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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JHARAUN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2026-000960

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

The State's contention that appellant's counsel was ineffective by failing to preserve the argument concerning the sufficiency of the state's evidence establishing mutual combat as required by its indictment of appellant is not supported by the Record.

The State adopts the same preservation argument as the Court of Appeals. "On appeal, Petitioner argued for the first time that the wording of the indictment enlarged the elements the State was required to prove—i.e., Petitioner contended for the first time that because the State alleged the parties were engaged in mutual combat at the time of the fatal shooting, the State had to prove all the elements of mutual combat, including pre-existing dispute or ill-will between the parties." State's Return p. 6.

This assertion lacks support in the Record. 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. 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. This included handing the trial court this Court's decisions in State v. Bowers, 436 S.C. 640, 875 S.E.2d 608 (2022). R. 404, ll. 1 – 3.

Counsel for Rivers argued the absence of the element of prior difficulty or mutual ill-will:

There was no evidence that of any prior disagreement between Mr. Rivers and the suspected shooter. As I mentioned earlier, we're not sure who that shooter is. And also, Your Honor, there's no evidence of mutual combat. Mr. Rivers is seen on video actually leaving the area, and there's no indication that he wants to do combat.

So with Mr. Rivers, for example, a mutual combat case would exist between the two people, like in the Taylor case, for instance. You know, they had, you know, prior disagreements with each other,

prior gun battles, and the gun battle lasted for hours through this neighborhood, and then someone got shot. That's not what we have in this case.

R. 407, ll. 2 – 15.

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 (emphasis added).

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 (emphasis added).

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. In making the ruling, the trial court specifically ruled upon the need for the State, under its indictment, to establish all elements of mutual combat.

I also find that to constitute mutual combat, it's not necessary that there should be a positive agreement between the participating parties to enter into combat.

It's sufficient if they willfully enter into conflict upon the impulse of the moment. I'm not passing any judgment on the strength of the case, but what I would say is, as it relates to mutual intent, I mean I think clearly there's the existence of evidence that shows there's some type of mutual intent, when there's evidence that the Defendants are basically going to get their guns, Mr. Rivers and -- which I think the evidence is very clear that Mr. Rivers was getting the gun.

At the same time there is some evidence to suggest that Mr. Washington is going to get a gun. 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. I think both these individuals were armed with a weapon. I think there's evidence -- I think there's the existence of evidence, as it relates to that.

As it relates to identity of Mr. Washington, I think that the Facebook exhibit involving the shootout, that could be interpreted a lot of different ways, but I think that one of the ways that that could be interpreted is that he was involved in a shootout, as in he was shooting that gun. I also think, and I'm sorry, I don't recall the woman's name, but she testified yesterday afternoon, and, yes, sir, while she was not able to identify Mr. Washington in the photo lineup, she did, again, I'm not passing any judgment on the strength of her identification, but I recall that she did indicate that he was the shooter, and that she knew him, and was able to identify him, because she had been maybe at a friend or some relative's house who lived very close or next door to his mother, and she had seen him there at the mother's.

So I think that 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. Hold on. So I think with all that, I'm going to respectfully deny both Ms. Carmody and Mr. Hall's motion, and allow this matter to go to the jury for their consideration, all right? Thank you.

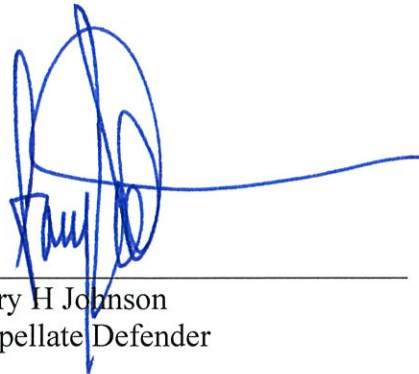
R. 426, l. 14 – 428, l. 18 (emphasis added).

The State's argument (and the decision of the Court of Appeals) that the detailed motion for a directed verdict based upon the language used in the indictment and the absence of evidence on all the elements of mutual combat failed to preserve this matter for review would elevate our issue preservation rules to insurmountable hurdles. The nature of the directed verdict motion was clear: the State failed to produce evidence on all aspects of mutual combat as

required under the indictment. The trial court heard arguments from all sides on the merits of the elements of mutual combat. The trial court ruled on the absence of some elements (prior-ill will) and the evidence supporting some elements (mutual willingness to fight) through the spur of the moment concept pushed by the State.

CONCLUSION

The State's assertion, and the holding of the Court of Appeals, that some failing of trial counsel to preserve this matter for appellate review ignores the guidance of this Court that the preservation rules should not be "applied in a technical manner" thereby "elevating form over substance." State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Based upon the arguments presented to and ruled upon by the trial court, this issue was fully preserved for appellate review.

A handwritten signature in blue ink, appearing to read 'Gary H. Johnson', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of June, 2026.