STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable Kristi F. Curtis, Circuit Court Judge
Appellate Case No. 2022-001428

THE STATE,

Respondent,

vs.

JOQUELL WAYNE MYERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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"Whether the trial court erred by providing the jury with an instruction on mutual combat and thereby prejudiced Appellant's ability to plead his case for self-defense?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow err by instructing the jury on mutual combat when there was evidence presented during trial establishing Appellant, his brother, and their associates engaged in mutual combat with the victims shortly after Appellant's brother—with the assistance of Appellant and their associates—directed provocative threatening statements at one of the victims through social media, which predictably led to the armed confrontation and deadly shoot-out that followed?

STATEMENT OF THE CASE

In September of 2019, Appellant Joquell Wayne Myers was arrested following an investigation into a massive shoot-out that occurred in the parking lot of a gas station located in Sumter, South Carolina. In July of 2020, the Sumter County Grand Jury indicted Appellant for one count of murder and one count of possession of a firearm during the commission of a violent crime. In August and September of 2022, the Sumter County Grand Jury additionally indicted Appellant for two counts of attempted murder and one count of unlawful carrying of a pistol. On September 26, 2022, a jury trial was commenced in the Sumter County Court of General Sessions with the Honorable Kristi F. Curtis, circuit court judge, presiding. At the conclusion of the six-day trial, the jury convicted Appellant of one of the attempted murder charges along with the possession of a firearm during the commission of a violent crime and unlawful carrying of a pistol charges. Meanwhile, the jury acquitted Appellant of all the remaining charges. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for attempted murder, five years for possession of a firearm during the commission of a violent crime, and one year for unlawful carrying of a pistol. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In August of 2019, Michael Rogers, who was known as "Killah Mike," was involved in several altercations.[1] (R. pp. 292-293). In addition to that, Rogers's vehicle was also "shot up" with gunfire. (R. pp. 292-293).

Around the same time, Appellant's brother, Diontrae Epps, recorded himself making—in a lyrical manner—threatening statements toward Rogers that were broadcast via social media.[2] (R. p. 167; p. 211; pp. 293-295; p. 297; p. 459; p. 521; State's Ex. # 9 (Facebook Recording)). On that recording, Epps asserted he was going to be sending his "goons" at Rogers, whom he referred to by nickname, and warned both Rogers and his vehicle would soon be getting a "new makeover."[3] (R. p. 211; pp. 299-300; p. 525; p. 527; State's Ex. # 9). Notably, as Epps was making those provocative remarks, others came into view, and one of those individuals—Jay McBride—unmistakably mimicked firing a gun into the camera through hand gestures. (R. p. 303; p. 460; p. 523; State's Ex. # 9). Likewise, Appellant—who, by his own later admission, was depicted in the recording—could be seen grabbing at his waistband and making various hand gestures, including ones that could be construed as mimicking a gun, as his brother continued directing his threats toward Rogers. (R. p. 169; p. 303; p. 461; p. 463; pp. 519-520; State's Ex. # 9).

Not long after that recording was broadcast, Appellant, Epps, McBride, and some of their associates gathered in the parking lot outside the "Hop In," a gas station located on Broad Street in Sumter, in the early morning hours of September 9, 2019, along with a large number of other

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[1] During trial, testimony was presented suggesting Rogers may have been known as "Killah Mike" because he was a "ladies' man." (R. pp. 242-242).

[2] "[T]echnically," Epps was Appellant's half-brother. (R. p. 516).

[3] Later on, "goon" was defined as a gang soldier. (R. p. 464).

individuals. (R. p. 130; p. 319; p. 464). While they congregated there, Rogers—who was fully aware of Epps's recent threatening recording—arrived at the scene with a group of his own associates in a red Dodge Charger, and, with the car's tires loudly "squeal[ing]," they backed into a parking space directly in front of the gas station before exiting the vehicle. (R. pp. 105-108; pp. 126-127; p. 129; p. 294).

Predictably, just minutes later, Rogers aggressively approached Epps, and Epps responded by punching Rogers with one of his hands. (R. p. 109; pp. 132-134; p. 145; pp. 147-148; p. 190; State's Ex. # 7 (Multi-Camera Surveillance Footage)). Almost immediately after that, Epps raised a gun with his other hand and began shooting at Rogers. (R. p. 134; p. 145; pp. 147-148; p. 190; State's Ex. # 7). Rogers, who was armed with his own gun, returned fire as he stumbled backwards, and others—including Appellant and McBride—quickly joined in the gun battle. (R. pp. 191-194; p. 242; pp. 253-254; pp. 261-262; p. 267; p. 283; p. 287; p. 581; pp. 583-584; State's Ex. # 7).

In the resulting pandemonium, *no less than* twelve different guns were fired from positions all over the gas station's parking lot. (R. p. 320; p. 414; pp. 429-438; State's Ex. # 21 (Diagram); State's Ex. # 22 (Diagram); State's Ex. # 23 (Diagram); State's Ex. # 24 (Diagram); State's Ex. # 26 (Diagram)). Significantly, those many firearms were used to fire *at least* sixty to seventy rounds of ammunition of all different types and calibers, and that extraordinary quantity of shots was fired off during multiple sustained volleys of gunfire. (R. pp. 333-334; p. 349; pp. 352-353; pp. 415-416; pp. 440-444; State's Ex. # 5 (Cell Phone Recording)).

As a result of the shooting, Rogers was killed by a bullet as was Gregory Middleton, who was the cousin of one of Rogers's associates.[4] (R. p. 129; p. 246; p. 369; p. 380; p. 383).

[4] At the time of his death, Middleton was known as "D-Black." (R. p. 179).

Likewise, Epps was shot, and, as he was being rushed to the hospital, someone inside the vehicle being used to transport him there shot Christopher Fordham, who was merely trying to drag Rogers to safety.[5] (R. pp. 186-188; p. 203; p. 224; State's Ex. # 7). Furthermore, the red Dodge Charger was peppered by gunfire *from Appellant* as its driver, Michael Lucas, attempted to escape from the terrifying shoot-out, and Appellant moved toward—as opposed to away from—the fleeing vehicle as he fired upon it. (R. p. 106; p. 120; p. 127; p. 135; pp. 261-262; p. 269; pp. 350-351; State's Ex. # 7).

During the ensuing investigation into the incident, Appellant was identified from the gas station's surveillance footage as one of the many gunmen that had been involved. (R. pp. 253-254; pp. 261-262; p. 283; pp. 286-287; p. 538). As a result, he was arrested for a number of charges, including murder and attempted murder. (R. p. 274; pp. 784-788).

Following Appellant's arrest, Detectives Willie McFadden and Natalie Kelly from the Sumter Police Department attempted to interview him about the shoot-out. (R. pp. 152-153; pp. 272-274). In response, Appellant denied knowing what the detectives were talking about, falsely insisted he had not possessed or fired a gun, and ended the interview. (R. p. 161; p. 275; p. 279; State's Ex. # 3 (Statement Recordings)).

However, on the following day, Appellant asked to speak with the detectives again, and they once again met with him. (R. pp. 276-277; State's Ex. # 3). During the renewed conversation, Appellant initially repeated his earlier untruthful denials and insisted he had not killed anyone. (R. pp. 280-281; State's Ex. # 3). However, after being confronted about the surveillance footage, he eventually admitted he fired a gun during the incident, including at the red Dodge Charger, and asserted he would "take" the attempted murder charge based on his

[5] Fordham's nickname was "Pies." (R. p. 201).

actions. (R. pp. 222-223; p. 281; pp. 285-286; State's Ex. # 3). Nonetheless, Appellant continued to insist he had not personally shot or killed anyone. (R. p. 283; State's Ex. # 3).

Subsequent to that, Appellant was indicted for a variety of charges, including murder in connection to Middleton's death, attempted murder in connection to the non-fatal shooting of Fordham, and attempted murder in connection to the shooting of Lucas's vehicle as Lucas fled from the scene. (R. p. 8; pp. 776-783). Ultimately, Appellant elected to proceed forward to trial. (R. p. 8).

Toward the outset of Appellant's trial, the parties presented their opening statements to the jury. (R. pp. 70-87). Through his, the solicitor described the incident that gave rise to Appellant's charges as a gun battle and alerted the jurors mutual combat may be something they would consider. (R. pp. 70-83). Conversely, defense counsel suggested Appellant has a right to pull out his pistol during the incident *to defend his brother* and further claimed Middleton had already been shot down before Appellant "fire[d] the first shot." (R. pp. 83-87). However, defense counsel conceded Appellant had, in fact, shot a car. (R. p. 87).

As the trial continued forward, the law enforcement personnel and others involved in the investigation into the incident recounted what they discovered through it. (R. pp. 88-103; pp. 152-169; pp. 179-269; pp. 272-288; pp. 305-363; pp. 365-390; pp. 400-416; pp. 420-445; pp. 457-469; pp. 471-473). Likewise, a variety of recordings were introduced into evidence, including multiple recordings captured by the gas station's surveillance cameras, a cell phone recording of what occurred both directly before and during the gun battle, the social media recording of the threatening statements Epps directed at Rogers, and the recording of Appellant's incriminating post-arrest statements to the detectives. (R. pp. 109-110; pp. 158-159; p. 206; p. 294).

In addition to that, Tyrek Archie, one of the individuals who accompanied Rogers to the scene on the date of the incident, offered his account of what occurred on that date. (R. pp. 105-122). Specifically, he recounted there was "a lot of tension" as soon as they arrived at the scene in the red Dodge Charger, that tension led him to ask several people standing near their vehicle if "[they] ha[d] a problem," and he quickly became embroiled in an argument with someone. (R. p. 108; p. 114; p. 122). And, shortly after that, Archie confirmed the shoot-out began. (R. p. 115; p. 122).

Likewise, Timothy Scarborough, another of the people that accompanied Rogers to the gas station, provided a similar—and more detailed—account of the incident. (R. pp. 125-150). Pursuant to his account, Scarborough indicated he became involved in an argument with one of the people present almost as soon as they arrived at the scene based on a recent earlier "altercation" that had occurred between them. (R. pp. 129-130). And, notably, he testified almost everyone at the crowded scene had their guns out as soon as he and his companions exited the red Dodge Charger. (R. pp. 138-141). Based on everyone already having their guns out, Scarborough asserted he approached Epps—whom he had previously had difficulties with and who had a "prior history" with one of his family members—in an effort to convince him to "stand down." (R. p. 80; pp. 90-91; pp. 94-95). However, he explained Rogers then approached Epps, too, which triggered the punch and outbreak of the gunfire from Epps and others at the scene. (R. pp. 94-98).

Furthermore, Arkell Eaglin, Rogers's girlfriend at the time of his death, discussed the altercations Rogers was involved in prior to the incident and confirmed she observed Epps's threatening social media recording just a few weeks prior to the shoot-out. (R. pp. 292-295; p.

297). Importantly, Eaglin further confirmed she made sure Rogers was aware of that "very" concerning recording after she saw it. (R. p. 294).

Beyond that, Appellant elected to testify on his own behalf and offered his account of what transpired. (R. pp. 486-586). Through his testimony, Appellant acknowledged he—and everyone with him—was armed with guns on the night of the incident, and he indicated they all went to the gas station together that night.[6] (R. pp. 491-493). While they were there, he asserted the red Dodge Charger arrived and, following that, gunshots were fired as he was laughing and talking with others. (R. pp. 493-497). After the gunfire began, Appellant claimed he turned and saw his brother had been shot and, in response, he grabbed his own gun and ran over to check on his brother. (R. pp. 497-499). When he did, he alleged he realized bullets were being fired at both him and his brother, including from the red Dodge Charger. (R. pp. 498-500). As a result, Appellant admitted he fired multiple volleys of bullets at that vehicle, but, in doing so, he claimed he had no intent to kill anyone and had no problem with Lucas, who was supposedly shooting at them for no reason at all. (R. pp. 503-505; p. 512). Once Lucas's vehicle was gone, Appellant indicated he then helped his brother, who had been shot, to the hospital and, along the way, someone in his vehicle shot Fordham. (R. pp. 506-509; pp. 554-556). Appellant further acknowledged he left his brother behind at the hospital without even going inside, never attempted to contact law enforcement prior to his arrest, and subsequently lied during his interview with the detectives. (R. pp. 558-561; p. 564; p. 566; p. 569; p. 571).

After all that testimony and evidence was presented, the trial judge discussed his intended jury instructions with the parties, and the solicitor requested a jury instruction on mutual combat. (R. pp. 593-594). In response, defense counsel objected, arguing no evidence had purportedly

[6] More specifically, Appellant claimed he was personally armed with a nine-millimeter pistol he had purchased from "the old dude." (R. p. 489).

been presented that supported such a charge. (R. p. 598). Ultimately, after considering the matter, the trial judge confirmed she intended to instruct the jury on mutual combat over defense counsel's objection. (R. pp. 621-622; pp. 624-625).

Following that ruling, the parties presented their closing arguments. (R. pp. 631-708). Through his, the solicitor contended Appellant's case was one involving mutual combat. (R. p. 646). And, as support for that, the solicitor noted the testimony and other evidence presented established everyone at the scene was armed at the time of the incident while both Eaglin's testimony and the social media recording—which he aptly described as "an invitation to the cemetery"—demonstrated the existence of "bad blood" between the parties prior to the predictable shooting that occurred. (R. p. 635; p. 639; pp. 646-648; p. 662). Contrastingly, defense counsel attempted to place the blame for the shooting on Rogers and, in doing so, noted Rogers had his hand on his own gun, which he purportedly pulled first, at the time he approached Epps prior to the gunfire erupting. (R. pp. 668-669). Furthermore, defense counsel acknowledged the existence of the threatening social media recording and conceded Appellant "arguably" made a gun gesture with his hand in that recording. (R. p. 685). Nevertheless, defense counsel contended no one knew what Appellant's intent truly was when he did so and suggested the recording had merely been a joke. (R. p. 686).

At the conclusion of the parties' closing argument remarks, the trial judge instructed the jury on the applicable law. (R. pp. 708-732). As part of her jury instructions, the trial judge—consistent with her earlier ruling—provided the following instruction on mutual combat:

> South Carolina recognizes the doctrine of mutual combat as the basis for a conviction for either murder or voluntary manslaughter. If a person voluntarily enters into a mutual combat with another where deadly weapons are used, knowing that they are being used, and death results to an innocent third-party, then everyone engaged in the mutual combat is equally guilty, regardless of whether they

> fired the fatal shot. All participants in the mutual combat are responsible for their fellow combatants' actions resulting in foreseeable injury to an innocent third-party. However, if the innocent third-party was killed before the defendant joined in the mutual combat, then the defendant cannot be held responsible under the doctrine of mutual combat.
>
> The State bears the burden of proving beyond a reasonable doubt that the defendant was engaged in mutual combat with a rival combatant or combatants, that each was armed for the mutual combat with a deadly weapon, that each knew the other was armed. The State must prove beyond a reasonable doubt that there was a mutual intent and willingness to fight with deadly weapons manifested by the acts and conduct of the parties and circumstances leading up to the combat.
>
> The statements prove that the conflict arose from a preexisting dispute between the combatants. However, it is not necessary that there should be a positive agreement between the participating parties to enter the conflict. It is sufficient if they willfully enter into the conflict upon the impulse of the moment. The State bears the burden of proving each of the elements of mutual combat beyond a reasonable doubt.

(R. pp. 719-720). In addition to that, the trial judge—amongst other things—instructed the jury on murder, attempted murder, several lesser-included offenses, self-defense, and defense of others. (R. pp. 717-722; pp. 724-729).

Thereafter, the case was submitted to the jury. (R. p. 732). Upon deliberating on the matter for roughly ninety minutes, the jury convicted Appellant of attempted murder in connection to the shooting of Lucas's vehicle along with several firearm-related offenses. (R. pp. 733-734). Meanwhile, the jury acquitted Appellant of all his remaining charges, including those related to the shootings of Middleton and Fordham. (R. pp. 733-734).

ARGUMENT

The trial judge properly instructed the jury on mutual combat because there was evidence presented during trial establishing Appellant, his brother, and their associates engaged in mutual combat with the victims shortly after Appellant's brother—with the assistance of Appellant and their associates—directed provocative threatening statements at one of the victims through social media, which predictably led to the armed confrontation and deadly shoot-out that followed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation[.]"). Significantly, the appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); see Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial."). Meanwhile, if the jury instructions presented were substantially correct and covered the applicable law, the trial judge's decision will not be reversed on appeal. State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.").

Analysis

Since "at least" 1843, the doctrine of mutual combat has existed in South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003). In our state, it primarily serves to negate

the defense of self-defense because a person engaged in mutual combat cannot be deemed to be without fault for the difficulty as necessary for that defense to be applicable. State v. Bowers, 436 S.C. 640, 647-648, 875 S.E.2d 608, 612 (2022). Relatedly, the mutual combat doctrine can serve as a basis for criminal responsibility because "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." State v. Young, 429 S.C. 155, 166, 838 S.E.2d 516, 522 (2020). For similar reasons, a mutual combatant can likewise be criminally responsible for the death of a friendly co-combatant at the hands of a rival. Id. at 161, 838 S.E.2d at 519.

"The mutual combat doctrine is triggered when both parties contribute to the resulting fight." Taylor, 356 S.C. at 235, 589 S.E.2d at 5. For the doctrine of mutual combat to apply, 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) (citation and internal quotations omitted). Such intent and willingness may be shown "by the acts and conduct of the parties and the circumstances attending and leading up to the combat." State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Typically, the parties' desire to fight can be shown by evidence of pre-existing ill-will, disputes, or threats between them. Taylor, 356 S.C. at 234, 589 S.E.2d at 4-5. Importantly though, "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." Young, 429 S.C. at 160, 838 S.E.2d at 519 (emphasis added and citation, brackets, and internal quotations omitted). Beyond that, the parties must be mutually armed with deadly weapons. Taylor, 356 S.C. at 233-234, 589 S.E.2d at 4-5.

"Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer,

320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). Conversely, a trial judge should not present a jury instruction "which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). Significantly, that is true because the presentation of jury instructions on inapplicable matters has the potential to confuse or mislead the jury. See State v. Washington, 338 S.C. 392, 400, 526 S.E.2d 709, 713 (2000) ("Jury instructions by the court of irrelevant and inapplicable principles may be confusing to the jury and can be reversible error."). Therefore, there must be *some* evidence adduced at trial on mutual combat in order for a jury charge on that issue to be warranted. Taylor, 356 S.C. at 234, 589 S.E.2d at 5; see State v. Otts, 424 S.C. 150, 158, 817 S.E.2d 540, 545 (Ct. App. 2018) (explaining there must be some evidence adduced at trial on a particular issue in order for a jury instruction on that issue to be warranted).

In the case sub judice, Appellant contends the trial judge reversibly erred by instructing the jury on mutual combat because the facts of his cases purportedly "in no way" supported a conclusion he engaged in mutual combat with anyone at all. In so contending, Appellant maintains no evidence of any kind was presented demonstrating that he had an agreement to engage in mutual combat with anyone, that he had any pre-existing ill-will or conflicts with the people involved in the shoot-out, or that he had armed himself with a deadly weapon for purposes of a planned fight. Furthermore, Appellant alleges he was prejudiced by the mutual combat jury instruction given because it supposedly transferred the State's burden to disprove self-defense to him. To the contrary, the trial judge properly instructed the jury on mutual combat because there was evidence presented supporting such an instruction, and the trial

judge's correct decision to give that factually-supported instruction was critically important for the jury to properly be able to resolve the issues raised in Appellant's case, including the issue of whether Appellant's defense *of others* claim was a valid and viable one under the circumstances involved.

Turning to the evidentiary support for the mutual combat charge introduced during trial, the evidence and testimony presented demonstrated Rogers's group and Appellant's group had pre-existing ill-will *prior to* the date of the shoot-out due to the threatening statements Appellant's brother—with Appellant's assistance—disseminated to the community through social media. Significantly, amongst the threatening remarks made, Epps warned Rogers he would be sending "goons"—or gang soldiers—at him and both Rogers and his vehicle—which had recently been "shot up"—would be receiving a "new makeover."[7] And, as those troubling remarks were being made, both McBride and Appellant helped provide non-verbal—and unsubtle—context as to their meaning by mimicking what appeared to be guns with hand gestures. Given the nature of the words spoken, the accompanying hand gestures employed, and the fact Rogers's vehicle had already recently been fired upon following an earlier altercation, the import of Epps's statements toward Rogers was unmistakable, and it was clear he was threatening armed violence against Rogers. Thus, there was, in fact, evidence presented of pre-existing ill-will between Rogers and Appellant, his brother, and their associates. See Taylor, 356 S.C. at 232, 589 S.E.2d at 4 ("The [mutual combat] doctrine has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs.").

[7] Reportedly, Epps and "some of the other family members, cousins, [or] whatever" were the ones involved in the earlier altercations with Rogers, including the one in which Rogers's vehicle was subjected to gunfire. (Supp. R. pp. 4-5). However, since Rogers died in the gunfight, that information was not presented to the jury due to hearsay restrictions. (Supp. R. p. 19).

Beyond that, the evidence and testimony presented demonstrated Rogers predictably armed himself with a gun in response to Epps's provocative remarks and sought Epps out to settle their issues. And, based on the testimony presented, Epps, Appellant, McBride, and a number of other individuals at the scene were likewise armed with guns, and, as soon as Rogers and his associates exited their vehicle at the gas station, the people already there took those guns out. In fact, according to one eyewitness, "[t]he whole parking lot seemed like it had guns[,]" and the fact those guns were visibly on display was why one of Rogers's associates unsuccessfully attempted to convince Epps to "stand down" before the seemingly-inevitable mayhem ensued. (R. pp. 138-141). Rogers—who had been subjected to threats from Epps suggesting he and his vehicle would be shot—then aggressively approached Epps with his hand seemingly on his gun. Indeed, defense counsel—while relying on surveillance footage from the scene—argued Rogers's "hand[wa]s on his gun the whole time" as he approached Epps. (R. pp. 667-668). Thus, there was evidence presented demonstrating both Rogers and Epps were armed with guns prior to and at the time of the shoot-out, and each was well aware the other was armed when they elected to—within seconds of coming together—mutually engage in the gun battle that Appellant and many others swiftly joined in. See Campbell v. State, 441 S.C. 361, 366, 893 S.E.2d 492, 494 (Ct. App. 2023) (recognizing mutual combat arises when the combatants are armed with deadly weapons and know their rivals are also armed); cf. State v. Brown, 108 S.C. 490, __, 95 S.E. 61, 62 (1918) (concluding mutual combat was involved in a multi-party fight when "there was testimony tending to show that those who *joined in* the combat knew that a knife was being used by one of the combatants" (emphasis added)).

In light of that evidence and testimony, the jury could rationally and logically conclude Rogers, Epps, Appellant, and their associates possessed a "mutual intent and willingness to

fight" when they all engaged in the massive shoot-out to settle their pre-existing issues with one another, and, therefore, a jury instruction was—just as the trial judge prudently recognized—factually warranted in Appellant's case. See Taylor, 356 S.C. at 231-232, 589 S.E.2d at 3 ("The case law does establish that there must be mutual intent and willingness to fight to constitute mutual combat. Mutual intent is manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." (citations and internal quotations omitted)); cf. State v. Johnson, 733 A.2d 852, 855 (Conn. App. Ct. 1999) ("The trial court had ample evidence before it to charge that the victim and the defendant agreed to engage in combat by agreement. The two men argued, displayed their weapons, walked to the middle of the street armed and angry and confronted each other. The defendant fired three shots that killed the victim. The trial court properly instructed the jury on the combat by agreement exception to self-defense."); Alston v. State, 662 A.2d 247, 254 (Md. 1995) ("[I]t is true that the antagonists did not proceed pursuant to a written code of honor. Nor is there any evidence on an expressly articulated agreement for mutual combat. Nevertheless, the Baltimore City jury in this case had sufficient evidence from which it could find that all of the participants, driven by an unwritten code of macho honor, tacitly agreed that there would be mutual combat." (citation omitted)). Moreover, even if that evidence and testimony was somehow insufficient to support a conclusion Appellant *personally* was engaged in mutual combat, the jury instruction was nevertheless still factually warranted because it was fundamentally necessary for the jury to be able to determine whether Appellant could justifiably act in defense of his brother, which he could only legally do if Epps was not engaged in mutual combat when Appellant supposedly intervened in the gun battle in his defense. See Douglas v. State, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998) ("Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a

friend, relative, or bystander *if* that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." (emphasis added)); cf. State v. Cook, 78 S.C. 253, __, 59 S.E. 862, 863 (1906) ("[I]f a son fight in defense of his father, his act in doing so will receive the same construction as that of the father, and if the latter was the aggressor in bringing on the difficulty, and could not plead self-defense, the same rule applies to the son. And the son cannot rely on his own freedom from fault in bringing on the difficulty, as a defense, where he knew the father had provoked the attack. Both must have been without fault in bringing it." (citations and internal quotations omitted)).

Accordingly, since the mutual combat jury instruction was supported by the evidence in Appellant's case and necessary to a proper resolution of the matter, the trial judge properly instructed the jurors on mutual combat and left it to them to resolve any credibility issues raised by the evidence and testimony presented. See Peer, 320 S.C. at 553, 466 S.E.2d at 380 (explaining a trial judge is ordinarily duty-bound to give a jury instruction upon request that correctly states the law applicable to an issue raised when supported by the evidence); see also Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial."); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing "it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict"); cf. Carreker v. State, 541 S.E.2d 364, 366 (Ga. 2001) ("The trial court did not err by charging the jury as to the law of mutual combat. There was some evidence from which the jury could have found that both parties intended to resolve their differences by fighting each other with deadly weapons, thus justifying the giving of the mutual combat charge."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

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BY:_____
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ATTORNEYS FOR RESPONDENT

July 24, 2024

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable Kristi F. Curtis, Circuit Court Judge
Appellate Case No. 2022-001428

THE STATE,

Respondent,

vs.

JOQUELL WAYNE MYERS,

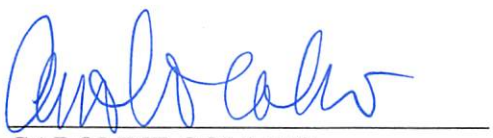
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Lewis Hartwell Warr and Robert R. Young, Jr., Esquires
23 West Calhoun Street
Sumter, South Carolina 29150

I further certify all parties required by Rule to be served have been served.
This 24th day of July, 2024.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General

From:	Caroline Collins
To:	lwarr@sumterattorney.com; kyoung@sumterattorney.com
Cc:	Mark Farthing; MaryKatherine Coulter
Subject:	The State v. Joquell Wayne Myers (2022-001428)
Date:	Wednesday, July 24, 2024 4:26:00 PM
Attachments:	image001.png Myers.FBOR (03644101xD2C78).PDF

Good Afternoon Mr. Warr and Mr. Young,

Attached please find the Final Brief of Respondent in The State v. Joquell Wayne Myers (2022-001428). This will be submitted to the Court of Appeals today via the AIS OneDrive System.

If you will, please confirm receipt.

Thank you,

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