to take the gun away but it accidentally fired. (App. p. 363; R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired another shot into the ground. (App. p. 363; R.p. 362, lines 18-22). Robinson then got into his vehicle and drove away. (App. pp. 364-65; R.p. 363, line 25 - p. 364, line 4). Seconds after Robinson left, Petitioner and Young, Sr. retrieved a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (App. pp. 365, 412 and 414; R .p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). In Young Sr.’s grey truck, Petitioner and Young, Sr. began searching for Robinson. (App. p. 368; R.p. 367, lines 5-12). After one failed attempt at locating Robinson, Petitioner and Young, Sr. finally tracked him down on Bryant Road. (State’s Ex. 38, Video 7 at 00:23-00:36). Petitioner pulled his weapon out and tried to shoot Robinson but the gun jammed. (State’s Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson’s home on Allen Road. (State’s Ex. 38, Video 7 at 2:00-2:50). After spotting Robinson’s vehicle, Petitioner began firing bullets into the car. (State’s Ex. 38, Video 2 at 00:10-00:21). Petitioner boasted that he shot the car “**twenty damn times**” and when he was done it looked like “**swiss cheese**”. (State’s Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Petitioner got back into the truck and began to drive away when Robinson fired three shots at Petitioner and Young, Sr. (State’s Ex. 38, Video 3 at 00:45-00:55). Further, Delaney testified Robinson approached him during the conflict and told him “yeah they was shootin at me

so I shoot back at them.” (App. p. 334; R.p. 333, lines 18-19). A woman who called 911 dispatch reported that a grey truck and Robinson were shooting at each other. (State’s Ex. 2). Petitioner and Robinson’s actions and conduct that afternoon indisputably prove the required mutual intent and willingness to fight for mutual combat. This intent is further demonstrated by Petitioner’s own admission to participating in a gun battle with Robinson. (State’s Ex. 38, Intro Video - Video 8).

The State also presented direct evidence of Petitioner and Robinson’s animosity towards each other. Petitioner, in a conversation with Investigator Albertin, discussed his relationship with Robinson:

Man, Tyrone tried to kill me in the gardens a couple of days ago, man...I don’t like that dude, man.

...

He crazy. Something wrong with that boy. He think he the shit or something. I don’t know. He thinks he got power around here. Cause people scared...I’m little? But I’m not scared of you big dude...Ever since I knocked him out that one time he don’t like me. Me and him got in a fight, I knocked his ass out right there. I swear to God. Ask everybody. I knocked that bitch clean out.

(State’s Ex. 38, Video 4).

This colloquy, coupled with the chain of events on September 1, 2012, clearly shows Petitioner and Robinson had ill-will towards each other. And each knew the other was armed.

The State presented direct and circumstantial evidence that Petitioner was armed with a 9MM semi-automatic pistol. During Petitioner’s interview with Investigator Albertin, Petitioner admitted to using his 9MM handgun to shoot Robinson’s car. According to Petitioner, **“Boy, I swiss cheese that car...I swear I did.”** (State’s Ex. 38, Video 3 at 00:20). Petitioner bragged, **“I mean shit, I shot the car a good, what, twenty damn times.”** (State’s Ex. 38, Video 6 at 00:55). Additionally, Petitioner admitted he attempted to shoot Robinson with the gun but it

jammed. **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25). The State presented circumstantial evidence that Petitioner was armed through Jontu's testimony. According to Jontu, Petitioner pulled a gun out of a black bag and began assembling the weapon while they were searching for Robinson. (App. pp. 365-69; R.pp. 364-68). Agent DeFreese's testimony corroborated Jontu's testimony and Petitioner's admission in determining that the bullets in Robinson's car originated from Petitioner's 9 MM semi-automatic pistol. (App. pp. 470-71; R.p. 466, line 15 – p. 467, line 6). Also, the State introduced direct evidence that Petitioner knew Robinson was armed with a weapon. During Petitioner's interview, he discussed knowing what type of gun Robinson used during the conflict:

"Cause at the end of the day, Y'all still don't got T's shit...T's shit is a revolver, man. That's the most important gun. Fuck a automatic and a hand gun is nothing 'cause it automatically drop shells. But nigga if he got a revolver, how the fuck y'all gonna get his gun casings? ...You know how many people done got hit with a nine millimeter and ain't die, but bitch you get hit with a 38 your ass is dead."

(State's Ex. 38, Intro Video at 2:55-3:39)

Furthermore, the State produced circumstantial evidence that Petitioner knew Robinson was armed. Jontu testified that Robinson approached Petitioner with a gun in his hand off Wild Horse Road. (App. p. 363; R.p. 362, lines 2-22). Robinson then fired the gun twice in front of Petitioner. (App. p. 363; R. p. 362, lines 2-22). Additionally, the State presented direct evidence Petitioner knew Khalil and the other children were playing outside. During Petitioner's interview, he admitted multiple times to engaging in a gun fight with children present:

"We came down the road. There was children outside playing already..." (State's Ex. 38, Video 1 at 00:11-00:28); **"The little children was the ones who saw us 'cause they was pointing at us...they was pointing at us...I saw the trampoline and all, that's the crazy thing about it"** (State's Ex. 38, Video 1 at 1:10-1:16); **"In order to ride up the road, you gotta pass by the children"** (State's Ex. 38, Video 1 at 1:39-1:41).

While discussing seeing the children, Petitioner stated, “We got there and all hell broke loose” (State’s Ex. 38, Video 1 at 00:34-00:37). This evidence clearly demonstrated that Petitioner was aware that innocent bystanders were in the vicinity. But this fact did not stop Petitioner from continuing the conflict with Robinson. Accordingly, it is reasonable to presume Petitioner knew the natural consequences of his actions could lead to Khalil’s death.

In conclusion, overwhelming direct and circumstantial evidence was presented to the jury tending to prove Petitioner was engaged in mutual combat with Robinson. The State introduced evidence Petitioner and Robinson had a mutual intent to fight, they had ill-will between each other, and both came to the fight armed and knew the other to be armed. The elements of mutual combat have clearly been established. Thus, the trial court did not abuse his discretion in denying Petitioner’s motion for directed verdict on the murder charge, and the Court of Appeals properly affirmed.

C. Petitioner did not request a directed verdict on the basis of a withdrawal from mutual combat, so that portion of the issue is not preserved for review. However, the record shows the argument is without merit.

The trial record shows this particular portion of the issue is not preserved for review. Petitioner only discussed the end of mutual combat when he requested a jury instruction on the law after he had already argued his motion for a directed verdict. Even so, this argument is easily dispatched as there was no evidence that Petitioner withdrew from the conflict.

In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. *State v. Kennerly*, 503 S.E.2d 214, 221 (S.C. App. 1998), *aff’d*, 524 S.E.2d 837 (S.C. 1999). A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”). Here,

Petitioner did not argue that the mutual combat ended when he made a motion for a directed verdict. The trial judge only had the opportunity to consider this issue when Petitioner asked for a jury charge on the law of withdrawal. Therefore, Petitioner is barred from asserting and relying on this point in his appeal.

Regardless, Petitioner would not be entitled to relief even if he raised this issue at trial. In order to bring mutual combat to an end, one of the combatants must withdraw from the conflict in good faith and make that fact known to his adversary. *Graham*, 260 S.C. at 451, 196 S.E.2d at 495–96. Here, there was no evidence presented at trial that would allow for the jury or the judge to deduce that Petitioner withdrew from the conflict. This matter is discussed in much greater detail in Issue II. Petitioner’s action of driving away after firing multiple bullets into Robinson’s car must be taken in context with entire conflict. The chain of events that unfolded on September 1, 2012, included numerous instances of Petitioner and Robinson driving to and away from multiple locations. Petitioner’s other comings and goings were not viewed as withdrawals because they were simply in furtherance of his pursuit of Robinson. This instance should not be viewed as any different. Also, Petitioner’s recorded statements that were published to the jury directly show he did not intend to withdraw. When Petitioner was discussing his driving away after firing shots into Robinson’s car, he stated, **“the dude knew we were gonna come back for him”**. (State’s Ex. 38, Video 1 at 1:10). Also, Petitioner stated he told his father **“man, turn around”** after he heard Robinson’s gun shots. (State’s Ex. 38, Video 3 at 00:45). Both of these statements undoubtedly show Petitioner’s intent was not to withdraw but to continue fighting. Thus, Petitioner’s own words completely contradict his assertion that he withdrew from the conflict. Again, though this particular portion of the issue is not preserved, but the record shows it is without merit.

II.

The Court of Appeals did not err in finding no abuse of discretion in denying Petitioner's request to charge withdrawal from mutual combat when no evidence existed to support such a charge.

Petitioner submits, as he did in his petition for rehearing to the Court of Appeals, that the Court of Appeals utilized an incorrect standard in reviewing the denial of a request to charge. (Brief of Petitioner at 16; Petition, p. 13; see also App. pp. 758-59 (petition for rehearing to the Court of Appeals)). He also submits the evidence of Petitioner's leaving the scene when Robinson fired is "some evidence" that the combat had ended. (Petition, p. 14). Neither argument prevails on this record.

The Court of Appeals noted the correct passage from this Court's opinion in *State v. Graham* which properly guides the analysis, and emphasized the following passage which appears in bold italics below:

Where a person voluntarily participates in . . . mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self-defense . . . unless, before the homicide is committed, ***he withdraws and endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary, . . .***

State v. Graham, 260 S.C. 449, 451, 196 S.E.2d 495, 495-96 (1973); (emphasis added in Court of Appeals opinion). (See App. p. 749).

The Court of Appeals then recounted the ongoing gun battle, including the driving through two different neighborhoods. (App. p. 750). While Petitioner argues that leaving a neighborhood and no return fire at that time may be "some evidence" of withdrawal, (see Brief of Petitioner at 18; Petition p. 14), it is hardly so where the battle has spanned locations and there were volleys in different areas. Moreover, as the Court of Appeals also noted, there was no

evidence that an intent to withdraw was communicated “either by word or act.” (App. p. 454; App. p. 450). Rather,

...no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs’ yard. Moreover, because we find the combat did not end when Young, Jr. fled the scene after shooting Robinson’s unoccupied vehicle, we similarly find Young, Jr.’s act of fleeing before Robinson fired the fatal shots did not make known to Robinson any intent to withdraw.

(App. p. 750).

The evidence of chase does not allow Petitioner’s offered argument to show some support evidence of intent to withdraw. Even so, assuming for the sake argument that Petitioner intended to withdraw, neither his words nor actions communicated this intent to Robinson. This Court in *Graham* explained that a withdrawal must be “communicated to the victim by word or act.” 260 S.C. at 451, 196 S.E.2d at 496. Petitioner did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, the act of driving down the road would not have been reasonably interpreted by Robinson that Petitioner intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations.

Because the law to be charged is driven by the facts adduced at trial, there was no necessity of a charge on withdrawal from the mutual combat. *See, e.g., State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008) (“The law to be charged to the jury is determined by the evidence presented at trial.”). This Court has explained that the failure to give a charge supported by the evidence is an error of law; thus, the failure to give a charge warranted by the evidence constitutes an abuse of discretion. *See State v. Commander*, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011) (affirming the Court of Appeals conclusion “the trial court acted within its discretion in refusing to charge the jury on accident” where there was no “basis of an accident charge under the facts.”). Though specifically regarding a manslaughter charge, the following

passage from this Court's precedent well-illustrates the logic of the matter and aptly addresses Petitioner's argument on the correctness of the legal conclusion:

A court may eliminate the offense of manslaughter where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. *State v. Burriss*, 334 S.C. 256, 264, 513 S.E.2d 104, 109 (1999). An appellate court will not reverse the trial judge's decision absent an abuse of discretion. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Id.* The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Id.* at 390, 529 S.E.2d at 539. The law to be charged must be determined from the evidence presented at trial.

State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)

Whether there was a factual basis warranting the charge is was exactly what the Court of Appeals considered in ruling on the issue. Thus, the Court of Appeals correctly followed this Court's precedent, and properly focused on the evidence presented in relationship to the requested charge. The Court of Appeals did not err in reviewing the trial judge's consideration of the charge in light of the evidence presented at trial.

A. The trial judge did not abuse his discretion in denying Petitioner's request to charge withdrawal from mutual combat because no evidence existed to support such a charge.

After Petitioner's directed verdict motion was denied, Petitioner then requested a jury instruction on the ending of mutual combat. The judge found there was no evidence of a withdrawal that would warrant such an instruction. (App. pp. 523-25). He ruled correctly.

"Where a person voluntarily participates in mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self-defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the homicide is committed, he **withdraws and endeavors in good faith to decline further conflict, and**, either by word or act, **makes that fact**

known to his adversary.” *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Thus, two elements must be satisfied in order to successfully withdraw from mutual combat. Here, neither of these elements have been met.

Petitioner argues that he withdrew from the conflict when he drove away from the scene, thereby ending the mutual combat. However, the key component to withdrawal from a conflict is that it must be done in **good faith**. In order to actually withdraw in good faith from a conflict, the aggressor must have truly desired to withdraw from or abandon the conflict, and must not have merely paused in his assault. *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974). Thus, there is no withdrawal where he simply steps back to assume a better strategic position or if he leaves and then returns to the scene with the same threatening or hostile intentions. *Id.* An aggressor does not abandon a conflict if he merely leaves to obtain a weapon, to wait for his adversary in ambush elsewhere, or because he is convinced that he has disabled or killed his adversary. *Id.*

Although South Carolina case law maintains that a withdrawal must be done in good faith, it does not specifically address what constitutes a “good faith withdrawal.” However, other states have addressed this very issue. In addressing this issue, the Supreme Court of Missouri explained the difference between a good faith withdrawal and a mere retreat. “There is a wide difference between a withdrawal and a mere retreat. A retreat may be and often is a continuance of hostilities. A withdrawal is the abandonment of the struggle by one of the parties, and such abandonment must be perceived by the other.” *State v. Heath*, 237 Mo. 255, 141 S.W. 26, 29 (1911).

Additionally, the Kentucky Court of Appeals in *Hellard v. Commonwealth* rejected the defendant’s assertion that he withdrew from the combat in good faith. *Hellard v. Commonwealth*,

84 S.W. 329, 329 (Ky. 1905). The court held, "A retreat is not necessarily an abandonment. It may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it." *Id.* Also, the Supreme Court of Louisiana, in *State v Kellogg*, analyzed the reinstatement of a claim of self-defense if the defendant withdrew from the combat in good faith. *State v. Kellogg*, 29 So. 285 (La. 1901). The court stated that self-defense could not be asserted under the basis of withdrawal if the conduct was "a mere momentary cessation of hostilities, with no bona fide, clearly expressed intention to withdraw from the conflict." *Id.* at 291.

Here, there was certainly no evidence presented at trial that indicated Petitioner withdrew or desired to withdraw from the conflict in good faith. Petitioner's act of driving away moments after firing multiple bullets into Robinson's car was not a desire to end the fighting. Petitioner's actions were not a withdrawal or a retreat, but a continuation of the hunt for Robinson. His act of driving away must be viewed in relation to the whole incident. The entire conflict revolved around Petitioner and Robinson chasing after each other. Petitioner traveled down numerous roads and made many stops in his search for Robinson. These other comings and goings were not withdrawals but rather mere continuations of Petitioner's pursuit of Robinson. Petitioner's act of driving down the road after shooting Robinson's vehicle should not be viewed as any different.

Additionally, Petitioner's statements introduced at trial further support that he did not withdraw in good faith. During the interview with law enforcement, Petitioner disclosed that after hearing Robinson shoot at Young, Sr.'s truck, he told his father, "**man turn around**". (State's Ex. 38, Video 3 at 00:45). Also, when discussing driving away after shooting Robinson's car, Petitioner told investigators, "**The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that.**" (State's Ex. 38,

Video 1 at 1:10). Petitioner's admissions that he intended to return to the fight directly refute any intent to withdraw.

Assuming Petitioner intended to withdraw, which the evidence suggests otherwise, neither his words nor actions communicated this intent to Robinson. The Court in *Graham* explained that a withdrawal must be "communicated to the victim by word or act." 260 S.C. at 451, 196 S.E.2d at 496. Petitioner did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, Petitioner's act of driving down the road would not have been reasonably interpreted by Robinson that Petitioner intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations that did not amount to a withdrawal. It would be unreasonable to assume Robinson viewed this instance as anything different. Therefore, since Petitioner did not withdraw from the conflict in good faith or inform Robinson of an intended withdrawal, a jury instruction on the ending of mutual combat would be improper. The trial judge did not err in declining to give the charge in these circumstances; however, if any error did occur, such error would be harmless in light of the remainder of the charge and specifically the carefully crafted charge on mutual combat.

Yet, a review of the record undoubtedly shows the requested charge was not warranted. Therefore, there was no error by the trial judge, and the Court of Appeals properly affirmed. Petitioner's argument to the contrary should be rejected.

III.

The Court of Appeals did not err in finding no abuse of discretion in denying Petitioner's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

Petitioner argues there is "no circumstantial evidence, much less substantial circumstantial evidence that Petitioner shot at or attempted to shoot Robinson," as he similarly argued in his petition for rehearing. (Brief of Petitioner, Petition, p. 17) (emphasis in original); (see also App. p. 760, petition for rehearing in the Court of Appeals). The Court of Appeals properly and reasonably rejected Petitioner's argument there was no evidence of criminal intent toward Robinson. The Court reasoned:

Here, Singleton testified after Robinson first fired his revolver at the ground near the Youngs, the Youngs went into their house and retrieved a semi-automatic pistol. Thereafter, Singleton and the Youngs drove around their neighborhood searching for Robinson, and Young, Jr. assembled the pistol during the search. Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him. Delaney also testified Robinson told him about an exchange of gun fire with the Youngs. Moreover, the State published Young, Jr.'s police interview to the jury. In the interview, Young, Jr. explained, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Young, Jr. also clarified Robinson was his intended target. Viewing this evidence in the light most favorable to the State, we find there was substantial circumstantial evidence tending to prove Young, Jr. attempted to murder Robinson.

(App. p. 748-49).

The record supports the Court of Appeals' decision.

Attempted murder is defined as "a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied." S.C. Code Ann. § 16-3-29. Respondent submits that ample substantial circumstantial and direct evidence was presented at trial showing Petitioner intended to and attempted to kill Robinson with malice aforethought.

Witness Testimony

- Jontu Singleton testified Petitioner retrieved the gun, assembled the gun, and looked for Robinson (App. pp. 365-69; R.p. 364-68)
- Robinson's statement to Mitchell "those M.F. was shooting at me" (App. p. 311; R.p. 310)
- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck (App. p. 334; R.p. 333)
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck¹² (State's Ex. 2).

Petitioner's Admissions in Recorded Statements

- "Should've never moved my ass from Ridgeland. Could've killed any n**** I wanted to and nobody'd ever fucking find out" (State's Ex. 38, Intro Video at 4:01)
- Talking about driving away after shooting Robinson's car: "The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that" (State's Ex. 38, Video 1 at 1:10)
- "Boy, I swiss cheese that car...I swear I did" (State's Ex. 38, Video 3 at 00:20)
- After Robinson shot at them in the truck, indicated to Young, Sr., "man turn around" (State's Ex. 38, Video 3 at 00:45)
- "I mean shit, I shot the car a good, what, twenty damn times" (State's Ex. 38, Video 6 at 00:55)
- "The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot" (State's Ex. 38, Video 7 at 00:25)
- "It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it was a dead road, nobody would've knew nothing...But the gun just wouldn't go off" (State's Ex. 38, Video 7 at 2:11).

Petitioner was the person who tried to kill Robinson; he admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). He admitted to

¹² The caller referred to the car as a "grey Lexus," however, the caller positively identifies the driver of the car (actually a green Acura) as Tyrone Robinson.

being the person who shot Robinson's car to the point it looked like "swiss cheese." (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates the statements that he was the shooter, in particular, Jontu Singleton's testimony that Petitioner was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (App. pp. 368-69; R. pp. 367-68). Additionally, Charlese Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (App. p. 329; R. p. 328; see also App. pp. 301-313; R. pp. 300-312).

Respondent submits that the State presented direct and substantial circumstantial evidence of Petitioner's guilt at trial. The standard is well-established:

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.

State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006)

The State met this requirement in its presentation of the evidence. Therefore, the trial judge did not abuse his discretion in denying Petitioner's motion for a directed verdict on the attempted murder charge. The Court of Appeals proper affirmed and did not err in reviewing the trial judge's consideration of the charge in light of the evidence presented at trial.

A. The trial judge did not abuse his discretion in denying Petitioner's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

After the State rested its case, Petitioner moved for a directed verdict on the murder and attempted murder charges. With regard to the attempted murder charge, Petitioner argued that there was no evidence presented that showed Petitioner attempted to kill Tyrone Robinson.

Specifically, Petitioner argued the State offered no evidence that Petitioner pointed a gun at Robinson. (App. p. 512; R.p. 508, lines 10-13). Furthermore, Petitioner alleged it was never confirmed that Robinson was referring to Petitioner when he stated “those M.F. was shooting at me.” (App. p. 512; R.p. 508, lines 16-20). The State responded that there was in fact at least three pieces of evidence presented during trial proving Petitioner’s attempted murder of Robinson. (App. p. 518; R.p. 514, lines 9-11). These three pieces of evidence were: (1) Robinson’s statement to Mitchell, “those M.F. was shooting at me”, (2) Robinson’s statement to Delaney, “yeah they was shootin at me so I shoot back at them” after asking about a grey truck, and (3) the 911 call reporting a shootout between a grey Lexus driven by Robinson and grey truck. (App. pp. 517-18; R.p. 513, line 20–p. 514, line 11). The State further argued that Petitioner’s admission to attempting to kill Robinson but failing because the gun jammed was an important indication that Petitioner intended to kill Robinson. (App. p. 518; R.p. 514, lines 12-15).

Correctly reviewing the evidence in the light most favorable to the State, the trial judge held that there was substantial circumstantial and direct evidence introduced at trial. Specifically, the court emphasized “that the attempted murder of Mr. Robinson is borne out by [Petitioner’s] own statement.” (App. p. 521; R.p. 517, lines 18-19). Accordingly, the trial judge denied Petitioner’s motion for a directed verdict on attempted murder.

Petitioner’s argument fails in that the evidence must be viewed in the light most favorable to the State. Contrary to Petitioner’s assertion, there is ample direct and circumstantial evidence supporting the trial judge’s denial of Petitioner’s directed verdict motion on the attempted murder charge, and his ruling should be affirmed.

Attempted murder is defined as “a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied.” S.C. Code Ann. § 16-3-29.

Respondent submits that substantial circumstantial and direct evidence was presented at trial showing Petitioner intended to and attempted to kill Robinson with malice aforethought. The following are the key pieces of direct and circumstantial evidence from the trial record:

Witness Testimony

- Jontu's testimony about Petitioner retrieving a gun and looking for Robinson (App. p. 365; R.p. 364, lines 7-10; p. 367, lines 5-8)
- Jontu's testimony about Petitioner assembling the gun while looking for Robinson (App. p. 369; R.p. 368, lines 13-25)
- Robinson's statement to Mitchell "those M.F. was shooting at me" (App. p. 311; R.p. 310, lines 8-11)
- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck (App. p. 334; R.p. 333, lines 1-19)
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck¹³ (State's Ex. 2)

Petitioner's Admissions

- Petitioner's statement **"Should've never moved my ass from Ridgeland. Could've killed any nigga I wanted to and nobody'd ever fucking find out"** (State's Ex. 38, Intro Video at 4:01)
- Petitioner's statement when he was talking about driving away after shooting Robinson's car: **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that"** (State's Ex. 38, Video 1 at 1:10)
- Petitioner's statement **"Boy, I swiss cheese that car...I swear I did"** (State's Ex. 38, Video 3 at 00:20)
- Petitioner's statement to Young, Sr. after Robinson shot at them in the truck, **"man turn around"** (State's Ex. 38, Video 3 at 00:45)

¹³ Petitioner argues in his brief that the caller referred to the car as a "grey Lexus", but that Robinson was driving a green Acura on the incident date. Respondent submits that this argument is meritless because the caller positively identifies the driver of the car as Tyrone Robinson. Therefore, the color of the car is insignificant.

- Petitioner's statement **"I mean shit, I shot the car a good, what, twenty damn times"** (State's Ex. 38, Video 6 at 00:55)
- Petitioner's statement **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25)
- Petitioner's statement **"It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it was a dead road, nobody would've knew nothing...But the gun just wouldn't go off"** (State's Ex. 38, Video 7 at 2:11)
- Investigator Albertine's question **"So what were you shooting at then?"** and Petitioner's response **"Him"** (State's Ex. 38, Video 7 at 1:10).

The chain of events evidences that the Petitioner clearly intended and attempted to kill Tyrone Robinson with malice aforethought. Petitioner's intent was unmistakably illustrated by eyewitness testimony about Petitioner obsessively chasing Robinson down numerous roads in Hilton Head while armed with a semi-automatic weapon. Moreover, Petitioner's admission that he attempted to kill Robinson but the gun was inoperative further supports his guilt. Even though Petitioner does not specifically state he pointed the gun at Robinson, he admitted he was shooting at **"him"**. (State's Ex. 38, Video 7 at 1:10). This admission constitutes direct evidence of the Petitioner's involvement in the crime, **"immediately"** establishing his intent to murder Robinson. If Petitioner's statements were not persuasive enough, Robinson's statements about Petitioner shooting at him surely aided the jury in their determination of Petitioner's guilt beyond a reasonable doubt. Although Petitioner argues that Robinson's statements could have meant someone besides Petitioner was shooting at him, the statements must be taken in the context of the events that afternoon. This was a question for the jury to decide and the only reasonable inference was that Robinson was referring to Petitioner in his statements. Accordingly, the State did indeed present substantial direct and circumstantial evidence, when viewed in the light most favorable to the State, proving Petitioner's guilt of the attempted murder of Robinson.

Petitioner compares his case to the following cases: *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Hepburn*, 409 S.C. 416, 753 S.E.2d 402 (2013). His reliance on these cases is misplaced. In each of those cases, this Court found that a directed verdict was warranted based on the evidence presented by the State at trial. However, the instant case is distinguishable from all of those cases. *Accord State v. Bratschi*, 413 S.C. 97, 106-14, 775 S.E.2d 39, 44-48 (Ct. App. 2015).

The Court in *Bostick* and *Odems* held a directed verdict was proper because the State had failed to present evidence placing the defendant at the scene of the crime. *Bostick*, 392 S.C. at 141, 708 S.E.2d at 778; *Odems*, 395 S.C. at 592, 720 S.E.2d at 53. Here, there is no question Petitioner was present at the crime. Not only do multiple witnesses place him at the scene, he places himself there by his own admission. Therefore, both of these cases cited by Petitioner are inapplicable to the case at hand.

Also, Petitioner's contention that his case is comparable to *Hepburn* is erroneous. The Court in *Hepburn* held that the State failed to present substantial circumstantial evidence that the defendant killed the victim, and thereby a directed verdict was warranted. *Hepburn*, 406 S.C. at 440, 753 S.E.2d at 415. The Court emphasized that while the State presented substantial evidence the defendant was at the scene, it failed to present evidence tending to prove that this defendant, rather than the codefendant, inflicted the harm on the victim. *Id.* Thus, unlike this case, the underlying issue was "who" committed the crime. Here, there is no question about "who" attempted to kill Robinson. Undoubtedly, it is known that Petitioner was the person who tried to kill Robinson due to his own confessions. Petitioner admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). Petitioner admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese." (State's

Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates Petitioner's own statements that he was the shooter. Jontu testified Petitioner was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (App. p. 369; R.p. 368, lines 13-25). Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (App. p. 329; R.p. 328, lines 3-21). Since the identity of the person who committed the crime is not at issue in this case, *Hepburn* is not appropriate for comparison.

Respondent submits that the evidence presented in this case is akin to evidence presented by the State in *State v. Lane*, where the South Carolina Supreme Court reversed the Court of Appeal's reversal of the trial judge's denial of the defendant's motion for a directed verdict. *State v. Lane*, 765 S.E.2d 557, 557 (S.C. 2014). In reversing the Court of Appeals decision, the Court held "in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt." *Id.* In that case, the State presented evidence of the following: eyewitness testimony observing a red Mitsubishi parked in the victim's driveway on the afternoon of the burglary, a piece of paper found in victim's driveway after the burglary that was later identified as belonging to the defendant, officer testimony that they observed a red Mitsubishi in the driveway when they went to interview the defendant at his girlfriend's house, and defendant's admission to driving a red Mitsubishi on the day of the burglary and ownership of the piece of paper. *Id.*

Here, the State presented evidence regarding Petitioner's ill-will towards Robinson, Petitioner and Robinson's confrontation earlier in the day, Petitioner's actions in retrieving and assembling a weapon, Petitioner hunting down Robinson in a grey truck, eyewitness testimony placing Young, Sr.'s grey truck near the scene, officers testimony that they pulled over Petitioner in Young, Sr.'s grey truck shortly after the shooting, eyewitness testimony about a shootout

between a grey truck and grey Lexus shooting at each other near the scene, Petitioner's own admission of his chasing down Robinson while riding in his father's grey truck, and Petitioner's admission of his intent, and attempt, to shoot Robinson. (See App. pp. 489-90; R.pp. 287-506; State's Ex. 38, Intro Video to Video 8; State's Ex. 2). Indeed, there was exceedingly more evidence presented in this case than in *Lane* to withstand a directed verdict motion.

Respondent submits that the State presented substantial circumstantial evidence in the instant case of the same caliber, if not more, as the evidence presented in *Lane*, and Respondent asks the Court to find, just as the Court did in *Lane*, that "the aforementioned evidence was sufficient to withstand Respondent's motion for a directed verdict." *Id.*

The State presented direct and substantial circumstantial evidence of Petitioner's guilt at trial. Therefore, the trial judge did not abuse his discretion in denying Petitioner's motion for directed verdict on the attempted murder charge, and the Court of Appeals properly affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Court of Appeals ruling affirming the judgment, conviction, and sentence of the trial court should likewise be affirmed.

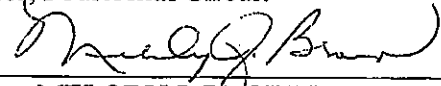
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August 6, 2019.

¹⁴ Present counsel for Respondent acknowledge the contributions of former Assistant Attorney General Margaret G. Boykin. Though no longer with the officer, Ms. Boykin prepared the Respondent's brief in this matter in the South Carolina Court of Appeals. Thus, her work carries over and is acknowledged here.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

*On Certiorari to the South Carolina Court of Appeals
Opinion No. 5592 (Ct.App. filed August 22, 2018)
(Former Appellate Case No. 2015-000508)*

The State,		Respondent,
	v.	
Aaron Scott Young, Jr.,		Petitioner.
Appellate Case No. 2018-001861		

CERTIFICATE OF SERVICE

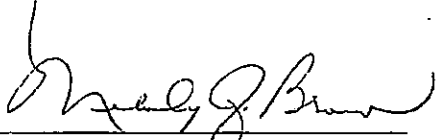
I, Melody J. Brown, certify that I have served the Brief of Respondent on Petitioner by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorneys of record:

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

This 6th day of August, 2019.



MELODY J. BROWN
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AUG 19 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

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ARGUMENT

Petitioner submits his Brief sets forth grounds upon which the Court of Appeals opinion should be reversed and his convictions and sentences vacated, and the State's Brief does nothing to change that result. However, there are five points on which Petitioner believes the Court may appreciate further briefing given the arguments made in the State's Brief.

I. SOUTH CAROLINA LAW DOES NOT AND SHOULD NOT RECOGNIZE THE STATE'S MUTUAL COMBAT THEORY AS A BASIS FOR A MURDER CONVICTION, AND EVEN WERE SOUTH CAROLINA, TO RECOGNIZE SUCH A THEORY IT WOULD NOT APPLY HERE.

The State now incredibly asserts Petitioner's convictions and the underlying distortion of South Carolina law through the mutual combat theory are necessary given the "escalating urban warfare in present-day society." (Resp't's Br. 19.) However, the State has not shown any "escalating urban warfare" necessitating a change in South Carolina law, and South Carolina law adequately addressed, and will continue to adequately address, the public use of firearms and the death of bystanders through the felony murder, accomplice liability, and transferred intent theories of criminal liability.

Moreover, not only is there no need to recognize a mutual combat theory of murder in South Carolina, recognizing mutual combat as a stand-alone basis for a murder conviction for the death of a bystander creates legal problems as highlighted by the use of the theory in this case. The harms resulting from recognizing such a theory include that:

- the theory conflicts with the requirement that a defendant proximately cause a death to be held criminally responsible for that death, and
- the theory conflicts with the settled law of transferred intent which serves only to expand the malice element of a murder charge and does not serve to expand the criminal liability of one actor to include the results of another person's actions.

Not only is the State's attempt to expand South Carolina law unnecessary and ill-advised, the facts of this case fall outside the State's proposed theory of mutual combat. Thus, even were the State's mutual combat theory legally valid, this is not the case to recognize such a theory. Petitioner and Robinson never engaged in mutual combat on the day in question, much less engaged in mutual combat at the time Robinson fired the fatal shot. Therefore, even were South Carolina to recognize the State's mutual combat theory, Petitioner could not be convicted of murder under such a theory.

To stretch the State's mutual combat theory to affirm Petitioner's murder conviction would create absurd results. Were the facts of this case sufficient for a murder conviction under a mutual combat theory, a person could be convicted of murder regardless of the facts that the person's "combatant" hides to avoid actual combat, the combatant ambushes the person at the time and place of the combatant's choosing, and the passage of days, weeks, or months since the last interaction between the "combatants." In short, if ill-will and any violence or threat of violence were to occur between a person and another, the State's theory would permit the person to be held criminally responsible for the other's violent acts at any future time or place.

The State appears to base its argument for such a mutual combat theory on the contention that a person should be held responsible for any criminal act that occurs as a result of his engaging in mutual combat, but the criminal law exists to punish offenders for prohibited conduct and harms that were the foreseeable result of such conduct. *See, e.g., 1 Wharton's Criminal Law* § 26 (15th ed.). Here, Petitioner could not reasonably foresee that Robinson would fire a weapon at him at that location with children in the line of fire. Petitioner did not know Robinson was present at the location where the fatal shot was fired, had no control over Robinson's actions, and had no control over where and when Robinson chose to fire his weapon.

Petitioner thus could not reasonably foresee that the death would result, and he should not be criminally responsible, even through a mutual combat theory, for the victim's death.

Petitioner may have acted foolishly and even criminally on the day that Khalil, the victim, died, but during the one instance when Petitioner fired his weapon that day—when he shot Robinson's car—he knew that there were no children around the vehicle or in the direction he fired. (State's Ex. 38, Videos 1, 2, & 7; R. 635.) Robinson, however, chose to ambush Petitioner resulting in Khalil's death. Robinson chose not only to fire at Petitioner, but he chose the time and place at which to do so.

II. ANY MUTUAL COMBAT ENDED BEFORE ROBINSON FIRED THE FATAL SHOT.

The State conflates the legal doctrine of withdrawal *from a conflict* with the idea that any animosity between the parties or any intent to cause future harm to an adversary must have dissipated for a conflict to end. The Court of Appeals similarly conflates the law on withdrawal with the notion of the cessation of animosity, concluding there was no withdrawal from combat by relying on Petitioner's statements regarding his continued animosity towards and his desire to engage in combat with Robinson and on the fact that "no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs' yard." (App. 750.)

South Carolina caselaw instructs that mutual combat ends when "the defendant withdraws from the conflict," *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); "after a withdrawal from the initial difficulty . . . if that withdrawal is communicated . . . by word or act," *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); and when the defendant "withdraws from the conflict and communicates that decision to his adversary," *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). Thus, while two persons may

still have a personal conflict—for example, animosity towards one another or a desire to cause harm to one another—their physical conflict and combat may have come to an end for purposes of mutual combat.

For any mutual combat to have ended the law only requires that Petitioner have withdrawn from the conflict and that Robinson knew of the withdrawal. While the Court of Appeals intimates that Petitioner needed to verbally communicate the withdrawal to Robinson, the law does not require a statement of an intent to withdraw, and a person leaving the scene with the adversary's knowledge is sufficient for withdrawal. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322. Petitioner and his father drove away from the location of Robinson's vehicle and did not see Robinson. Thus, there was no ongoing conflict or combat at that time. Robinson was not being attacked, was safe in his hiding place, and saw Appellant and his father driving away as evidenced by him shooting at them. Yet Robinson decided to initiate violence by firing upon Petitioner from his hidden position.

The Court of Appeals' and the State's conception of withdrawal is not only not supported by South Carolina law, it also would render it impossible for a person to withdraw from combat in any situation similar to the one present here. If Petitioner decided that shooting Robinson's car was enough and quit looking for Robinson after his father drove them away from Allen Road, under the Court of Appeals' decision and the State's theory this still would not constitute withdrawal, and the purported mutual combat would still be ongoing if Robinson and Petitioner saw each other a week later and Robinson began firing.

There has to be some point at which mutual combat ends, and South Carolina law defines that point as when a combatant withdraws from the scene of combat with his adversary's knowledge of the withdrawal. The Court of Appeals holding directly conflicts with that law.

III. THE STATE'S ARGUMENTS RELY ON UNSUPPORTED FACTUAL STATEMENTS.

The State argues the Court should affirm based on several misreadings of the record. Those factual points are central to the issues before this Court.

First, on multiple occasions the State asserts that Petitioner "tried to shoot Robinson but the gun jammed" and in support relies entirely on Petitioner's statement to the police. (Resp't's Br. 6, 40, 42, & 44.) To the contrary, Petitioner unequivocally stated to the police that the gun was jammed when he and his father were on Bryant Road and because he knew the gun was jammed *he did not point the gun at or try to shoot Robinson on Bryant Road*. Petitioner stated to the police:

Petitioner: What you mean the first we caught his ass? But the shit wouldn't shoot. It wouldn't shoot. It wouldn't shoot.

Investigator: So you saw him on Bryant Road?

Petitioner: That's how we knew where he was at. 'Cause, alright.

Investigator: Alright, let's try to figure this out.

...

Investigator: Did you come across him over there?

Petitioner: Yeah we did, but that shit wouldn't shoot. It wouldn't, the gun wouldn't shoot.

Investigator: So what were you shooting at then?

Petitioner: Him, but I didn't shoot. It didn't go off. The gun didn't go off.

Investigator: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?

Petitioner: *I didn't even point the gun at him.* The gun just wouldn't go off. I knew it wasn't, 'cause when you cocked it back it wouldn't . . . It jammed up on me. So that shit was a no go. . . .

Petitioner: The first time we went down there ain't nothing happened 'cause we saw him but it didn't go down like wanted it to. If it would have went down like that we wouldn't even be here and nobody would know nothing cause it was a dead road and nobody would've knew nothing but the gun just didn't go off.

(State's Ex. 38, Video 7 (emphasis added).)

Second, Respondent asserts that there was "crossfire" between Petitioner and Robinson, that the victim and other children were caught in that "crossfire," and that "it is just as probable that one of Petitioner's bullets could have injured or killed an innocent bystander" as Robinson's bullet. (Resp't's Br. 17, 27, 31.) To the contrary, the record makes clear that Petitioner fired only into Robinson's unoccupied vehicle, that those shots were fired at one end of Allen Road, and that the location where Robinson fired the fatal shot and where the children were playing was at the other end of Allen Road. (R. 303,-03, 322-25, & 488-529; State's Ex. 38, Videos 1 & 3.) Petitioner never fired a round in the area where the children were playing, much less fired a round where the children were in the "crossfire." Petitioner fired into an unoccupied vehicle, and his shots therefore could not have injured or killed an innocent bystander.

IV. PETITIONER PRESERVED FOR APPELLATE REVIEW HIS ARGUMENT FOR A DIRECTED VERDICT ON THE BASIS OF A WITHDRAWAL FROM COMBAT.

Petitioner preserved as a basis for reversal the argument that any mutual combat had ended at the time Robinson fired the fatal shot, and thus, the trial court erred in not granting Petitioner a directed verdict on the murder charge.

To preserve an error at trial, a party must raise the issue to and obtain a ruling from the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However, the issue preservation rule does not require a party to use a specific phrase or exact legal terminology to raise an issue to the trial court. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 902, 907 (2007) (finding argument preserved despite not being phrased “in the exact terms” used on appeal because the objection was stated at trial with “sufficient specificity to allow the trial court to rule on the issue”); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding an argument preserved despite the failure to use exact words in objecting because it was clear from the record that the argument was made on that ground). A party preserves an issue for appeal whenever the trial judge would have been reasonably able to understand the nature of the error alleged. *See, e.g., Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (“[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.”).

In support of this motion for a directed verdict on the murder charge, Petitioner raised the argument that to the extent there was any mutual combat, it ended before Robinson fired the fatal shot, as shown by the following:

- Petitioner argued there was “no evidence of mutual combat” (R. 512) and “no evidence of back and forth or a running gun battle or any kind of mutual combat” (R. 512), thus arguing there was no mutual combat at the time Robinson fired the fatal shot.
- Petitioner also more specifically argued that at the time Robinson fired the fatal shot, Petitioner did not even know Robinson was there—that “he never saw Mr. Robinson”—

and that therefore there was no mutual combat at that time—"You don't see somebody you can't be running a gun battle." (R. 513.)

- Upon the trial court rejecting Petitioner's argument that there generally was no mutual combat, Petitioner then continued his directed verdict argument as to mutual combat arguing "the problem in the next step of [the] mutual combat" analysis "is that obviously when you begin to retreat it ends the mutual combat." (R. 518.) Petitioner more specifically argued: "And in this instance clearly the evidence is that [Petitioner's father and Petitioner] drove the truck down Allen Road, took a left on Marshland Road and were some considerable distance away at the time the three shots were fired. . . . And therefore the mutual combat had ended." (R. 518.)
- After arguing that any mutual combat ended before Robinson fired the fatal shot, the colloquy between the trial court and Petitioner's counsel blurred into a discussion of both the directed verdict motion and the jury charges to be given. However, despite the blurred discussion, the trial court found there was no evidence to support Petitioner's argument that any mutual combat had ended and therefore rejected both the directed verdict argument and the argument for a jury charge on the end of mutual combat. (R. 519-21.)

Accordingly, Petitioner raised to the trial court the argument that any mutual combat ended before Robinson fired the fatal shot, the trial court refused to grant a direct verdict on that ground, and the issue is preserved.

V. PETITIONER MADE NO ATTEMPT TO MURDER ROBINSON AND THERE IS NO EVIDENCE SUFFICIENT TO CONSTITUTE SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF AN ATTEMPT.

As set forth in Petitioner's Brief, neither the Court of Appeals nor the State identify any act by Petitioner that constitutes an attempt to kill Robinson. While the insufficiency of the evidence relied upon by the Court of Appeals is addressed in Petitioner's Brief, the State now attempts to bolster the Court of Appeal's opinion by pointing to evidence not relied on by the Court of Appeals—a 911 call and additional statements by Petitioner to the police—as supporting the denial of Petitioner's directed verdict motion. (Resp't's Br. 40).

First, the 911 call does not provide substantial circumstantial evidence of any attempt by Petitioner to kill Robinson. The 911 caller stated that a grey Lexus driven by Robinson and a grey truck were shooting at each other. (State's Ex. 2.) The caller did not give any indication that shots were actually being exchanged between the vehicles. The caller's statement was equally consistent with indicating that Petitioner had been firing at Robinson's parked, unoccupied vehicle, and Robinson then firing at Petitioner's vehicle as it drove away. The caller also did not make any statement as to who was firing any weapon. A simple statement that gunfire had been exchanged by people who were now in a grey Lexus and a grey truck cannot constitute substantial circumstantial evidence that Petitioner fired a weapon at Robinson.

Second, the State points to numerous statements made by Petitioner while being interviewed by the police. (Resp't's Br. 40.) While those statements admittedly indicate Petitioner fired his weapon at Robinson's unoccupied vehicle, that Petitioner wanted to harm Robinson, and wanted the opportunity to engage in combat with Robinson, the statements contain no admission that Petitioner ever undertook any act that could constitute an attempt to murder Robinson.

CONCLUSION

For the reasons set forth herein and in Petitioner's Brief, the Court should reverse and vacate Petitioner's convictions.

Respectfully submitted,



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AUG 19 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

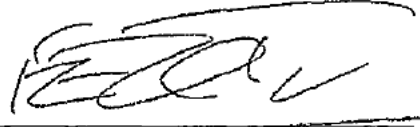
CERTIFICATE OF SERVICE

The undersigned certifies on August 19, 2019, he caused a copy of the foregoing Reply Brief of Petitioner to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Aaron Scott Young Jr., Petitioner.

Appellate Case No. 2018-001861

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Beaufort County
Thomas W. Cooper Jr., Circuit Court Judge

Opinion No. 27942
Heard November 20, 2019 – Filed February 5, 2020

AFFIRMED

F. Elliott Quinn IV, of The Steinberg Law Firm, LLP, of Summerville, and Jennifer K. Dunlap, of Parker Poe Adams & Bernstein, LLP, of Charleston, for Petitioner.

Attorney General Alan Wilson, Deputy Attorney General Donald J. Zelenka, and Senior Assistant Deputy Attorney General Melody J. Brown, all of Columbia; and Solicitor Isaac McDuffie Stone III, of Bluffton, for Respondent.

ACTING CHIEF JUSTICE KITTREDGE: In the course of a gun battle between mutual combatants, a bullet fired at Petitioner Aaron Young Jr. (Young

Jr.) missed its intended mark and killed an unintended victim; all involved in the gun battle, including Young Jr., were charged with murder. The heart of this case deals with the reach of the doctrines of mutual combat and transferred intent.

Young Jr. and his father Aaron Young Sr. (Young Sr.) willingly engaged a rival, Tyrone Robinson, in a cat-and-mouse gun battle in a residential neighborhood. The gun battle came to a tragic conclusion when Robinson shot and killed an unintended victim, an eight-year-old child who was playing in the area. The State charged all three combatants with the murder of the victim. Robinson's murder charge stemmed from a straightforward application of the doctrine of transferred intent. The Youngs' murder charges stemmed from an application of the doctrine of mutual combat,¹ under which each combatant is criminally responsible for a death caused by any of the other combatants, regardless of whether he fought with or against the killer-combatant.

Today, we hold mutual combat can properly serve as the basis for a murder charge for the death of a non-combatant under the "hand of one is the hand of all" theory of accomplice liability. When two or more individuals engage in combat via a reckless shootout, they collectively trigger an escalating chain reaction that creates a high risk to any human life falling within the field of fire. In that type of gunfight, *all* individuals are willing to use lethal force and display a depraved indifference to human life. More importantly, an innocent bystander would not be shot but for the willingness of all combatants to turn an otherwise peaceful environment, often a residential or commercial setting, into a battlefield. In a real sense, each combatant aids and encourages all of the other combatants—whether friend or foe—to create the lethal crossfire. We therefore find the law sanctions holding Young Jr. responsible for the actions of Robinson in causing the victim's death. Both men were equally culpable. As a result, we affirm Young Jr.'s murder conviction and sentence.²

¹ To be clear, the Youngs were charged with murder, not mutual combat. Of course, mutual combat is not a stand-alone crime in South Carolina. Rather, it is a theory of criminal liability that underlies a recognized crime such as murder or manslaughter. As we will explain later, the mutual combat doctrine is most commonly used to negate self-defense, but may also be used as a basis to sustain a murder or manslaughter conviction.

² Young Jr. also appeals his conviction for the attempted murder of Robinson. At one point in the combat, Young Jr. had his gun pointed at Robinson. When Young Jr. pulled the trigger, the gun jammed and did not fire. This action resulted in a

I.

Prior to the date of the gun battle, Robinson and Young Jr. had a history of violent confrontations with one another. On the day in question, Robinson drove to the Youngs' house and began arguing with Young Jr. outside, eventually pulling out a .38 caliber revolver and moving toward Young Jr. Young Sr. was present and attempted to take Robinson's gun away. While the two struggled for possession of the weapon, the revolver discharged. Young Sr. backed away, but Robinson fired once or twice more at the ground by Young Sr.'s feet. Robinson then returned to his vehicle and sped away.

This confrontation began a series of armed exchanges between the Youngs and Robinson across multiple residential neighborhoods over the next hour, wherein one side would catch up with the other, shoot, and flee. During the penultimate exchange, the Youngs were unable to locate Robinson but saw his unoccupied vehicle, so Young Jr. "swiss cheese[d] that car"—shooting at it over twenty times—despite the fact that he (Young Jr.) had just seen a group of children playing on a trampoline a short distance away. As the Youngs fled again, Robinson emerged from hiding and shot at their car three times, missing the Youngs, but tragically hitting the victim, who had been playing on the trampoline. Following their arrests, all three men were charged with the victim's murder.

Prior to the start of trial, Young Jr. moved to dismiss the murder indictment, arguing the charge was based on the theory of mutual combat, which was not a stand-alone theory of criminal responsibility in South Carolina, but instead a limitation on self-defense.³ The State acknowledged that, prior to charging Young Jr., the doctrine of mutual combat had not been used to impose liability for the death of a non-combatant. *See, e.g., State v. Brown*, 108 S.C. 490, 499, 95 S.E. 61, 63 (1918) ("[E]very one [sic] is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and *death results to one of the participating parties*, every

charge of attempted murder. We affirm the conviction for attempted murder pursuant to Rule 220(b), SCACR, as any argument that Young Jr. did not attempt to kill Robinson is manifestly without merit.

³ *See, e.g., Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) ("Mutual combat bars a claim of self-defense because it negates the element of 'not being at fault.'" (citing *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495–96 (1973))).

one [sic] engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences." (emphasis added)). The State argued it was a reasonable extension of the mutual combat doctrine to impose liability on all combatants for the death of an innocent bystander as well. Importantly, Young Jr. conceded the theory of mutual combat *would* apply to hold Young Jr. responsible for murder if, for example, Robinson had shot and killed Young Sr. instead of the victim because Young Sr. was a co-combatant. However, because the victim was not a combatant, Young Jr. argued he could not be found criminally responsible for the victim's murder.

The trial court denied Young Jr.'s motion to dismiss the indictment, noting that in mutual combat situations all participating parties were responsible for their fellow combatants' actions resulting in injuries to other participants in the combat. Although the experienced trial judge recognized the facts of this case represented an extension of the existing case law, he found Young Jr. could be held liable for the murder of the victim based on the theories of mutual combat and transferred intent, agreeing with the State's argument that

it would be very difficult to understand how if multiple people are shooting at each other and someone in the group is killed and everyone's responsible how they would also not be responsible if an innocent third party was shot.

Comparing this mutual combat scenario with the "hand of one is the hand of all" doctrine, the trial judge concluded, "[I]t is not the identity of the victim that controls, it is the intent, the state of mind which led to the mutual combat in the first place and the consequences that followed from that."

Ultimately, the jury convicted Young Jr. of murder, and the trial court sentenced him to thirty years' imprisonment. Young Jr. appealed, and the court of appeals affirmed. *State v. Young*, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018). We granted Young Jr.'s petition for a writ of certiorari to review the decision of the court of appeals.

II.

Young Jr. argues mutual combat cannot be used as the grounds on which to base criminal responsibility for murder, but instead may only be used as a limitation on self-defense. We disagree.

A.

"The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003). To constitute mutual combat, there must be a mutual intent and willingness to fight, "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." *Graham*, 260 S.C. at 450, 196 S.E.2d at 495; *see also Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered when both parties contribute to the resulting fight."); *Brown*, 108 S.C. at 499, 95 S.E. at 63 ("[T]o constitute mutual combat, it is not necessary that there should be a positive agreement between the participating parties to enter the combat; it is sufficient if they [willfully] enter into the conflict, upon the impulse of the moment."). The State is required to prove the rival combatants were armed for the mutual combat with deadly weapons and each combatant knew the others were armed. *Taylor*, 356 S.C. at 233–34, 589 S.E.2d at 4–5. Mutual combat may be the basis of either a murder or manslaughter conviction depending on the combatant's state of mind at the time of the killing, i.e., whether the combatant acted with malice aforethought. *Id.* at 232, 589 S.E.2d at 3–4 (quoting *State v. Andrews*, 73 S.C. 257, 260, 53 S.E. 423, 424 (1906)).

The majority of jurisdictions impose criminal responsibility on all combatants for the consequences of mutual combat. In line with the majority approach, South Carolina law has long recognized that criminal liability may be imposed on all combatants for the death of one of the participating parties because all are presumed to know and intend the consequences that naturally flow from their unlawful acts. *Brown*, 108 S.C. at 499–500, 95 S.E. at 63. In South Carolina and many other jurisdictions, the criminal liability stemming from mutual combat does not depend on which side(s) the combatant or the deceased fought. *Id.* Thus, for example, a combatant may properly be found guilty of murder for the death of a friendly co-combatant at the hands of a rival combatant. *See id.* In the eyes of the law, it does not matter that the combatant did not intend any harm to the friendly co-combatant. *People v. Sanchez*, 29 P.3d 209, 223 (Cal. 2001) (Kennard, J., concurring); *see also Brown*, 108 S.C. at 491–500, 95 S.E. at 61–63 (upholding the manslaughter convictions of three non-striking employees/combatants who participated in a fight between strikers and non-strikers that resulted in the death of a striker at the (accidental) hands of a fellow striker). Rather, the death of the friendly co-combatant was a harm that both in kind and degree was within the foreseeable risks the participants expected and intended to result from the mutual combat. *See Sanchez*, 29 P.3d at 223 (Kennard, J., concurring); *Roy v. United States*, 871 A.2d 498, 507–09 & n.10 (D.C. 2005) (collecting cases);

Commonwealth v. Santiago, 681 N.E.2d 1205, 1215 (Mass. 1997) (noting death is "a natural result of a shootout").

However, the existence of mutual combat is not wholly dispositive of criminal liability. A combatant may withdraw from mutual combat if he "endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary." *Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (citation omitted). Should a combatant satisfy the requirements to withdraw from mutual combat, he may no longer be held liable for the actions of his former co-combatants. *Cf. id.* (explaining that although a mutual combatant ordinarily may not validly claim self-defense, if he withdraws from the mutual combat, his right to self-defense is restored); *State v. Hendrix*, 270 S.C. 653, 659 n.3, 244 S.E.2d 503, 506 n.3 (citing 40 C.J.S. *Homicide* §§ 121, 133 (1944)) (explaining that withdrawing from the conflict restores a defendant's right to self-defense).

B.

No appellate court in South Carolina, however, has addressed the import of the mutual combat doctrine on the death of an innocent bystander. Jurisdictions that have considered a factual scenario analogous to the present case are nearly unanimous in finding mutual combat may serve as the basis for criminal liability for all combatants charged with murder or manslaughter, regardless of who fired the fatal shot. A number of jurisdictions reached this result under an aiding and abetting theory similar to South Carolina's "hand of one is the hand of all" doctrine. *See, e.g., State v. Spates*, 779 N.W.2d 770, 777–79 (Iowa 2010) (collecting cases and adopting this approach).

For example, in *Alston v. State*, the Court of Appeals of Maryland affirmed a second-degree murder conviction of a participant in a gun battle, despite proof that the innocent bystander was shot and killed by a member of the rival group. 662 A.2d 247, 247–48 (Md. 1995), *aff'g* 643 A.2d 468 (Md. Ct. Spec. App. 1994). In rejecting the defendant's argument that he did not aid and abet his rival in killing the bystander, the court explained the "argument rests heavily on [the defendant] disassociating himself from the [rival group's actions] and from the particular shot that killed [the bystander]. *The relevant frame of reference, however, is [the defendant's] participation in the gun battle.*" *Id.* at 252 (emphasis added). The court found significant the fact that both groups "were armed and prepared to do battle whenever and wherever their forces encountered one another" and "opened fire, returned fire, and continued to fire in mindless disregard of the lives of the people on the street and in the surrounding houses." *Id.* Likewise, the court determined the firefight demonstrated each participant was willing to use lethal

force and exhibited the malice necessary to support a second-degree murder conviction. *Id.* The court concluded that "all of the participants, driven by an unwritten code of macho honor, tacitly agreed that there would be mutual combat. . . . *Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved[-]heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare.*" *Id.* at 254 (emphasis added).

Similarly, in *People v. Russell*, the Court of Appeals of New York upheld a defendant's second-degree murder conviction even though the State was unable to establish which of the three combatants fired the shot that fatally wounded an innocent bystander. 693 N.E.2d 193, 194 (N.Y. 1998). The court explained the State "was not required to prove which defendant fired the fatal shot when the evidence was sufficient to establish that each defendant acted with the mental culpability required for the commission of depraved[-]indifference murder, and *each defendant 'intentionally aided' the defendant who fired the fatal shot.*" *Id.* at 195 (emphasis added). The court rejected the co-combatants' arguments that, as adversaries in a gun battle, they did not "share[] the 'community of purpose' necessary for accomplice liability," explaining that each of their respective actions made the gun battle possible, as there would not have been a firefight at all had they not been shooting at one another. *Id.* at 195–96 (discussing *People v. Abbott*, 445 N.Y.S.2d 344, 347 (App. Div. 1981),⁴ and citing, *inter alia*, *People v. Fabian*, 586 N.Y.S.2d 468, 471 (Sup. Ct. 1992) ("Although [the] defendants were trying to injure, if not kill each other, at the very same time they acted in concert to create an explosive condition which resulted inevitably in [the victims' death and injuries].")). The court therefore held the evidence was sufficient for the jury to find all three co-combatants acted with the mental culpability required for depraved-indifference murder, and the three men "*intentionally aided and encouraged each other to create the lethal crossfire that caused the death of [the victim].*" *Id.* at 196 (emphasis added).

⁴ In *Abbott*, the court held a defendant/drag racer equally complicit in the death of a bystander killed by the defendant's rival racer because the defendant's "conduct made the race possible." 445 N.Y.S.2d at 347. In particular, the court found that the defendant "accepted [his rival racer's] challenge and shared in the venture. Without [the defendant's] aid[, the rival racer] could not have engaged in the high-speed race which culminated in the tragedy. The accident was 'the culmination of a continuum of events' in which both [racers] participated." *Id.* (citation omitted).

We find the aiding and abetting approach outlined in *Alston* and *Russell* dovetails with our "hand of one is the hand of all" doctrine. See, e.g., *State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 276–77 (2017) (explaining that under the "hand of one is the hand of all" doctrine, one who joins with another to accomplish an illegal purpose—whether by *encouraging or aiding and abetting*—is guilty as a principal). We agree with those jurisdictions that have concluded co-combatants who aid and incite one another to engage in the fight that leads to the death or injury of an innocent bystander are equally criminally liable.⁵ As a result, we extend our mutual combat jurisprudence to permit finding all mutual combatants criminally liable in situations where an innocent bystander is killed by one of the combatants.⁶ Cf. *Roy*, 871 A.2d at 507 ("We think it important to note that while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a 'gun battle' on city streets, as in this case, is relatively new. While urban gun battles years ago involved revolvers or clipped pistols of limited fire power, they have now escalated

⁵ See, e.g., *Reyes v. State*, 783 So.2d 1129, 1132–33 (Fla. Dist. Ct. App. 2001); *March v. State*, 458 So.2d 308, 309 (Fla. Dist. Ct. App. 1984) (per curiam); *Spates*, 779 N.W.2d at 779–80 (discussing with approval *State v. Brown*, 589 N.W.2d 69, 74–75 (Iowa Ct. App. 1998), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22 (Iowa 2001)); *State v. Garza*, 916 P.2d 9, 15 (Kan. 1996); *Alston*, 662 A.2d at 252–54; *Santiago*, 681 N.E.2d at 1215; *Russell*, 693 N.E.2d at 195–96.

⁶ Other jurisdictions have reached a similar result by finding the mutual combat was the proximate cause of the innocent bystander's death, rather than by applying an aiding and abetting theory. See *Spates*, 779 N.W.2d at 777 (collecting cases). In doing so, the courts held the defendant criminally responsible as a principal on the basis of his own conduct. See, e.g., *Sanchez*, 29 P.3d at 217–20 (collecting cases); *id.* at 223 (Kennard, J., concurring); *Roy*, 871 A.2d at 507–08 & n.10 (collecting cases); *Brown*, 589 N.W.2d at 74–75; *Phillips v. Commonwealth*, 17 S.W.3d 870, 875 (Ky. 2000); cf. *Commonwealth v. Gaynor*, 648 A.2d 295, 297, 299 (Pa. 1994) (reaching the same result under a state statute dealing with mutual combat and transferred intent). We view the proximate cause theory of liability and the "hand of one is the hand of all" theory of liability as overlapping theories, tightly intertwined with one another. See, e.g., *Santiago*, 681 N.E.2d at 1215 (noting that a defendant may be the proximate cause of a bystander's death because death is the natural result of a shootout, and because "the shootout could not occur without participation from both sides"); *People v. Daniels*, 431 N.W.2d 846, 851 (Mich. Ct. App. 1988).

to the use of automatic and semiautomatic weapons. The results are pocket wars with no rules of engagement resulting in a highly increased risk to noncombatants. It is this increased risk to innocent bystanders which justifies the application of proximate cause liability to those participants who willfully choose to engage in these battles.").

C.

As applied here, the Youngs and Robinson were clearly engaged in mutual combat.⁷ In a real sense, although they were adversaries, the Youngs and Robinson jointly incited one another to continue the cat-and-mouse gun battle that resulted in the victim's death. While Robinson may have been the man who pulled the trigger and formally killed the victim, he would not have fired that shot had it not been for the "aid" and "encouragement" of the Youngs. To myopically narrow the focus only to Robinson's actions misses the point.

We therefore find the deadly homicidal force here was not the single bullet that struck and killed the victim, but rather a collective fusillade that spanned several neighborhoods over the course of one hour. *See Alston*, 643 A.2d at 469; *see also Roy*, 871 A.2d at 507 n.10 ("[C]ourts have determined that the combined hail of bullets that result from such a battle are jointly responsible for the fatal injury, such that a determination of which defendant's bullet 'actually' caused the death is unnecessary."). The Youngs and Robinson voluntarily and jointly created a battlefield that encompassed any number of innocent and unwilling bystanders—including young children like the victim. *See Russell*, 693 N.E.2d at 195. Given the Youngs and Robinson's collective actions in carrying out the gun battle, it is reasonable for the law of mutual combat to serve as the foundation of a murder charge—to hold each one responsible for both his own actions and the actions of the others. *Id.* Because we find the deadly force used in this case was the result of collective action, we hold the responsibility for the victim's death was collective as well. Accordingly, we hold Young Jr. was properly charged with the victim's murder under the theory of mutual combat.

⁷ Young Jr. moved for a directed verdict on the murder charge by claiming there was no evidence he and Robinson were engaged in mutual combat. The trial court denied the motion for a directed verdict, finding the evidence showed the shootout was the culmination of a running argument between the Youngs and Robinson. We agree. Any argument that there was no evidence of mutual combat is manifestly specious, as the evidence of mutual combat was overwhelming.

III.

Today, we extend our jurisprudence and hold that each participant who willingly engages in mutual combat may be held accountable for the death or injury of an innocent bystander resulting from that confrontation. As each combatant aids and encourages the others to fire and continue firing the hail of bullets that results in a victim's death or injury, each may be found guilty under the "hand of one is the hand of all" theory of accomplice liability. Accordingly, we affirm the court of appeals' decision upholding Young Jr.'s convictions and sentences.⁸

⁸ As a final matter, at trial, Young Jr. asked the trial court to instruct the jury on the end of mutual combat, claiming that by fleeing after "swiss cheesing" Robinson's car, he had ended the fight. The trial court refused to give such an instruction, stating that the Youngs' flight at that point was more akin to a temporary retreat than an unequivocal cessation of the gun battle, which the law requires. Pointing to the fact that the fight spanned several neighborhoods, the trial court found it "unlikely that the shooting of the car and then leaving is a signal that [the Youngs] have chosen at that point in time to fold their tents and move away and that the battle is over and truce has been declared." *See Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (explaining that in order to withdraw from mutual combat, the defendant must—before the homicide is committed—"withdraw[] and endeavor[] in good faith to decline further conflict, and, either by word or act, *make[] that fact known to his adversary*" (emphasis added) (citation omitted)). In support of the trial court's observation, we note that Young Jr. admitted to police that after Robinson fired the shots at the Youngs' fleeing truck following the "swiss-cheesing" of Robinson's car, he yelled at his father to turn the truck around and return to the gun battle. There is no indication that the Youngs' retreat after "swiss-cheesing" Robinson's car was any different than any of their previous—and, more importantly, *temporary*—retreats. Significantly, Young Jr. made no attempt to communicate to Robinson that *this* retreat was a complete withdrawal from the ongoing gun battle.

We nevertheless need not reach the challenge of Young Jr. that the trial court's failure to instruct the jury on the end of mutual combat was reversible error. This is because of Young Jr.'s concession at trial that he would have been guilty of murder via the mutual combat doctrine had Robinson shot and killed Young Sr. instead of the victim. In so conceding, Young Jr. tacitly admitted the mutual combat was ongoing at the time of the victim's death. That concession removed any basis on which to instruct the jury on the end of mutual combat.

AFFIRMED.

**JAMES, FEW, JJ., and Acting Justice Aphrodite K. Konduros, concur.
HEARN, J., dissenting in a separate opinion.**

JUSTICE HEARN: I respectfully dissent. While I agree with the majority to affirm the conviction for attempted murder, I disagree with extending the doctrine of mutual combat to hold Aaron Young Jr. responsible for the murder of the bystander victim. Specifically, I find the lapse of time between when the gun shots were fired at Robinson's car and when the fatal shots occurred prevents the extension of the mutual combat doctrine under our "hand of one is the hand of all" theory. Moreover, even if the doctrine applied here, the trial court erred in failing to charge the jury on the end of mutual combat.

In extending the doctrine of mutual combat, the majority relies on several cases from other jurisdictions, all of which are factually and materially distinct from this case. Every case cited by the majority involves individuals or groups on opposite sides who engaged in a gun battle where both sides *contemporaneously* opened fire on one another. There, the gunfire was characterized as the "combined hail of bullets," "shower of bullets," "lethal crossfire," and "gang-style gun play" in which both parties participated and induced the other to engage in a battle that proximately caused the death of an innocent bystander. Here, the majority portrays the events of this case as a continuous, ongoing gun battle in which the parties' collective action resulted in a bystander's death. However, unlike the cases on which the majority relies, there is no evidence to support that a simultaneous exchange of bullets occurred and caused the victim's death. Rather, a considerable amount of time passed between Young Jr.'s attack on Robinson's empty car and Robinson's retaliatory shooting which killed the victim. Indeed, a neighbor testified at trial that approximately ten minutes elapsed between these two events. Even the trial court's reasoning for charging mutual combat contemplated only the scenario where "multiple people are shooting at each other." Moreover, at oral argument, counsel for both parties acknowledged that a concrete lapse of time in which the "warfare" had subsided would prevent the State from charging a defendant with murder under a mutual combat theory. While it may be sound public policy to extend the doctrine under circumstances analogous to those in the cases cited, and I would be inclined to do so in the proper case, I disagree with the application of the doctrine under the facts presented here.

Even if the mutual combat charge was appropriate, the trial court erred in failing to instruct the jury on the end of mutual combat. The majority declines to reach this issue because it believes Young Jr. conceded at trial that he would have been guilty of murder through mutual combat if Robinson had shot and killed Young Sr. instead of the victim. However, in my view, this interpretation misstates the record. To gain a better understanding of the mutual combat doctrine and its application in the bystander context, the trial judge posed a hypothetical to

Young Jr., stating "if the Youngs and Mr. Robinson are out there shooting at each other, that if either one of them got shot and killed, that everybody would be guilty under mutual combat." Young Jr. agreed, stating "there's no question but the fact that if Aaron Sr. had gotten shot, then everybody would be responsible, but that's not what happened." I understand his response to the judge's hypothetical to be in the context expressed in *State v. Brown*, providing for criminal liability through mutual combat when another combatant is killed, and in the cases cited by the majority, where both parties are shooting at each other simultaneously and a bystander is killed. I do not believe there was any concession under these facts, where the Youngs clearly were not engaged in a shootout with Robinson at the time he fired the fatal shots.

In addition to relying on defense counsel's ostensible concession, the majority seems to imply that the charge was wholly unnecessary as a matter of law because there was no indication of withdrawal. As the majority notes, the trial court believed the facts evidenced a "temporary retreat" rather than a withdrawal ending the combat. While this may have been the case, and the jury could have agreed, the fact remains that if there was any evidence to support withdrawal, the trial judge should have given the charge. *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011) ("If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction."); *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001) ("If there is any evidence to support a charge, the trial judge should grant the request."); *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence."). At a minimum, the Youngs' conduct of driving away constituted some evidence of their withdrawal such that a charge on this issue was warranted. Therefore, I would affirm the conviction for attempted murder and reverse on the murder conviction and jury charge issues.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

RECEIVED

FEB 19 2020

S.C. SUPREME COURT

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

PETITION FOR REHEARING

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ATTORNEYS FOR PETITIONER

Pursuant to Rule 221(a), SCACR, Petitioner Aaron Scott Young, Jr. respectfully petitions the Court for a rehearing of its Opinion No. 27942, filed February 5, 2020, based upon the following points overlooked or misapprehended.

I. EVIDENCE EXISTED TO SUPPORT A JURY CHARGE ON THE END OF MUTUAL COMBAT AND TRIAL COUNSEL DID NOT CONCEDE THE ISSUE.

Petitioner asserted the trial court's failure to give a requested jury charge on the end of mutual combat was error, and the Court rejected this challenge and affirmed on the ground that at trial "Young Jr. tacitly admitted the mutual combat was ongoing at the time of the victim's death" and "[t]hat concession removed any basis on which to instruct the jury on the end of mutual combat." Petitioner submits that as is made clear by considering the record in relation to the "concession" relied upon by the Court, the "concession" was not a concession as to the existence of mutual combat at the time Petitioner and his father were leaving Allen Road and turning onto Marshland Road.

In context, the "concession" relied upon by the Court in finding a jury charge on the end of mutual combat was not warranted is as follows:

The Court: Mr. Voux [*sic*], I'm looking at the Brown case and it talks about mutual combat as you know. But one of the things that it says is that if two persons or two groups of people are fighting in mutual combat and deadly weapons are used, and everybody knows that deadly weapons are being used, and death results to one of the participating parties, it doesn't matter which side as I read the case, could be on the side of the person who is killed or on the side of the person who's doing the killing because that's what the case says, it makes no difference as to whether the shooter was on one side or the other if all of them are out there participating then all are equally responsible.

So if we just look at that part and it seems that without transferred intent of course which is what carries this case to little Khalil that if the Young's [*sic*] and Mr. Robinson are out there shooting at each other that if either one of them got shot and killed that

everybody would be guilty under mutual combat. Do you read that into that case?

Mr. Vaux: Your Honor, I think I understand what you're saying. I think I agree with you. The word that you used that distinguishes Brown from us is you said participating parties.

The Court: Right.

Mr. Vaux: Now, there's no question but the fact that if Aaron Senior had gotten shot —

The Court: Right.

Mr. Vaux: — then everybody would be responsible.

The Court: Right.

Mr. Vaux: Okay. But that's not what happened.

The Court: Right.

Mr. Vaux: Okay. We have an unrelated uninvolved unparticipating third party.

The Court: Right.

Mr. Vaux: And we know who killed this unparticipating third party.

The Court: Right.

Mr. Vaux: So it's totally distinguishable. And I think the word that you read that's absolutely vital —

The Court: Right.

Mr. Vaux: — is that a participant — I think the phrase

Mr. Vaux: I know you used the word participate.

The Court: That's what it is. You're right.

Mr. Vaux: And that's the whole key.

(R. 225–26.) Read in context, the “concession” there is not a “concession” related to when mutual combat began or ended and therefore has no impact on the availability of a jury charge on the end of mutual combat.

First, the “concession” was made in the context of a motion to quash the murder indictment. The premise of the motion to quash was that the indictment charged murder based on mutual combat where a third-party, not a combatant, died and that does not constitute murder through mutual combat. Petitioner’s counsel’s answer was limited to that issue, and at that point in the trial, no issue as to the end of mutual combat had been raised and no evidence had been presented on that issue.

Second, the “concession” was made in response to a hypothetical question posed by the Court in relation to the motion to quash. The Court asked: “So *if we just look at that part . . . if the Young’s and Mr. Robinson are out there shooting at each other* that if either one of them got shot and killed that everybody would be guilty under mutual combat. Do you read that into that case?” (R. 225 (emphasis added).) Therefore, Petitioner’s trial counsel’s “concession” was a response to a hypothetical posed by the Court in which it was assumed that the Youngs and Robinson were shooting at each other at the time of the death. Read in that context, the “concession” is not related to and has no impact on the request for a jury charge on the end of mutual combat.

Setting aside the “concession” as unrelated to the request for a charge on the end of mutual combat, the trial court’s failure to give the request charge was reversible error. “[I]f any evidence exists to support a charge, it should be given” and a “trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). Here, there was some evidence that any mutual

combat had ended such that it was reversible error for the trial court to refuse to give the requested charge.

At the time Robinson fired the fatal shot, Petitioner was fleeing the area, Robinson was in a hidden position, Robinson knew Petitioner was fleeing the area, and Petitioner had no knowledge of Robinson hiding in that location. While apparently not reaching the issue due to the “concession” by Petitioner’s counsel, the Court expressed skepticism as to whether Petitioner had communicated to Robinson “that *this* retreat was a complete withdrawal from the ongoing gun battle.” In response, Petitioner first submits that what his fleeing the scene communicated to Robinson as to whether any fight had ended was an issue for the jury to decide.

Second, South Carolina law makes clear that withdrawal does not require that one leave his opponent safe for all time, rather the law on withdrawal turns on whether a party left his opponent in a safe position such that further violence is not warranted. In *State v. Bryant*, the Court indicated that a party leaving the scene of the violence would be enough to indicate to his opponent that he was withdrawing, stating: “If appellant truly intended to withdraw he could have easily left the open parking lot.” *State v. Bryant*, 336 S.C. 340, 346, 520 S.E.2d 319, 322 (1999). Nothing in the *Bryant* opinion indicates that the appellant leaving the scene could be only a retreat and therefore not enough to constitute withdrawal.

Moreover, any holding that Petitioner fleeing the scene was not sufficient to constitute “a complete withdrawal from the ongoing gun battle” raises the problem of what is the outer limit of the mutual combat, “hand of one is the hand of all” murder doctrine adopted by the Court. As highlighted by Justice Kennard of the California Supreme Court in his concurrence in the *People v. Sanchez* decision, cited in the Court’s opinion here, there must be limits on mutual combat:

History sadly establishes that killings motivated by revenge may occur in cycles lasting many years and even generations. Although those whose conduct

precipitates these vendetta cycles, and all who participate in continuing them, must bear moral responsibility for the ensuing bloodshed, the criminal law will not impose what in theory could be unbounded liability for retaliatory killings, and courts must try to draw appropriate lines to mark the outer limits of legal causation in these situations.

People v. Sanchez, 29 P.3d 209 (2001) (Kennard, J. concurring)

Petitioner submits that criminal liability for mutual combat cannot be unbounded. There must be temporal limits on mutual combat. Had Robinson seen Petitioner a week later, fired at him from a hidden position where Petitioner did not know he was present, and an innocent third-party died from being struck by Robinson's bullet, certainly that would be beyond the scope of the "ongoing gun battle" and not sufficient to convict Petitioner of murder through a mutual combat theory. Petitioner submits that like that hypothetical, his case falls outside the limits of mutual combat. When he fled the scene, Robinson was in a hidden, safe location. Robinson could have remained hidden and could have contacted the police. The onus should be on Robinson to remain hidden and contact the police, and Petitioner should not be held responsible for Robinson's failure to do so. While Petitioner contends a directed verdict should have been granted on the murder charge based on any mutual combat having ended, at a minimum there is an issue here for a jury to determine as to whether any mutual combat ended prior to when Robinson fired the fatal shot.

II. THE DECISION HOLDS THERE WAS EVIDENCE OF MUTUAL COMBAT AT THE TIME OF THE FATAL SHOT WHEREAS THE RECORD SHOWS THERE WAS NO MUTUAL COMBAT AT THAT TIME.

The Court's opinion states that mutual combat requires (1) a mutual intent and willingness to fight manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat, (2) the combatants were armed with deadly weapons, and (3) each combatant knew the others were armed. Here, the Court's opinion holds that "the

Youngs and Robinson were clearly engaged in mutual combat” but does not address Petitioner’s argument that there was no evidence of any point in time at which a mutual intent and willingness to fight existed. The opinion states only that “the evidence showed the shootout was the culmination of a running argument.”

As set forth in Petitioner’s briefs, there was no time at which a mutual intent and willingness to fight existed. The first interaction between the parties, the Wild Horse Road incident, was an unprovoked and unexpected attack by Robinson. Petitioner did not fight at that time and was not armed at that time. For all of the remaining events of that day up until when Robinson fired the fatal shot, Robinson either was not present where Petitioner was or fled when Petitioner arrived. Robinson fired the fatal shot while hidden behind a tree in a location unknown to Petitioner. Therefore, at no time that day did Petitioner and Robinson have a mutual intent and willingness to fight. Instead, Robinson continually fled and hid from Petitioner. Given the lack of evidence of the required element of a mutual intent and willingness to fight, Petitioner submits the record does not provide evidence to support mutual combat and his motion for a directed verdict on the murder charge should have been granted.

Additionally, there was no actual combat between Petitioner and Robinson. The opinion refers to a “shootout,” a “collective fusillade,” and a “battlefield,” but the record is clear that at no location did Robinson and Petitioner trade shots. On Wild Horse Road, Robinson fired at unarmed Petitioner and his father and then fled. Robinson then continued to flee or hide up until when he fired the fatal shot. Petitioner fired at Robinson’s car, but Robinson was not there and the car was unoccupied. When Robinson fired the fatal shot at Petitioner, missing him and striking the victim, Robinson fired from a hidden position. Petitioner was in a vehicle driving away from Robinson and there is no evidence that Petitioner had any idea that Robinson was

there. Therefore, there was no exchange of gunfire on the day in question. Robinson shot at unarmed Petitioner and fled, Petitioner searched for Robinson but was unable to find him, and Robinson attempted to ambush Petitioner from a hidden position. This was not a "shootout" or a gun battle. This was Robinson choosing to attack, flee and hide, and then ambush from a position that placed children in the line of fire.

Petitioner asks the Court to set aside any ill will he had towards Robinson that day, any desire or intent he had for a gun battle with Robinson on that day, and the tragic death of an innocent child, and to not allow any such facts to stretch the law to fit the charges against him. Those facts are not relevant to the determination of whether mutual combat existed between Petitioner and Robinson. The bottom line is that Petitioner may have engaged in a gun battle with Robinson had the events of that day unfolded differently, but the events of that day unfolded as set forth in the record and such that Robinson chose to provoke Petitioner, flee, hide, and then fire from a hidden position with children in the line of fire. The responsible criminal party—Robinson—has been convicted and sentenced. The law should not be stretched to hold Petitioner responsible as well when, despite any ill will or desire to fight he may have had, he did not actually engage in any mutual combat and did not fire or provoke the firing of shots in a location in which children were in the line of fire.

III. THE COURT'S HOLDING ON PETITIONER'S ATTEMPTED MURDER CHARGE RELIES ON EVIDENCE NOT IN THE RECORD.

The Court affirmed Petitioner's attempted murder conviction on the basis that "Young Jr. had his gun pointed at Robinson" and "[w]hen Young Jr. pulled the trigger, the gun jammed and did not fire." At trial, the only testimony or other evidence presented on this issue was Petitioner's recorded statement to the police, and that statement does not support the factual statements in the Court's opinion. Beyond Petitioner's statement to the police, the State failed to

present any other witness or evidence to indicate that Petitioner fired, or even pointed, a gun at Robinson. Sergeant Albertin, the police investigator, testified at trial that she had no evidence that Petitioner ever pointed a gun at or shot at Robinson. (R. 486-87.)

In his statement to the police, Petitioner unequivocally stated to the police that the gun was jammed when he was on Bryant Road and found Robinson and that *because he knew the gun was jammed he did not point the gun at or try to shoot Robinson* on Bryant Road. Petitioner stated to the police:

Petitioner: What you mean the first we caught his ass? But the shit wouldn't shoot. It wouldn't shoot. It wouldn't shoot.

Investigator: So you saw him on Bryant Road?

Petitioner: That's how we knew where he was at. 'Cause, alright.

Investigator: Alright, let's try to figure this out.

...

Investigator: Did you come across him over there?

Petitioner: Yeah we did, but that shit wouldn't shoot. It wouldn't, the gun wouldn't shoot.

Investigator: So what were you shooting at then?

Petitioner: Him, but I didn't shoot. It didn't go off. The gun didn't go off.

Investigator: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?

Petitioner: *I didn't even point the gun at him.* The gun just wouldn't go off. I knew it wasn't, 'cause when you cocked it back it wouldn't . . . It jammed up on me. So that shit was a no go. . . .

Petitioner: The first time we went down there ain't nothing happened 'cause we saw him but it didn't go down like wanted it to. If it would have went down like that we wouldn't even be here and nobody would know nothing cause it was a dead road and nobody would've knew nothing but the gun just didn't go off.

(State's Ex. 38, Video 7 (emphasis added).)

Petitioner submits that therefore there was no evidence that he ever pointed his gun at Robinson or ever pulled the trigger on his gun with Robinson present. Accordingly, Petitioner requests the Court rehear Petitioner's arguments as to the attempted murder conviction given the lack of evidence in the record to support the Court's grounds for affirming his attempted murder conviction.

For the reasons set forth herein, Petitioner respectfully requests rehearing in this case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 19 2020

S.C. SUPREME COURT

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned certifies on February 19, 2020, he caused a copy of the foregoing Petition for Writ of Certiorari to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

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MAR 02 2020

S.C. SUPREME COURT

Opinion No.27942 (S.C.Sup.Ct. filed Feb. 5, 2020)

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

Appellate Case No. 2018-001861

RETURN TO PETITION FOR REHEARING

This Court affirmed Petitioner's convictions for murder and attempted murder by opinion filed February 5, 2020. On February 19, 2020, Petitioner Young served and filed a Petition for Rehearing. On February 20, 2020, this Court called for response. Respondent, State of South Carolina, submits that Petitioner has failed to show any point or fact overlooked or misapprehended by the Court; consequently, there is no basis for rehearing. See Rule 221, SCACR. The petition should be denied. In support of its position, Respondent would respectfully show the Court:

1. The Court wrote: "... the Youngs and Robinson were clearly engaged in mutual combat." (Opinion, p. 9). The record supports that conclusion. Petitioner, however, argues that an instruction on withdrawal from the combat should have been given because whether "his fleeing the scene communicated to Robinson" the "fight had ended" was most properly decided

by the jury. (Petition, p. 4). Taking issue with the Court's conclusion that trial counsel conceded that mutual combat existed, Petitioner argues that "trial counsel did not concede the issue" and the Court relied upon counsel's response to a hypothetical. (Petition, p. 1).

The opinion reflects this Court rejected Petitioner's argument that an instruction was necessary, with majority ultimately concluding that the instruction challenge need not be reached because Young conceded at trial that he would have been responsible if a co-combatant was killed. (Opinion, p. 10 at n. 8). But before that ultimate conclusion, the Court recognized record support for the trial judge's reasoning that the evidence did not support communication to Robinson that the battle was over, as the battle had already been waged in a stop and go fashion. (Opinion, p. 10 at n. 8). Critically, this Court correctly noted if the last retreat was going to be different, "Young Jr. made no attempt to communicate to Robinson that *this* retreat was a complete withdrawal from the ongoing gun battle." (Opinion, p. 10 n. 8) (emphasis in original). However, as previously acknowledged, the majority ultimately concluded that issue need not be reached due to the concession at trial.

Petitioner cites to a discussion on criminal responsibility during which defense counsel agreed that if "Aaron Senior [another combatant] had gotten shot ... then everybody would be responsible." (App. p. 226; R. p. 225). Petitioner argues that because the concession was made in a hypothetical and addressed in the motion to quash the murder indictment, that the concession somehow lacks value. (See Petition, p. 3). Respondent disagrees. Petitioner's arguments were arguments against criminal responsibility for a combatant's actions. (See App. pp. 225-227; R. pp. 224-226). There would be no need to discuss criminal responsibility among combatants if there was withdrawal. That concession is very important – and one counsel was bound to make as the facts clearly show that there was mutual combat among Young, Jr., Young, Sr., and

Robinson. (See also Opinion, p. 9 n. 7, “any argument that there was no evidence of mutual combat is manifestly specious, as the evidence of mutual combat was overwhelming.”). Even so, Petitioner does not challenge the remainder of the note, which lists the record support for the trial judge’s ruling. In short, the record shows that the instruction was not warranted.

In his argument to the contrary, Petitioner urges this Court find that the trial court erred in failing to parse the evidence to create a scenario not supported by the testimony at trial. (See Petition, p. 4). As this Court noted, there is no evidence Petitioner communicated the retreat was a “complete withdrawal” different from any other during the battle. (Opinion, p. 10 at n. 8). To show withdrawal, a combatant must “make[] that fact known to his adversary.” *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Petitioner acknowledges *Bryant*, but suggests *Bryant* does not undermine his position from a factual standpoint. (Petition, p. 4). However, in *Bryant*, there was only one scene – a parking lot. This Court noted that “appellant never told [the victim] he was leaving and did not want to fight,” but “[i]f appellant truly intended to withdraw he could have easily left the open parking lot.” 336 S.C. at 346, 520 S.E.2d at 322. Petitioner’s act of driving away must be viewed in relation to the whole incident. The entire conflict revolved around Petitioner and Robinson chasing after each other. These other comings and goings were not withdrawals. To view this one episode of mutual combat as a series of individual episodes of mutual combat where each side withdrew at the end of each volley is as illogical as it unfounded. Petitioner’s act of driving down the road after shooting Robinson’s vehicle was no different than his actions throughout this one gun battle. See *State v. Heath*, 141 S.W. 26, 29 (Mo. 1911) (“There is a wide difference between a withdrawal and a mere retreat.”); *Hellard v. Commonwealth*, 84 S.W. 329, 329 (Ky. 1905) (“retreat is not necessarily an abandonment. It

may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it.”).

Additionally, and again as this Court noted, there is no evidence of “good faith” to the purported withdrawal. During the interview with law enforcement, Petitioner disclosed that after hearing Robinson shoot at Young, Sr.’s truck, he told his father, “man turn around.” (State’s Ex. 38, Video 3 at 00:45). (See also Opinion, p. 10 n. 8). Also, when discussing driving away after shooting Robinson’s car, Petitioner told investigators, “The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don’t play like that.” (State’s Ex. 38, Video 1 at 1:10). Petitioner’s admissions that he intended to return to the fight directly refute any intent to withdraw.

Assuming Petitioner intended to withdraw, which the evidence suggests otherwise, neither his words nor actions communicated this intent to Robinson – a necessary requirement. *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 (citing *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973)). *Graham* explained that a withdrawal must be “communicated to the victim by word or act.” 260 S.C. at 451, 196 S.E.2d at 496. Petitioner did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, Petitioner’s act of driving down the road would not have been reasonably interpreted by Robinson that Petitioner intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations that did not amount to a withdrawal. Therefore, since Petitioner did not withdraw from the conflict in good faith or inform Robinson of an intended withdrawal, a jury instruction on the ending of mutual combat would be improper.

Lastly, Petitioner suggests that applying mutual combat to the gun battle here “raises the problem of what is the outer limit of mutual combat....” (Petition, p. 4). He simply argues

another fact pattern – one, incidentally, without Petitioner’s withdrawal discussed. Rather, Petitioner argues Robinson should have withdrawn, essentially hiding from Petitioner until, perhaps, Petitioner gave up looking for him. (Petitioner, p. 5). The suggestion does not show withdrawal by Petitioner. Even so, going back to the facts here, if there was *any* evidence “*this* retreat” was different, (see Opinion, p. 10 n.8), – for example, disarming as driving away, or at least stating that he wanted a truce – and the evidence did not exist that Young conceded that he wanted to return, then perhaps an argument could be made. As the record stands, it cannot. Petitioner has failed to show any error in the Court’s opinion.

2. Petitioner next suggests that there was “no mutual combat” at the time Robinson shot the victim. (Petition, pp. 5-6). He asserts “at no location did Robinson and Petitioner trade shots.” (Petition, p. 6). The record does not support that assertion. The 911 call reflected a report that a “grey truck” and Robinson were shooting at each other. (State’s Exhibit 2). Tyrone Delaney testified that he heard “rapid fired shots,” then three other shots. He testified the shots sounded different, as from different guns. (App. pp. 336 and 339). Dominique Griffin testified that she heard “random gun fire” and answered both that the sounds were different and that they were the same. (App. pp. 355-56). Even though it is incorrect to suggest mutual combat begins and ends only at the moment of shooting, there was little question that shooting between the two sides was occurring at and round the time when the innocent victim was shot.

3. Lastly, in challenging this Court’s affirmance of the attempted murder conviction, Petitioner argues his statement to police does not support the Court’s conclusion that, given the admission that Petitioner pulled the trigger and the gun would not shoot, “any argument that Young Jr. did not attempt to kill Robinson is manifestly without merit.” (Opinion, pp. 2-3 n.2). (See Petition, pp. 7-8). However, while that statement does support the finding, other evidence

also supports the exchange of fire. One witness that called to report the crime told the 911 dispatcher that two cars were shooting at each other near Spanish Wells Road. (State's Ex. 2). She identified the two cars involved as a grey truck and a grey Lexus.¹ (State's Ex. 2). Tyrone Delaney testified that he heard rapid gun shots after Robinson left their house. (App. p. 335; R.p. 334). Minutes later, he heard three gunshots that seemed to have come from a different type of weapon. (App. p. 336; R. p. 335).² Charlese Mitchell, a woman who lived in the neighborhood off Allen Road, testified that she heard three sets of gunshots around 4:00 p.m. that afternoon. (App. pp. 301-330; R.pp. 300 -329). Ms. Michell is related to Robinson. Robinson, who appeared scared, told Mitchell, "those M. F. was shooting at me." (App. p. 311; R.p. 310). Delany, who is Mitchell's fiancé, heard Robinson state, "yeah they was shootin at me so I shoot back at them." (App. p. 334; R.p. 333). Further evidence supports Petitioner was the person who tried to kill Robinson – he admitted to being the person that attempted to shoot Robinson but stated the gun jammed. (State's Ex. 38, Video 7). He admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese." (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates the statements that he was the shooter, in particular, Jontu Singleton's testimony that Petitioner was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (App. pp. 368-69; R. pp. 367-68).

¹ The caller referred to the car as a "grey Lexus," however, the caller positively identifies the driver of the car (actually a green Acura) as Tyrone Robinson.

² The dissent suggests that gun fire must be "*contemporaneously*" engaged in to support an extension of mutual combat. ((Opinion at 12) (Hearn, J., dissenting) (emphasis in original). Respondent would submit that even this test is satisfied when viewing the evidence as a whole, if the word "*contemporaneously*" is not equated with "*simultaneously*." Respondent respectfully submits such a narrow definition would not encompass the back and forth of gun battle. At any rate, the evidence at trial does show different guns heard close in time to the shooting.

In response to Petitioner's motion for a direct verdict, the State argued that there were at least three pieces of evidence presented during trial proving Petitioner's attempted murder of Robinson: (1) Robinson's statement to Mitchell, "those M.F. was shooting at me", (2) Robinson's statement to Delaney, "yeah they was shootin at me so I shoot back at them" after asking about a grey truck, and (3) the 911 call reporting a shootout between a grey Lexus driven by Robinson and grey truck. (App. pp. 517-18; R.pp. 513-14). The State further argued that Petitioner's admission to attempting to kill Robinson but failing because the gun jammed was an important indication that Petitioner intended to kill Robinson. (App. p. 518; R. p. 514). Correctly reviewing the evidence in the light most favorable to the State, the trial judge held that there was substantial circumstantial and direct evidence introduced at trial. Specifically, the court emphasized "that the attempted murder of Mr. Robinson is borne out by [Petitioner's] own statement." (App. p. 521; R.p. 517, lines 18-19). Petitioner's argument fails. The chain of events supports that Petitioner clearly intended and attempted to kill Tyrone Robinson with malice aforethought. Petitioner's intent was unmistakably illustrated by eyewitness testimony about Petitioner obsessively chasing Robinson down numerous roads in Hilton Head while armed with a semi-automatic weapon. Moreover, Petitioner's admission that he attempted to kill Robinson but the gun was inoperative further supports his guilt. Even though Petitioner does not specifically state he pointed the gun at Robinson, he admitted he was shooting at "him". (State's Ex. 38, Video 7 at 1:10). The State presented direct and substantial circumstantial evidence of Petitioner's guilt at trial.³

³ Not only did the majority reject Petitioner's argument on this issue, the dissent also "agree[d] with the majority to affirm the conviction for attempted murder." (Opinion at 12) (Hearn, J., dissenting).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that Petitioner has failed to show any error in the Court's opinion. The petition for rehearing should be denied.

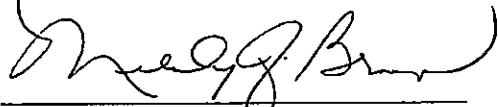
Respectfully submitted,

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Deputy Attorney General

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Senior Assistant Deputy Attorney General

ISAAC MCDUFFIE STONE, III
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ATTORNEY FOR RESPONDENT

March 2, 2020

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAR 02 2020

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No.27942 (S.C.Sup.Ct. filed Feb. 5, 2020)

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

Appellate Case No. 2018-001861

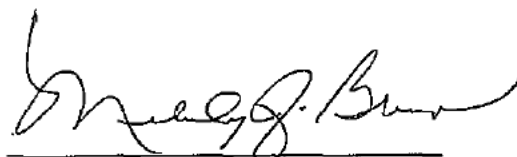
CERTIFICATE OF SERVICE

I, Melody J. Brown, certify that I have served the *Return to Petition for Rehearing* on Petitioner by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorneys of record:

F. Elliotte Quinn, IV, Esquire
103 Grandview Drive
Summerville, SC 29483

Jennifer K. Dunlap, Esquire
200 Meeting Street, Suite 301
Charleston, SC 29401

This 2nd day of March, 2019.



MELODY J. BROWN
Senior Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State, Respondent,

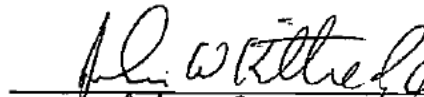
v.

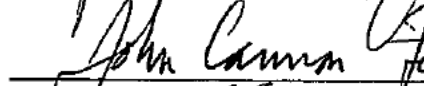
Aaron Scott Young, Jr., Petitioner.

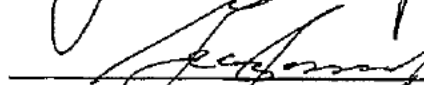
Appellate Case No. 2018-001861

ORDER

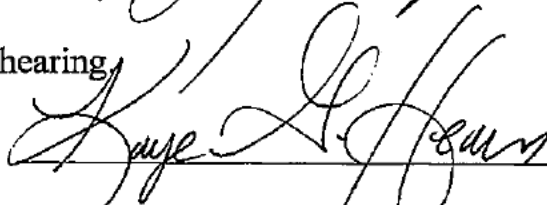
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 A.C.J.

 J.

 J.

I would grant the Petition for Rehearing

 J.

Acting Justice Aphrodite K. Konduros, not participating

Columbia, South Carolina

March 12, 2020

cc:

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

Margaret Graham Boykin, Esquire

Isaac McDuffie Stone, III, Esquire

Melody Jane Brown, Esquire

Jennifer Kirk Dunlap, Esquire

Frederick Elliotte Quinn, IV, Esquire



The Supreme Court of South Carolina

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CLERK OF COURT

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March 12, 2020

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Aaron S. Young, Jr.
Lower Court Case No. 2012GS0701932
Appellate Case No. 2018-001861

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc:

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

Margaret Graham Boykin, Esquire

Isaac McDuffie Stone, III, Esquire

Melody Jane Brown, Esquire

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