The State OF South Carolina

In The Court Of Appeals

Certiorari to Saluda County

Honorable Walter J. McLeod, Circuit Court Judge

Aaron Hood,

Petitioner,

Vs.

State Of South Carolina,

Respondent,

Appellate Case No. 2023-001512

Pro Se Johnson Petition for Writ of Certiorari

Aaron Hood#392005

Lee Correctional Institution

990 Wisacky Highway/ F2B-2211

Bishopville, South Carolina 29010

Question Presented

Under the doctrine of Mutual Combat, if the victim was fighting on behalf of another party. Is the defendant entitled to the trial court granting motion for directed verdict, if so, did the trial court err in denying motion for directed verdict when the evidence supports verdict of Mutual Combat diminishing the factual predicate for murder?

Factual Analysis

This is a question of law and facts, while the doctrine of **"Mutual Combat"** is not new to this court, which has addressed this question numerous times before. It is only new in the sense that, the facts of this case and the application of Mutual Combat defense to the facts is novel.

Based on the facts of this case, it is appellant argument the trial court erred in failing to grant directed verdict motion. The evidence presented by the state only proves that the parties agreed mutually to fight. Now the question is one of substance not form, all things being equal, this case must be viewed in contrast to other precedents of this court addressing mutual combat.

For instance, in State v Young, 429 S.C. 155 (2020) the court held that**: "[A] mutual combatant may be properly found guilty of murder for the death of a friendly co-combatant at the hands of the rival combatant." Young, id, at 161**

Clearly, under mutual combat Hood is guilty of murder or manslaughter depending on the combatant's state of mind. In this case, the state only proved sudden heat of passion. Likewise, the evidence from trial establishes that appellant was defending himself from another party's act of aggression. Despite the victim not being the one who initiated the conflict, he was a willing combatant. **(Tr.Tr.pg.97; Lines 10-19)**

Mr. Springs testified that on March 16th, 2021, he was living in a trailer park in Saluda on Keisha Avenue. He lived there with his girlfriend Nivea Hill, his cousin Cerika Springs, and her four children. Dameon said he was aware that his friend was communicating on Facebook with appellant that morning. Appellant was known as Ron to Dameon. Dameon offered that Lavoris and appellant were talking about fighting each other that morning, and Dameon said Lavoris showed him a picture of appellant with a gun.

Dameon recalled that he saw appellant at the trailer park a short time later" I said something to him and he did have a gun on him. When I said something, he pulled a gun out on me." Dameon also recalled that "SK" was with appellant at this time. Dameon maintained that the decedent told appellant he would fight him with fists, but he did not want any guns involved. A short time later Dameon heard a single gunshot, and he ran outside. **"I seen Lavoris on top of Sk beating him and Aaron Hood hit Lavoris across the top of the head with the gun."**

Dameon Springs-Direct

Q: All right. Now at some point were you aware that Lavoris Hill began talking to someone on social media?

A: Yes

Q: Do you know who he was talking to?

A: yeah

Q: Who is that?

A: Aaron Hood

Q: Aaron Hood?

A: Yeah

Tr.Tr.pg.88; Lines 16-24

Q: Prior to them going down the street to fight, did you ever see Xavier Cancer or Lavoris with a gun?

A: No

Q: Did you ever hear them threaten Mr. Hood?

A: No

Q: They just wanted to fight with their fists?

A: That's it

Tr.Tr.pg.99; lines 10-16

In this case, the evidence of the events leading up to and during the fight between petitioner and the victim is sketchy at best. It appears the argument, stems from the appellant challenging the victim to a fight, and the victim agreed to do so. At no time has the state, presented any witnesses who saw the defendant shoot the victim. According to Mr. Hill, while Appellant was assaulting him he heard a gun go off and further the appellant was pointing the gun at him and at no time did the witness say he saw appellant shoot the victim. (Tr.Tr.pg. 157; lines 6-14)

Interestingly, the appellant was not seen with a gun when he and the victim were fighting, but according to the testimony of Hill. It was not until the victim was apparently getting the best of appellant that he asked for his gun. Appellant avers that he sees nothing in this court precedent, which would not warrant a conviction for manslaughter/self-defense during this encounter with victim. Similarly, the doctrine of sudden-heat of passion should be considered when the appellant was engaged in a fight with a person who was twice his age, size and had prior difficulties with.[" **A: When he pulled up, he just—everything just stopped and Hood, he was just like oh, yeah, I ain't even worrying about you, I've been on him. So I guess they had problems already or something. I don't know. I don't know what the problem was. He says it was about a girl or whatever, but I don't know."]**

Mr. Hill was living in the trailer park on Keisha Avenue on March 16th, 2021. Mr. Hill was thirty-eight years old, and he worked at Bo jangles and the IHOP in Aiken. Mr., Hill testified that he did not know appellant, and he had only **"seen him around, but I didn't know who he was."**

On cross-examination, Mr. Hill denied that he ever told Law Enforcement that appellant had pointed his gun at him. Mr. Hill denied telling the police that he was hit in the head and then he saw appellant point the gun at him and pull the trigger.

Mr. Hill admitted that he was not happy that appellant was messaging his girlfriend on Facebook. " I just told him to stay out of my girl's inbox and he was like don't nobody wasn't your dusty ass girl and stuff like that, so we just went back and forth and it ended up[him]coming out at times to the trailer park. Mr. Hill recalled that the decedent agreed to have a fistfight with appellant, and he claimed he saw appellant pass his gun to SK. Appellant and the decedent then began fighting.

Mr. Hill said on redirect that the decedent took off his chest and shoulder holster with his gun in it and he put them on the porch. The decedent also took off his shirt in anticipation of his fist fight with appellant.

Lavoris Hill-Direct

Q: All right let's talk about that day, the day that he was killed on Keisha Avenue and the day you got hit on the head and were transported to the hospital. Let's start with just the beginning of that day and how it started. Who was there to start that day?

A: It started about a message that I got—well, my girlfriend got and she told me about it and I said something to him and we just went on from there.

Q: Okay. So your girlfriend being Cerika?

A: yes Sir.

Q: Got a message from somebody?

Q: Do you know who the message was from?

A: Yes, it was from Aaron. Aaron Hood.

Tr.Tr.pg.118; Lines 13-25; pg.119; Lines 1

Q: So he sent Cerika a message?

A: Yes, sir.

Q: And what did you do in response to him sending your girlfriend a message?

A: I just told him to stay out of my girl's inbox and he was like don't nobody want your dusty ass girl and stuff like that, so we just went back and forth and it ended up him coming out at times to the trailer park or whatever.

Q: Okay. Slow down one second. How were you-all communicating?

A: We was communicating on Facebook

Q: Facebook messenger?

A: Yes, sir

Tr.Tr.pg 119; Lines 11-23

Q: What happened when he pulled up?

A: When he pulled up, he just—everything just stopped and Hood, he was just like oh, yeah, I ain't even worrying about you, I've been on him. So I guess they had problems already or something. I don't know. I don't know what the problem was. He says it was about a girl or whatever, but I don't know.

Q: All right. So he's pulled up. He's no longer focused on you. He's now focused on Zay. He said I want—he wanted Zay now?

A: Yeah, he said I don't even want you no more. I've got a problem with him. So Zay was like what's up.

Q: What did—what was Zay's response to Mr. Hood?

A: He was like what's up, let's go. He was like yeah, let's walk down to the end of the road. Dameon was telling him to get out of his yard because he didn't want any trouble in his yard. Shawn—Shawn and Ron, they went like towards the road.

Q: Let me stop you there and back up. When Zay said what's up, let's go, what was he talking about doing?

A: They was going down the road and doing—and fight or whatever.

Q: Fight how?

A: I guess hands. Fist fight.

Q: Did he give any indication he was willing to fight with guns?

A: no, there hadn't been any of that.

Q: So he agreed to have a fistfight?

A: Yeah, said let's go handle this or whatever, so they walked down the road

Tr.Tr.pg.124; Lines 5-25; pg.125; Lines 1-9

The petitioner and the victim arguably exhibited bias towards one another, and when the victim showed up at the trailer park, the appellant and the victim engaged in a mutual combat. **See, State v Graham, 260 S.C. 449 (1973)**

Let the record reflect, that all parties, were combatants in this tragic event and despite all the testimony to the contrary. Furthermore, the testimony at the trial was that they knew appellant had a gun and brandished this weapon according to Hill on Facebook, and despite knowing this; they all participated in the fight. Clearly, when Mr. Hill and Mr. Springs voiced their opinion about fighting with guns, once they participated in the fight does not relieve them of the responsibility for the victim death. However, once they reengaged the appellant in the fight, it can no longer be said legally they abandoned the crime. And unlike the other precedents, none of

them come close to addressing the combatants when it was not one but all present at the scene engaged in the combat, further, the appellant was assaulting Mr. Hill when he heard the gun shots. So what evidence did the prosecution present, other than the fighting mutually that resulted in the death of the victim, absent any testimony the appellant fired at the victim is lacking in credible evidence. Thus, it is only pure speculation that the appellant shot victim when nobody saw the appellant do so. For this reason, the jury was allowed to speculate about the guilt of the appellant when it comes to the murder conviction.

Since it was done in the sudden heat of passion upon sufficient provocation or without premeditation, it is manslaughter. The testimony likewise reveals that the appellant did not leave the area. So there was no cooling off period, and had the jury been informed or charged with mutual combat or manslaughter the jury would have found appellant not guilty because the evidence shows that the willingness to fight was mutual.

Legal Analysis

When ruling on a motion for directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. See, State v Weston, 367 S.C. 279, 292 (2006) A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. Weston, id. On appeal from denial of directed verdict in a criminal case, an appellate court must view the evidence in light most favorable to the state. See, State v Stanley, 356 S.C, 24, 41 (Ct.App.2005) If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury. See, State v Mollison, 319 S.C. 41, 61(Ct.App.1995)

Hood argues the trial court erred in denying his motion for directed verdict because the state failed to introduce any direct or substantial circumstantial evidence that he intended to ill victim, when the evidence shows that this was a mutual combat between the parties. Despite, the fact that victim was not the one who was privy to the mutual combat, once he took it upon himself to fight on the behalf of the person who initiated the conflict the same rule must apply as if he was the actual victim.

The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years. The case law does not establish that there must be "mutual intent and willingness to fight" to constitute mutual combat. See, State v. Graham, 260 S.C. 449, 450 (1973) mutual intent is manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat. Graham, id.

"The doctrine [of mutual combat]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 "State v Taylor, 356 S.C. 227, 232 n.4 (2003) Mutual combat occurs when there is a mutual intent and willingness to fight. Graham, id, at 450, Mutual intent is "manifested by the acts and the conduct of the parties and the circumstances attending and leading up to the combat." See, 40 C.J.S. Homicide§123

The antiquated doctrine was limited in its application by our Supreme Court in Taylor, our Supreme Court required that the fight arise out of a preexisting dispute and that the combatants be armed with deadly weapons Taylor, id, at 233-34 n.4., additionally, each party must know the other is armed with a deadly weapon. Taylor, Id., n.5, Moreover, it is essential; that the agreement to fight be **"entered into prior to the beginning of the combat"** also described as an antecedent agreement to fight. See, 40 C.J.S. §206; accord Taylor, id.

Graham provides the quintessential example of mutual combat in South Carolina. In Graham, Graham and the decedent threatened each other and quarreled the day before the shooting. Graham, id, at 451. Graham armed himself and the two met in town the next day. Id. They became engaged in an altercation, which continued until Graham waived his pistol in the face of the decedent, who then left town only to return shortly thereafter with his own pistol. Id. The decedent parked outside of the barber shop where Graham was waiting, and the decedent stepped out of his vehicle, pistol in hand. Id. Graham, seeing the decedent armed, left the barber shop and walked into the street, positioning himself for an encounter. Id. As Graham entered the street, both parties fired, and Graham fatally wounded the decedent.

Our Supreme Court determined **"[t]here was ill-will between the parties" and it was "inferable that they had armed themselves to settle their differences at gun point." Id.** Accordingly, the question of mutual combat was for the jury to decide. See, State v Mathis, 174 S.C. 344,348 (1934) (finding the law of mutual combat was appropriately instructed to the jury because[t]here was testimony that the appellant and the decedent were on the lookout for each other; Were armed in anticipation of a combat; [and] that each drew his pistol and fired upon each other")

Similarly, other jurisdictions have found a charge on the law of mutual combat appropriate when there is evidence of an antecedent agreement to fight and when both parties are armed with dangerous weapons. See, Hughes v State, 101 Tex.Crim. 164, 274 S.W. 146, 147 (1925) (emphasizing the importance of there being evidence of an antecedent agreement to fight before there can be an issue of mutual combat); Lujan v State, 430 S.W.2d 513, 514 (Tex. Crim. App. 1968); Green v State, 302 G.A. 816, 809 S.E.2d 738, 741 (2018); State v Johnson, 53 Conn. App. 476, 733 A.2d 852, 855(1999)

On the other hand, Taylor is an example of circumstances that do not justify a jury instruction on mutual combat. In Taylor, the petitioner and the decedent got into a physical altercation after the petitioner attempted to stop a fight between the decedent and another person. Taylor, id, at 229, n.2. At the suggestion of someone in the house, the petitioner and decedent moved the fight outside and, shortly thereafter, the petitioner drew a knife and stabbed the decedent fifteen times. Our Supreme Court determined there was no ill-will between the parties and no evidence the decedent knew the petitioner was armed with a knife. Id, at 234.n.5. Accordingly, there was "insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury."

Although we have limited cases in our jurisprudence on the law of mutual combat, that case law unequivocally indicates that it is essential there is evidence there is evidence of pre-existing ill-will between the parties and that both are armed with deadly weapons and have knowledge the other is armed.

Conclusion

The court is asked to grant writ, on the question of whether Mutual Combat was warranted in the case at bar when the trial record is saturated with evidence of a mutual combat between parties, as well as, fact that all parties knew the other was armed and agreed to fight as was made clear at trial. A directed verdict was warranted in this case.

Wherefore, it is prayed court grant writ

Dated: 6 day of November, 2024,

Respectfully Submitted;

S/ Aaron Hood

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