STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal from Jasper County
Robert J. Bonds, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JHARAUN WASHINGTON,

PETITIONER

Opinion No. 2026-UP-004 (S.C. Ct. App. Filed January 14, 2026)

APPELLATE CASE NO. 2023-000468

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# PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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I.

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 18, 2026.

## QUESTIONS PRESENTED

I.

Did the Court of Appeals properly rule that trial counsel failed to raise absence of evidence regarding mutual animosity or ill-will between combatants as an essential element of mutual combat at the directed verdict phase and then waived any defect in such proof supporting the indictment by not objecting to the jury charge that allowed conviction on a basis other than mutual combat?

II.

Should the Court of Appeals have reversed the trial court's denial of a directed verdict motion on the state's failure to produce any competent evidence of mutual animosity or ill-will as an essential element of the offensive use of mutual combat as a basis for the indictment of petitioner?

## STATEMENT OF THE CASE

Petitioner was indicted under the doctrine of mutual combat causing the death of Donovan Hay and for possession of a weapon during a violent crime by a Jasper County grand jury on February 24, 2022. R. 516-517. The language of the indictment became a focal point during the directed verdict motions following close of the state's case. The state elected to indict both petitioner and a co-defendant, Xavier Rivers, under the theory that the two engaged in mutual combat leading to the death of Hay. R. 516-517.

Shots were exchanged between individuals in a vehicle and people gathered around the back porch of an apartment complex in Jasper County. The shooting was captured on surveillance video.[1] Donovan Hay was driving a vehicle with three other occupants. The vehicle stopped on the street close to the back porch area of an apartment behind some concealing hedges, allowing Rivers to exit the rear of the vehicle and obtain an assault rifle from the trunk of the car just before the shooting.[2] State's Exhibit 15. In response to seeing the Hay vehicle, an individual the state claimed to be petitioner armed himself with a handgun from a white Cadillac parked at the apartment complex. State's Exhibit 15. As Rivers re-entered the Hay vehicle with the assault rifle, Hay began to drive down the street and shots were fired between petitioner's group and the Hay vehicle. State's Exhibit 15. Hay was struck in the head and killed by the gunfire. R. 395, ll. 5 – 14.

At the close of the state's case in chief, counsel for both Rivers and petitioner moved for a directed verdict based upon the failure of the state to introduce evidence on the required

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1 State's Exhibits 11 and 15 are on file with this Court. State's 15 represents a composite video showing the movement of the two shooters.

2 Xavier Rivers was tried with petitioner but was acquitted by the jury. R. 503, ll. 1 – 9.

elements of mutual combat, including the lack of evidence surrounding ill-will between the groups or a pre-existing dispute. R. 404 - 422.

In response to the directed verdict motion, the state argued there was no need under the law of mutual combat to show a prior dispute or prior ill-will between the combatants, since the combat could result from the "impulse of the moment." R. 415, ll. 9 – 24. In response to the trial court's inquiry about the need for "animus or the bad blood" between the parties, the state argued that mutual combat contained no such element. R. 417, ll. 3 – 5. The state produced no evidence about an ongoing dispute or source of ill-will between the Hay vehicle and the occupants on the porch of the apartment leading up to the shooting. The trial court denied the directed verdict motion.[3] R. 428, ll. 15 – 18.

Despite the lengthy argument at trial, the Court of Appeals determined that "the specific issue of whether Washington's guilt was wholly dependent on a finding of mutual combat based on his indictment, as argued on appeal, was not raised to the circuit court" and that "discussion between the court and the prosecution alone is not sufficient to preserve an argument." State v. Washington, Op. No. 2026-UP-004 at 6 (S.C. Ct. App. Filed January 14, 2026). In addition, the Court of Appeals applied a novel concept of waiver, indicating trial counsel's failure to object to the jury charge which allowed a finding of guilt without regard to an independent finding of mutual combat waived any alleged defect in the indictment under issue preservation rules. "Furthermore, the circuit court's instruction that the defendants' guilt should be considered separately was in direct opposition to the State having to prove mutual combat to convict

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[3] Petitioner's counsel also moved for a directed verdict on the failure of the evidence to establish petitioner as the shooter depicted in State's Exhibit 15. R. 409, ll. 3 – 20. During closing argument, petitioner's counsel argued that he was the person shooting at the Hay vehicle but argued petitioner was guilty of voluntary manslaughter and not murder resulting from mutual combat. R. 468, ll. 9 – 20.

Washington." State v. Washington, Op. No. 2026-UP-004 at 6 (S.C. Ct. App. Filed January 14, 2026).

Petitioner sought rehearing, noting the pages in the directed verdict argument that specifically touched on the requirement (under offensive use of mutual combat as a basis to indict for murder) that the state had the burden to produced evidence of prior difficulty or ill-will between the combatants. Petitioner also argued that a failure of proof at the directed verdict stage was not waived by arguments at the close of a case nor cured or waived by the charge to the jury. The Court of Appeals denied rehearing, refusing to address the merits of the underlying issue by relying on a defect in the preservation of the issue not raised by either party.

## ARGUMENT

I. The Court of Appeals improperly ruled that trial counsel failed to raise absence of evidence regarding mutual animosity or ill-will between combatants as an essential element of mutual combat at the directed verdict phase and then waived any defect in such proof supporting the indictment by not objecting to the jury charge that allowed conviction on a basis other than mutual combat.

*A. The failure of the state's proof supporting all the elements of mutual combat requiring a directed verdict of acquittal was raised and ruled upon by the trial court.*

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.[4] 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. Petitioner'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.

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[4] "We end where we began: indictments matter." State v. Dent, 446 S.C. 121, 136, 919 S.E.2d 394, 402 (2025).

Strangely, the Court of Appeals relied 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 petitioner's counsel. The trial court, before ruling on the directed verdict motion, focused questions to the State in part on the lack of any prior animosity or ill-will between the parties:

> 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.

Arguments from attorneys for all parties on the issue of mutual combat and the required proof began on page 404 of the Record, with the trial court denying the directed verdict motions in detail on pages 427 - 428 of the Record. The Court of Appeals 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 that required the trial court to direct a verdict in favor of petitioner.

B. *The Court of Appeals improperly created a new issue preservation rule by finding trial counsel's failure to object to the jury charge amounted to a waiver of any appellate review of the state's failure to produce evidence of the elements of the crime charged to avoid a directed verdict.*

As an additional basis to deny addressing the merits of the issues raised concerning mutual combat, the Court of Appeals adopted a novel concept of, in essence, waiver when dealing with motions regarding the sufficiency of the evidence. Notably, the Court of Appeals 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 was 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. [5] "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 that 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

[5] 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.

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, the Court of Appeals should have considered 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 on appeal, on the sufficiency of evidence to survive a directed verdict.

The Court of Appeals also noted trial counsel's closing argument regarding admitting guilt to voluntary manslaughter. State v. Washington, Op. No. 2026-UP-004 n. 1 (S.C. Ct. App. filed 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 appeal of a legitimate issue." State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Contrary to the Court of Appeals opinion on issue preservation, 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 the Court of Appeals crafted a new issue preservation hurdle in evaluating the sufficiency of the state's evidence for the indicted charge, 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.

The Court of Appeals 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. Petitioner requests that this Court grant certiorari to correct the improper application of existing preservation rules and correct the creation of new issue preservation rules surrounding the directed verdict stage of trial.

II. The Court of Appeals should have reversed the trial court's denial of a directed verdict motion on the state's failure to produce any competent evidence of mutual animosity or ill-will as an essential element of the offensive use of mutual combat as a basis for the indictment of petitioner.

*A. The offensive use of mutual combat as a basis for a murder charge.*

Here, the state elected to charge both Rivers and petitioner for murder under the theory that they were engaged in mutual combat leading to the death of Hay. R. 516-517. While South Carolina has recognized the use of mutual combat as the basis for a jury charge to negate an assertion of self-defense, it has also recently extended the doctrine to encompass criminal liability based upon its use as a basis for criminal liability:

> 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.

State v. Young, 429 S.C. 155, 166, 838 S.E.2d 516, 522 (2020).

In Young, the defendants were charged with murder under the theory that they engaged in 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." Young, 429 S.C. at fn. 1, 838 S.E.2d at fn. 1.

In this case, the state adopted the offensive use of mutual combat in indicting Petitioner and Rivers. Petitioner's indictment reads:

> That in Jasper County, South Carolina, on or about April 22, 2020, the Defendant, JHARAUN MONTYCE WASHINGTON did willfully, unlawfully and with malice aforethought engage in mutual combat with XAVTER KENDRELL RIVERS and did thereby cause the victim DONOVAN HAY to be shot and killed in the area of the Walsh Drive Apartments, Hardeeville, South Carolina and that DONOVAN HAY did die in Jasper County as a proximate result thereof on April 22, 2020, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina (1976), as amended.

R. 516-517. The language from petitioner's indictment closely tracks the indictment issued in Young.[6]

*B. The state was required to produce evidence concerning all elements of mutual combat under the indictment it elected to charge.*

In adopting the Young language as the basis for the indictment in the present case, the state assumed the burden of establishing the elements of mutual combat. In South Carolina, "[i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment." State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993). "A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it 'is not an element of the offense.'" Gunn, 313 S.C. at 136, 437 S.E.2d at 82 (*quoting* State v. Hiott, 276 S.C. 72, 276 S.E.2d 163 (1981)).

"[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts *under a different theory* than

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6 The indictment at issue in Young added additional language regarding murder, including the malice aforethought requirement. The indictment in Young can be viewed in Appendix page 205 contained in the South Carolina Appellate Case Management System for State v. Young, Appellate Case No. 2018-001861 (2020). https://ctrack.sccourts.org/public/caseView.do?csIID=68570.

that alleged." Bailey v. State, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011) (emphasis added) (*quoting* Thomason v. State, 892 S.W.2d 8, 11 (Tex.Crim.App.1994)). In Bailey, our Supreme Court held that an indictment charging "physical injuries resulting in Victim's death" required the state to produce evidence of such "physical injuries" rather than relying on "neglect" to support a conviction. Bailey, 392 S.C. at 435–36, 709 S.E.2d at 678. In State v. Smith, 406 S.C. 215, 219–20, 750 S.E.2d 612, 614 (2013), this Court ruled that an indictment under S.C. Code § 16-35-85(A)(1) (abuse or neglect causing death of a child) did not provide notice of a section (A)(2) charge (aiding and abetting abuse or neglect resulting in death of a child) requiring reversal of Smith's conviction. Recently, this Court restated the importance of the language adopted by the State in charging defendants, particularly when the evidence presented at trial deviates from the language used in the indictment:

> 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).

Here, the indictment's theory was that mutual combat between Rivers and petitioner resulted in the death of Hay, making both petitioner and Rivers criminally liable for murder. Much like the indictment in Young, the underlining theory of guilt was based upon mutual combat, requiring the state to meet the burden of production and proof on each aspect of mutual combat. Counsel for petitioner argued a failure to produce any evidence of pre-existing animosity or ill-will or any evidence of an agreement to engage in mutual combat:

> 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.

In addition, counsel for petitioner pointed out the failure of proof regarding the mutual knowledge that each combatant was armed and ready to engage in combat:

> Now, Mr. Hatfield's testimony was he said something out loud, but of course he also couldn't verify that anybody heard him say, "Oh, look, that's Zay [co-defendant Rivers] in the car," or words to that effect. There's no testimony here from anyone that indicated at least at that point that anybody was armed.
>
> And fast-forward to getting around the curb where the car stops, and exits the vehicle and removes this assault vehicle and gets back in. It's -- up to that point, and, again, there's no proof, there's nothing that's indicated in the record that there's anything going on here, that there's any willingness to fight.
>
> *There's absolutely zero evidence of any prior difficulties between Mr. Washington and Mr. Rivers.*

R. 410, ll. 11 – 25 (emphasis added).

In response, the state confirmed its use of offensive mutual combat from the indictments:

> And so at the outset mutual combat is first and foremost the basis for criminal responsibility and liability, and that would be indicted for a murder that is the killing that is committed during a mutual combat situation. And that is exactly how the State indicted both Mr. Rivers and Mr. Washington.
>
> They were indicted exactly the same, as the indictments that were issued in the Robinson and State v. Aaron Young Jr. and Aaron Young, Sr. cases. And so that is where we're a little off track with the Young case. And so, again, I've provided the Court with many different cases that address where we are with this as a liability criminal responsibility indictment as mutual combat.

R. 411, l. 20 – 412, l. 9.

The state asserted the video itself was sufficient evidence supporting mutual combat, based upon the two parties arming themselves. R. 413, l. 13 – 414, l. 18. The state also echoed the language from State v. Brown,[7] that it was sufficient if the parties "willfully enter into the conflict upon the impulse of the moment, and that is exactly what you have in this case." R. 415, ll. 21 – 24. In response to the trial court's inquiry about the need for "animus or the bad blood" between the parties, the state argued that mutual combat contained no such element. R. 417, ll. 3 – 5. The state produced no evidence about an ongoing dispute or source of ill-will between the Hay vehicle and the occupants on the porch of the apartment leading up to the shooting.

The trial court ultimately ruled with the state. In its ruling, the trial court focused on the "impulse of the moment" concept eliminating the need for any evidence of prior dispute of ill-will:

> As far as to an agreement, I don't think there has to be a stated agreement, as in we sit down and say, hey, let's agree to duke it out, you get your gun, I'll get my gun, let's go for it. I think the agreement can be upon the impulse of the moment, and I think that's clear -- I think there's evidence that that could be what happened here.

R. 427, ll. 6 – 13.

The trial court noted it was "as far as meeting the elements, giving the State in this case quite frankly every benefit of the doubt, which I'm charged to do at this point, I believe that there's enough evidence for this case to move forward for the jury to consider." R. 428, ll. 9 – 14.

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7 "That, to 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."* State v. Brown, 108 S.C. 490, 95 S.E. 61, 63 (1918) (emphasis added).

The trial court's error centers on the state's failure to meet its burden of production on an essential element of mutual combat: a pre-existing dispute or ill will. The basis for the requirement of a pre-existing dispute has been addressed by this Court in State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003). In Taylor this Court found that "[a]lthough South Carolina has not explicitly required that the fight arise out of a pre-existing dispute, other states have made this prerequisite to mutual combat explicit. Texas and Colorado adhere to the rule that an 'antecedent agreement to fight' must exist for the court to charge mutual combat." Taylor, 356 S.C. at 233, 589 S.E.2d at 4. This Court reasoned it was "logical that the evidence of agreement to fight be plain, like the evidence of mutual combat present in the *Porter*; *Graham*, and *Mathis* cases." Taylor, 356 S.C. at 234, 589 S.E.2d at 4.

This Court in Taylor then reviewed the evidence presented at trial to determine if mutual combat was applicable:

> There is no evidence, and the State does not contend, that there was any pre-existing ill-will or dispute between Kevin and the Petitioner, and there is no evidence that Kevin was willing to engage in an armed encounter with Petitioner. In their determination of mutual willingness to fight, the South Carolina cases discussed emphasize that each party knew the other was armed. Here, there is no indication that Kevin knew Petitioner was armed with a knife, and there was no pre-existing ill-will between the parties. Under these circumstances, there is insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury.

Taylor, 356 S.C. at 234, 589 S.E.2d at 5.

This requirement of prior ill-will was also addressed in State v. Bowers, 436 S.C. 640, 875 S.E.2d 608 (2022). This Court in Bowers noted:

> If Bowers and Michael Morgan *had a previous dispute, mutually agreed to fight at a later time, and otherwise satisfied the limitations on the doctrine of mutual combat* set forth in *Taylor,* and if the resumption of their conflict played a role in starting the

> shootout in which Bowers shot Green, then under the same theory that led us to apply the doctrine in *Graham* and *Young*, the doctrine would make Bowers responsible for the injury to Green.

Bowers, 436 S.C. at 649, 875 S.E.2d at 612-13 (emphasis added).

The required element of pre-existing ill-will is a common theme seen in South Carolina caselaw on mutual combat: State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977) (finding the prior argument over livestock accompanied by threatening gunshots supported a finding of mutual combat); State v. Graham, 260 S.C. 449, 196 S.E.2d 495 (1973) (noting parties had quarreled prior to the day of the killing and had made threats against each other before the fatal encounter); State v. Mathis, 174 S.C. 344, 177 S.E. 318, 319 (1934) ("There was testimony that the petitioner 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."). As was the case in Taylor, 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, 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.

However, this expansive view of mutual combat, which effectively eliminates any need to show prior hostility or disagreement between the parties involved, has already been reviewed and rejected by our Supreme Court in State v. Taylor:

> As mentioned, mutual combat acts as a bar to self-defense because it requires mutual agreement to fight on equal terms for purposes other than protection. This is inherently inconsistent with the concept of self-defense, and directly conflicts with the 'no fault' finding necessary to establish self-defense. As such, it is only logical that the *evidence of agreement to fight be plain*, like the evidence of mutual combat present in the *Porter*; *Graham*, and *Mathis* cases.

Taylor, 356 S.C. at 234, 589 S.E.2d at 4 (emphasis added). As noted, Porter, Graham, and Mathis all contained evidence of an ongoing dispute or prior ill-will between the parties involved.

By directly charging offensive mutual combat in the indictment, the state was bound to produce evidence supporting the required elements of mutual combat, including pre-existing ill-will or an ongoing dispute. As noted in the First Issue presented, the Court of Appeals avoided addressing the merits of this argument by creating a new barrier to appellate review of directed verdict motions. However, this Court should review the merits of the underlying issue and reverse the trial court's finding that the state was not required to produce any evidence of the required elements of mutual combat when indicting under offensive mutual combat theory of criminal liability.

## CONCLUSION

"We end where we began: indictments matter." Dent, 446 S.C. at 136, 919 S.E.2d at 402. The state elected to indict petitioner under offensive mutual combat as a basis for criminal liability and was, therefore, required to produce evidence on each of the elements of mutual combat. Due to a failure of proof as to ill-will or animosity between the alleged combatants, the trial court should have directed a verdict of acquittal and the Court of Appeals erred in crafting new and novel theories of issue preservation to avoid addressing the merits. Petitioner respectfully requests that this Court grant review, find the matter was properly preserved for appellate review and reverse the lower court's denial of the directed verdict motion.

Respectfully Submitted,

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ATTORNEY FOR PETITIONER

This 17th day of April, 2026.

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Apr 17 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal from Jasper County
Robert J. Bonds, Circuit Court Judge

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THE STATE,

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V.

JHARAUN WASHINGTON,

PETITIONER

Opinion No. 2026-UP-004 (S.C. Ct. App. Filed January 14, 2026)

APPELLATE CASE NO. 2023-000468

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CERTIFICATE OF SERVICE

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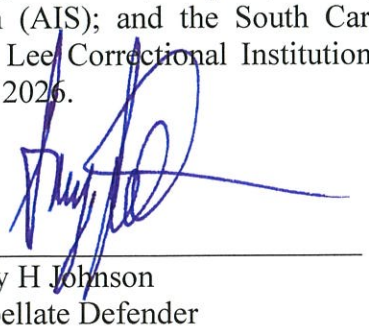
Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals and Appendix in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Jharaun Washington, #390464, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of April, 2026.



Gary H Johnson
Appellate Defender

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## Leverett, Scott

**From:** Leverett, Scott
**Sent:** Friday, April 17, 2026 2:58 PM
**To:** Melody Brown
**Cc:** 'abennett@scag.gov'; Johnson, Gary
**Subject:** 2023-000468 - State v. Jharaun Washington - Petition for Writ of Certiorari to the Court of Appeals
**Attachments:** 2023-000468 - State v. Jharaun Washington - Petition for Writ of Certiorari to the Court of Appeals.pdf

Dear Ms. Brown,

Attached please find a copy of the Petition for Writ of Certiorari to the Court of Appeals in the above referenced case that is being filed today with the Supreme Court and with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Gary Johnson
Appellate Defense