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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

THE STATE,

RESPONDENT,

V.

RASHAD MONTRELL HARVIN,

APPELLANT

APPELLATE CASE NO. 2025-000123

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by instructing the jury on mutual combat?

STATEMENT OF THE CASE

Appellant was indicted during the October 29, 2020, term of the Sumter County grand jury for murder and possession of a weapon during the commission of a violent crime. R.*(Indictments). On March 28, 2022, the case proceeded to trial before the Honorable Kristi F. Curtis and a jury. Tr. 1. Allen Barnes of the Taylor Law Group represented Appellant; John Meadors represented the state. Tr. 2. The jury convicted Appellant of both counts. Tr. 648. Judge Curtis sentenced Appellant to thirty (30) years' imprisonment for murder and five (5) years for the gun charge, to run concurrently. Tr. 654.

This appeal follows.

STANDARD OF REVIEW

A jury charge is to be determined by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). This Court "determines whether the [circuit courts]'s ruling is supported by any evidence." *State v. Williams*, 400 S.C. 308, 314, 733 S.E.2d 605, 608 (Ct. App. 2012) (alteration in original; citation omitted). A jury charge must be both erroneous and prejudicial to warrant reversal of the judgment. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (citing *Ellison v. Parts Distributors, Inc.*, 302 S.C. 299, 395 S.E.2d 740 (Ct. App. 1990)).

ARGUMENT

The trial court erred by charging the jury on mutual combat.

Relevant Facts

On May 8, 2020, at the A&P Coastal gas station in Sumter, Appellant shot and killed Michael Wilson. Tr. 169-71. None of the state's witnesses saw who fired the first shot, and a security camera video of the incident did not record the several seconds when the shooting began. Tr. 226-27; State's Exhibit 37 (on file with this Court). What is known is that Appellant and Wilson both shot at each other several times each. Tr. 278-79.

Appellant testified in his own defense. Tr. 486. He testified that Wilson had threatened him at Family Dollar a week prior to the shooting incident. Tr. 492. During that incident, the two almost came to blows, but Wilson reached for a firearm. Tr. 492. On the day of the shooting, Appellant was at the gas station when Wilson arrived. Tr. 496. He traveled to the gas station specifically using a different street than normal because he thought Wilson may be at Family Dollar again, and Appellant wanted to avoid him. Tr. 521. Wilson saw Appellant before Appellant saw Wilson, and Wilson yelled various taunts and threats at Appellant, including "didn't I tell you I'm going to kill you?" Tr. 502-03. When Appellant turned around to look at Wilson, Wilson was reaching for his gun. Tr. 503.

At that point, Appellant pulled out his own gun and "accidentally shot in the air." Tr. 503. He then ran to take cover behind a gas tank as Wilson shot at him. Tr. 503. After Wilson began shooting at Appellant, Appellant shot at Wilson, then ran away. Tr. 504. Appellant ran home and buried his gun in his backyard. Tr. 507.

At the charge conference, the trial court indicated its intention to charge the jury on mutual combat. Tr. 565. Appellant objected to the charge, arguing there was no evidence to

support it. Tr. 565. Of note, the solicitor also expressed discomfort with the charge. Tr. 566-68.[1] The trial court disagreed, stating "I mean, if you follow the Defendant's testimony, that he just shot up in the air and the guy turned around and fired at him and they're firing at one another, I think...it probably does fit *under the Defendant's testimony.*" Tr. 567, ll. 6-10 (emphasis added). When the solicitor asked the trial court whether it thought there was a "willingness" to fight, the trial court responded, "they're engaged in a gun battle across the parking lot," and "the Defendant's testimony is that he fired up in the air, and that the victim then turned around and fired at him." Tr. 567, l. 21 – 568, l. 9.[2]

The trial court charged the jury, in relevant part, as follows:

> The following elements are required to establish self-defense. First, the Defendant must be without fault in bringing on the difficulty. If the Defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the Defendant would be at fault in bringing on the difficulty. It would not be entitled to an acquittal based on self-defense.
>
> If the Defendant voluntarily participated in mutual combat for purposes, other than protection, the killing of the victim would not be self-defense. This is true, even if during the combat, the Defendant feared death or serious bodily injury.
>
> However, if before the killing is committed, the Defendant withdraws and tries in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty. For mutual

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[1] "MR. MEADORS: You know what? And I...this mutual combat, I don't know why it's bothering me. It must be a mutual intent and willingness to fight. Do you think that's there? THE COURT: Well, they're engaged in a gun battle across the parking lot. MR. MEADORS: Yeah. But 'willingness' is the word that bothers me, I guess. I mean, I almost see mutual combat. Yeah. Everybody's there. Everybody knows you got a gun and we're going to start fighting. Almost. I know. It's not that clear." Tr. 567, l. 21 – 568, l. 6.

[2] Respectfully, this is not an accurate statement of Appellant's testimony. Appellant testified that he shot into the air after Wilson first reached for his own gun. Tr. 503.

> combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties, and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

Tr. 636, l. 24 – 637, l. 19. The jury ultimately convicted Appellant of murder and the related weapons charge. Tr. 648.

Discussion

No evidence supported the trial court's charge on mutual combat. Accordingly, that court erred by charging mutual combat. Further, since Appellant's only defense at trial was self-defense, and the trial court negated its own self-defense instruction with an unwarranted charge on mutual combat, Appellant was prejudiced. For these reasons, this Court should reverse Appellant's convictions and sentences and remand for a new trial.

The mutual combat doctrine is by no means new; it "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). Mutual combat requires "mutual intent and willingness to fight." *Id.* (citing *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973)). This can be evidenced 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 (citing 40 C.J.S., *Homicide* § 122). For example, "if two men, each having threatened the other, both go to the point where they know the other is going to be or have reason to believe the other is going to be, and a fight ensues…he cannot set up self-defense." *State v. Jones*, 113 S.C. 134, 134, 101 S.E. 647, 647 (1919); *see also, State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934) (mutual combat charge was warranted where evidence showed that defendant and victim were on the lookout for each other, both were armed anticipating meeting one another, and each shot their pistol at the other). If two people engage in mutual combat, and one dies, the survivor is guilty of murder if the killing was

"maliciously done," and voluntary manslaughter if the killing was done in the sudden heat of passion. *State v. Andrews*, 73 S.C. 257, 53 S.E. 423, 424 (1906).

Importantly, mutual combat must arise from an "antecedent agreement to fight." *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4 (citing, *inter alia*, *Eckhardt v. People*, 126 Colo. 18, 247 P.2d 673 (1952); *Lujan v. State*, 430 S.W.2d 513, 514 (Tex. Crim. App. 1968)); *see also, id.* ("We believe the restrictions placed on the applicability of mutual combat by the courts in...Colorado and Texas are warranted"); *see also, State v. Bowers*, 428 S.C. 21, 32, 832 S.E.2d 623, 629 (Ct. App. 2019), *aff'd* 436 S.C. 640, 875 S.E.2d 608 ("the agreement to fight [must] be entered into prior to the beginning of combat" (internal quotation marks and citations omitted)). Unless combat arises from a "mutual agreement to fight on equal terms for purposes other than protection," a mutual combat charge is unwarranted. *Id.*

Further, an erroneous charge on mutual combat is "ipso facto harmful." *Id.* (quoting *Grant v. State*, 120 Ga. App. 244, 170 S.E.2d 55, 56 (1969)). A charge on mutual combat has the effect of "plac[ing] upon the defendant a heavier burden than required for self-defense." *Id.* (quoting *Grant*, 120 Ga. App. 244, 170 S.E.2d at 56 (internal quotation marks omitted)). Especially in a self-defense case, the wrongful charge of mutual combat has the effect of negating self-defense and is similar to a trial court's failure to charge self-defense at all. *Id.* at 235, 589 S.E.2d at 5 (citing *State v. Burkhart*, 350 S.C. 252, 565 S.E.2d 298 (2002)). Charging mutual combat when not warranted has the effect of shifting the state's burden to disprove self-defense onto the accused. *Id.*

In *State v. Taylor*, the Supreme Court analyzed a case where the trial court had charged mutual combat in a self-defense case. 356 S.C. 227, 589 S.E.2d 1. The defendant in that case went to the home of an acquaintance with several other people. *Id.* at 229, 589 S.E.2d at 2. One

of them, Carter, was heavily intoxicated and shoved a woman into a counter. *Id.* The defendant intervened in the fight, which led to him and Carter engaging in a violent, physical altercation. *Id.* At the request of the homeowner, they took the fight outside, where the *Taylor* defendant would ultimately stab Carter fifteen times in the chest, killing him. *Id.* at 231, 589 S.E.2d at 2. The trial court charged the jury on mutual combat, and Taylor was convicted of murder. *Id.* at 230, 589 S.E.2d at 3.

The Supreme Court reversed. *Id.* It held that there was no evidence to support the mutual combat charge because there was no evidence of preexisting ill-will between Taylor and Carter, and there was no evidence that Taylor intended to engage in an armed encounter with Carter. *Id.* at 234, 389 S.E.2d at 4. Importantly, the Supreme Court also held that a crucial element of mutual combat was that "*each party knew* the other was armed." *Id.* (emphasis in original). There was not only no evidence that Taylor knew Carter was armed, but there was also no evidence that Carter knew Taylor was armed. *Id.* These facts defeat mutual combat. *Id.* The Supreme Court also held that the mutual combat charge had been prejudicial, because Taylor's only defense was self-defense, and the mutual combat charge had the effect of shifting the burden of proof away from the state and onto Taylor. *Id.* at 235, 389 S.E.2d at 5.

Here, there was no evidence whatsoever that Appellant and Wilson made some pre-arrangement to fight with deadly weapons, nor is there evidence that Appellant or Wilson went to the incident location with the intention of seeing and fighting each other. The evidence presented was that Appellant went to the gas station with the intention to sell marijuana. Tr. 496. While the solicitor attempted to paint Appellant's statements as false in closing, no evidence was presented that Appellant went to the gas station for any other purpose than to sell marijuana. *See* Tr. 580 (closing argument); *cf., Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011)

("a lesser-included offense may not be charged merely on the theory that the jury may believe some of the evidence and disbelieve other evidence"). And the state took great pains to assert that Wilson was at the gas station for an entirely innocent purpose.[3] *Contra*, *Campbell v. State*, 441 S.C. 361, 364-65, 893 S.E.2d 492, 494 (Ct. App. 2023) (mutual combat charge was proper when, among other things, defendant armed himself before traveling to incident location with the express purpose of confronting victim). This is combined with the fact that Appellant's uncontroverted testimony is that he took a different route than normal to go to the gas station for the express purpose of *avoiding* Wilson; not confronting him. Tr. 521.

The state's theory was that Wilson was only at the gas station to play the lottery and purchase beer. That theory of prosecution is dispositive here. Mutual combat is just that: *mutual*. It requires an "antecedent *agreement* to fight." *Bowers*, 428 S.C. at 33, 832 S.E.2d at 630 (emphasis added (citing *Hughes v. State*, 101 Tex. Crim. 164, 274 S.W. 146 (1925)). There is "no evidence [Wilson] knew [Appellant] was armed." *Id.* (discussing *Taylor*, 356 S.C. at 229, 589 S.E.2d at 5).[4] Mutual combat jurisprudence places a heavy emphasis on the fact that both

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[3] Regarding Wilson's intent, the solicitor stated the following in closing:

> What's Mr. Wilson's intent that day? What did he do? You know what he did? Saw his buddy, Larry. They talked about the Cadillac club and his rims. Well, that's okay. He went and played his numbers. That's all right. And he bought some beer...He bought some beer...But what was his intent? His intent was to go to the store, [play] his numbers, get his lottery tickets, get some beer, and go enjoy the weekend. There's no dispute that's what Michael Wilson did, and what he wanted to do...He's not looking for trouble.

Tr. 578, l. 7 – 679, l. 1.

[4] The solicitor seemed to suggest otherwise during the charge conference. Tr. 568, ll. 2-5 ("I mean, I almost see mutual combat. Yeah. Everybody's there. *Everybody knows you got a gun and we're going to start fighting*. Almost" (emphasis added)). It is not at all clear where the solicitor got this idea, but it certainly was not from the evidence presented at the trial. *See, e.g.,*

parties must know the other is armed. *Taylor*, 356 S.C. at 234, 589 S.E.2d at 5. Without that knowledge, which must be shared by both parties to the combat, mutual combat cannot exist as a matter of law. *Id.*

In fact, the solicitor went so far as to suggest that Wilson would have been entitled to self-defense. Tr. 582.[5] This alone would seem to entirely negate mutual combat as a matter of law; mutual combat and self-defense cannot exist simultaneously. *See, e.g., Taylor*, 356 S.C. at 232, 589 S.E.2d at 3. One party to the mutual combat being entitled to self-defense means, as a matter of law, that the combat was not mutual. *See, e.g., State v. Young*, 429 S.C. 155, 161, 838 S.E.2d 516, 519 (2020) (all mutual combatants liable for all consequences of the mutual combat); *see also, Campbell*, 441 S.C. at 372, 893 S.E.2d at 498 ("when there is no evidence a *victim* is willing to engage in mutual combat, charging mutual combat and self-defense creates unfair prejudice" (emphasis added; internal quotation marks omitted)) (quoting *State v. Jackson*, 384 S.C. 29, 38 n.5, 681 S.E.2d 17, 21 n.5 (Ct. App. 2009)).

The trial court's rationale for charging mutual combat was that Appellant and Wilson were "engaged in a gun battle across the parking lot." Tr. 567-68. But that reasoning ignores mutual combat's "*antecedent agreement* to fight" requirement. *Taylor*, 356 S.C. at 233, 589

Tr. 267, ll. 19-20 (Mr. Harrison testified "I saw [Appellant's] gun *after* I was done turn around coming back to see...what's been going on now" (emphasis added)); Tr. 278 (Mr. Gainey testified that he saw Appellant "looking off" when he arrived at the gas station, but did not mention seeing Appellant with a gun); R* (State's Exhibit 6) (no 9-1-1 caller mentioned seeing Appellant with gun prior to the shooting); R* (State's Exhibit 4) (witnesses who spoke with first officer on scene did not mention seeing Appellant with gun). None of the witnesses who testified at the trial saw Appellant with a gun before the shooting. None of the 9-1-1 callers saw Appellant with a gun before the shooting. And none of the witnesses who spoke to Officer Salmon saw Appellant with a gun before the shooting.

[5] "You know who's entitled to self-defense in this case? Michael Wilson. I wish he'd been successful. I wish he had been successful, Michael Wilson." Tr. 582, ll. 10-12.

S.E.2d at 4 (emphasis added). The typical actions that the mutual combat doctrine is aimed at are far closer to, for example, dueling than what occurred in this case.[6]

What the trial court essentially held, however, is that any time both parties to a shootout fire their guns, mutual combat applies. The trial court's holding here can be logically extended to apply the doctrine in nearly every single self-defense case. That same reasoning could be used to justify charging mutual combat in cases where a victim of a carjacking shoots back; an absurd result would effectively nullify the defense of self-defense in South Carolina. And it is wholly inconsistent with the Supreme Court's limitation of the "antiquated doctrine" of mutual combat. *Bowers*, 428 S.C. at 32, 832 S.E.2d at 629 ("The antiquated doctrine was limited in its application by our supreme court in *State v. Taylor*").

Mutual combat requires an "*antecedent* agreement to fight." *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4 (emphasis added). It requires that both combatants, having threatened each other, go to a place that they know or should know the other will be. *Jones*, 113 S.C. at 134, 101 S.E. at 647. It requires both know that the other is armed with a deadly weapon and choose to engage in combat anyway. *Taylor*, 356 S.C. at 234, 589 S.E.2d at 5. No evidence exists to support even one of these elements in this case, much less all three.

The charge was enormously prejudicial to Appellant. "The commingling of mutual combat and self-defense jury instructions is problematic." *Bowers*, 428 S.C. at 37, 832 S.E.2d at 632 (citing *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4). It has the effect of burden-shifting, because mutual combat negates the first element of self-defense—that the accused is without fault in

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[6] It is true that Appellant presented evidence that he and Wilson had prior difficulties. *See* Tr. 492-96. However, this alone is in no way sufficient to negate self-defense or charge the jury on mutual combat. Rather, the fact of prior difficulties typically *strengthens* self-defense claims, not weakens them. *See, e.g., State v. Nichols*, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997), *accord State v. Hendrix*, 270 S.C. 653, 659-60, 244 S.E.2d 503, 506 (1978).

bringing about the difficulty—and essentially places the burden on the accused to either refute mutual combat or show that he withdrew from the conflict. *See id.* The *Taylor* Court noted this, and cited approvingly to courts in other states, which have held that commingling charges on mutual combat and self-defense is *per se* prejudicial. *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4 (citing *Grant*, 120 Ga. App. 244, 170 S.E.2d at 56). Essentially, an erroneous mutual combat charge requires the accused to prove self-defense, rather than requiring the state to disprove it. *Id.* at 235, 589 S.E.2d at 5. When a defendant admits to a killing and relies solely on self-defense, wrongly charging mutual combat is substantially similar to failing to charge self-defense at all. *Id.* It is difficult to imagine a case where a wrongful charge of mutual combat could ever be harmless error. *See State v. Day*, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000) (failure to charge self-defense when the charge is warranted is *per se* reversible).

Appellant admitted killing Wilson at trial. His lone defense was self-defense. By charging mutual combat, the trial court essentially nullified that defense. This Court should reverse Appellant's convictions and sentences and remand for a new trial.

CONCLUSION

For these reasons, this Court should reverse Appellant's convictions and sentences and remand for a new trial.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of October, 2025.