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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

FINAL REPLY BRIEF OF APPELLANT

W. CHANDLER NORVILLE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

The issue of whether the trial court erred by instructing the jury on mutual combat is preserved for appellate review.

All that is required to preserve an issue for appellate review is "a contemporaneous objection that is ruled upon by the trial court." *State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007). As to jury charges specifically, there is a "long-standing rule that" if "after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court's instructions." *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998). As to the substance of an objection, it is only necessary that the objecting party is "sufficiently clear in framing the objection." *Cone v. State*, 443 S.C. 487, 493-94, 905 S.E.2d 368, 372 (2024). So long as the trial court has an opportunity to rule, meaning that "both parties" are "aware of the nature of the objection," then the issue is fairly presented and preserved. *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). The error preservation rules, after all, are rules of fairness; if "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," then the rules are no longer fair. *Id.*

The state makes two primary arguments in support of its assertion that the issue is unpreserved. First, it asserts that Appellant's objection was too "general" and "very broad." BOR 11. Second, it asserts that Appellant did not renew his objection after the jury was charged, which the state asserts procedurally bars the issue under Rule 20(b), SCRCrimP. BOR 12. Both arguments fail.

First, after the trial court articulated its intention to charge mutual combat, trial counsel stated, "I just don't think there's any evidence to support that." R. 256, ll. 13-14. 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). Therefore, if a jury charge is not supported by any evidence, it is objectionable on that ground. Trial counsel articulated exactly that. His assertion that "there's [not] any evidence to support that," was sufficiently clear to permit both the trial court and the state to understand the basis of the objection.[1] The objection, contrary to the state's arguments, is not "general" or "broad" at all; it is an assertion that the proposed jury charge is not supported by any evidence.[2]

Second, the state asserts that Rule 20(b), SCRCrimP, requires that trial counsel reiterate his objection after the jury has been charged. According to the state, failure to do so renders his objection unpreserved for appellate review. BOR 12. That precise argument has been expressly rejected by our Supreme Court. *Johnson*, 333 S.C. at 64 n.1, 508 S.E.2d at 30 n.1 ("we clarify that neither our opinion in [another case], nor Rule 20(b), SCRCrimP...have altered the long-standing rule that where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court's instructions." (parenthetical omitted)).

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[1] Further, the discussion between the trial court and the solicitor regarding the mutual combat charge demonstrates with certainty that both knew "the nature of the objection." *Morales*, 439 S.C. at 609, 889 S.E.2d at 556; R. 256-257. The state recognizes this. BOR at 11 ("[The] State expressed uncertainty but deferred to the trial court").

[2] The state's complaints with how Appellant raised his objection seem to mostly stem from Appellant's "failure" to engage in "discussion" about his objection. BOR 12. But "discussion" is not required. All that is required is that Appellant make a contemporaneous objection that is sufficiently clear to inform the trial court and the opposing party of the nature of the objection. *Morales*, 439 S.C. at 609, 889 S.E.2d at 556. That was done here. Adoption of the state's "discussion" requirement would produce absurd results. For example, under the state's arguments, extremely common statements such as "Objection; Hearsay" would not preserve arguments for appellate review unless defense counsel followed with a long soliloquy about the ins and outs of the Rules of Evidence. This would come as a great surprise to the trial bar, as well as the trial bench, who would likely be dumbfounded by a rule which would, in practice, require the jury be sent from the courtroom for every single objection.

For these reasons, Appellant made a contemporaneous objection to the mutual combat charge, which was ruled upon by the trial court, and was sufficiently clear to enable both parties to understand the nature of the objection. Accordingly, the objection is preserved for appellate review.

CONCLUSION

For the foregoing reasons, the issue presented by Appellant is preserved for this Court's review. Further, the trial court's decision to charge mutual combat was wrong on the merits. This Court should reverse and remand for a new trial.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of May, 2026.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 28th day of May, 2026.

W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT