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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Robert J. Bonds, Circuit Court Judge

Opinion No. 2026-UP-004

THE STATE,

RESPONDENT,

V.

JHARAUN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2023-000468

PETITION FOR REHEARING

On January 14, 2026, this Court issued an unpublished opinion in connection with this matter. State v. Washington, No. 2023-000468 (S.C. Ct. App. Jan. 14, 2026). In the opinion, this Court found the issue argued before the Court was not preserved for appellate review. Pursuant to Rule 221(a), SCACR, Jharaun Washington requests that this Court grant rehearing.

This Court decision finds a preservation issue in part based on the nature of the argument during the directed verdict motion. The Court's opinion implies that trial counsel failed to argue that appellant was entitled to a directed verdict on the murder charge due to an absence of evidence of mutual combat. This finding misreads the trial court record. There is a reason the

State did not argue the directed verdict issue was not preserved for appellate review, as counsel for both defendants moved for directed verdict on the defects in the evidence surrounding mutual combat.

At the close of the state's case, both defendants moved for directed verdict and dismissal on the state's failure to establish mutual combat as indicted.[1] Counsel for co-defendant Rivers went first, arguing that mutual combat required some evidence of both agreement and prior difficulty and that co-defendant Rivers was entitled to a directed verdict of acquittal. R. 408, l. 10 – 409, l. 1. Appellant's counsel joined the motion for the same reasons.

> With respect to the mutual combat charge, I think with respect to proving all of the elements of mutual combat, if that existed, and, again, I'm not gonna go back through all of the case law that Ms. Carmody has cited. I know there was no evidence of the disagreement or a pre-existing ill-will between the appellant and the victim in that case.

R. 409, l. 21 – 410, l. 2.

> There's absolutely zero evidence of any prior difficulties between Mr. Washington and Mr. Rivers. And based upon all of that, I would ask the Court to grant our motion for directed verdict.

R. 410, l. 24 – 411, l. 2.

This Court's opinion relies in part on the argument made by the state in responding to the directed verdict motions, thus taking that portion of the record out of context from the arguments made by counsel for co-defendant Rivers as joined by appellant's counsel. In fact, the trial court

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[1] "We end where we began: indictments matter. The law does not mandate perfection in the drafting of indictments, but it does require fair notice of the charge against the accused. Here, rather than charging Dent with all the sexual batteries alleged in the victim's forensic interviews, the State opted only to indict Dent for the sexual battery of fellatio. That choice mattered. We fully understand the horrific nature of the multitude of uncharged acts of sexual abuse allegedly committed by Dent on the victim. Nonetheless, as a Court, we must be guided by the law and not a sliding scale of sympathy based on the appalling nature of the alleged offenses." State v. Dent, 446 S.C. 121, 136, 919 S.E.2d 394, 402 (2025).

focused questions to the State in part on the lack of any prior animosity or ill-will between the parties during the directed verdict argument:

> THE COURT: Well, what about the animus, where is that?
>
> MS. CAMPBELL: Sir?
>
> THE COURT: The animus or the bad blood or the -- is that a requirement?
>
> MS. CAMPBELL: It is not.

R. 416, l. 25 – 417, l. 5.

After argument and discussion on the issue of mutual combat and the required proof, a discussion that began on page 404 of the Record, the trial court denied the directed verdict motions in detail on pages 427 - 428 of the Record. This Court's finding that an isolated statement from the State in response to a question from the trial court prompted by the directed verdict motions failed to preserve the issue for appellate review is not supported by the Record. In fact, the Record contained detailed arguments from counsel for both defendants on the failure of proof on the elements of mutual combat, as outlined in Appellant's Brief, that required the trial court to direct a verdict in favor of appellant.

As an additional basis to deny addressing the merits of the issues raised concerning mutual combat, this Court's opinion creates a novel concept of, in essence, waiver when dealing with motions regarding the sufficiency of the evidence. Notably, this Court's opinion would require trial counsel to object to any aspect of the jury charge that contradicts the basis for the directed verdict motion to preserve the matter for appellate review. No authority is cited for this holding, in part because it is in direct conflict with existing precedent regarding how appellate courts review directed verdict motions.

In evaluating a mid-trial motion for directed verdict, the sole issue before the trial court and the appellate courts is the sufficiency of the evidence presented by 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. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015) (emphasis added). An exception to the rule that the evaluation is based solely upon the evidence presented by the state during its case in chief applies when the defendant(s) presents evidence to the jury. In that situation, on appellate review, the entire evidentiary record is reviewed for support. *See* State v. Hepburn, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013) (holding the in determining the sufficiency of the evidence, appellate courts should consider the entire testimony, including that offered by defendants). The "waiver rule" applied in Hepburn itself has an important caveat: "we recognize an exception to the waiver rule where a codefendant testifies" and any testimony elicited from co-defendants is to be excluded from sufficiency of the evidence considerations. Id., 406 S.C. at 436, 753 S.E.2d at 412.

No similar rationale would extend Hepburn to the trial court's charge on the law. In terms of appellate review of a directed verdict motion, this Court must consider the evidence presented during trial. The trial court's charge to the jury is not evidence. Likewise, argument of counsel is not evidence. *See* Lindsey v. State, 924 S.E.2d 104, 112 (S.C. 2025). Neither an attorney's closing argument nor the charge to the jury is evidence and neither plays a role in the evaluation by the trial court, or this Court on appeal, on the sufficiency of evidence to survive a directed verdict.

In evaluating a motion for directed verdict, the sole issue before this Court is the sufficiency of the evidence presented to the jury.[2] "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. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015) (emphasis added). If the defendant submits evidence in the case, on appellate review, the entire record is reviewed for evidentiary support. *See* State v. Hepburn, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013) (holding the in determining the sufficiency of the evidence, appellate courts should consider the entire testimony, including that offered by defendants). In evaluating the denial of a directed verdict motion, our courts look to the evidence presented during trial, not the charge from the bench or the argument of counsel during closing.

This Court's opinion noted trial counsel's closing argument regarding admitting guilt to voluntary manslaughter. State v. Washington, No. 2023-000468 n. 1 (S.C. Ct. App. Jan. 14, 2026). While not using this jury argument as a basis for the decision, the footnote implies an additional waiver ground. However, trial counsel is not required to pick a theory and ignore appeals to the jury based upon other considerations during closing argument out of fear of issue preservation. *See* State v. Moore, 245 S.C. 416, 421, 140 S.E.2d 779, 781 (1965) (holding "fact that the defendant interposed the defense of alibi did not deprive him of the benefit of the reasonable inferences to be drawn from the testimony relative to the degree of the offense committed, for the burden of establishing the offense charged rested upon the State.").

"[I]ssue preservation rules should not be applied in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the

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[2] Neither defendant in this matter presented evidence, so the evidence to consider, in terms of the directed verdict motion, was complete as soon as the state rested.

appeal of a legitimate issue." State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Appellant respectfully requests that this Court reconsider its opinion that the sufficiency of the state's evidence regarding mutual combat was addressed during the directed verdict motion, argued extensively before the trial court, and ultimately ruled upon by the trial court. To the extent this Court interpreted a failure to object to the charge, verdict form, and stance taken during closing argument as waiver, trial counsel's renewal of the motion for directed verdict after the verdict contradicts any assertion of waiver:

> MR. HALL: I would renew my prior directed verdict motion, and also renew any previous evidentiary motions that went against Mr. Washington for the record. Also, I would at this time make a motion for an essentially a judgment, notwithstanding the verdict, based on what appears to me to be an inconsistent application of the law that you provided to the jury.
>
> This was framed as an indicted mutual combat case, and the fact that my client -- the jury depicted my client of murder and Mr. Rivers of nothing is indicative to me that they neglected to fully understand the concept of mutual combat, that it actually required more than one combatant, and I don't think that -- and I'm asking you to set aside the jury verdict.

R. 506, ll. 6 – 21.

Moreover, an objection to the charge would have been fruitless according to the trial court who noted on the record he would not have altered the charge as given:

> I mean I think the charge certainly allows it, and so there was no objection to the charge, and even if there had been an objection, I will tell you, I'd let that charge stand, because I think that that is consistent, and I don't think that it is all or nothing proposition.

R. 50-7, ll. 15 – 20.

This Court's opinion finds an issue preservation concern, not raised and argued by the state, where the record demonstrates no failure of trial counsel in preserving the merits of the

sufficiency of the state's evidence supporting offensive use of mutual combat as a basis for criminal liability.

As was the case in State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003), here there is a complete lack of evidence of any pre-existing ill-will between the parties involved supporting a mutual willingness to fight. The state did not contend otherwise before the trial court, arguing instead that the "upon the impulse of the moment" language, referenced in State v. Brown, 108 S.C. 490, 95 S.E. 61, 63 (1918), eliminated pre-existing ill-will or ongoing dispute as a required element of mutual combat. R. 417, ll. 2 – 5. For the reasons set forth in Appellant's Brief to this Court, that ruling was in error since the state failed to present any evidence of pre-existing animosity or ill-will supporting an offensive use of mutual combat.

This Court's opinion finding the sufficiency of the state's evidence supporting mutual combat applies issue preservation "in a technical manner" and as a "game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." Morales, 439 S.C. at 609, 889 S.E.2d at 556. Appellant requests that is Court reconsider the merits of the issue presented and reverse the lower court's denial of directed verdict in favor of appellant.

Gary H. Johnson
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ATTORNEY FOR APPELLANT

This 29th day of January, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

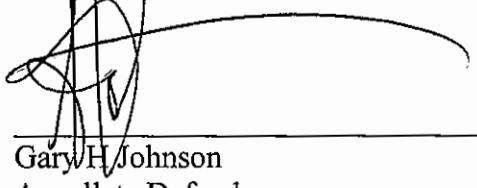
JHARAUN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2023-000468

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jharaun Washington, #390464, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 29th day of January, 2026.



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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, January 29, 2026 3:41 PM
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Cc: Johnson, Gary; abennett@scag.gov
Subject: 2023-000468 - The State v. Jharaun Washington
Attachments: 2023-000468 - The State v. Jharaun Washington - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, January 29, 2026, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
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