THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

INITIAL BRIEF OF APPELLANT

Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RECOGNIZING MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE AND DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE?

2. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT?

3. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE?

STATEMENT OF THE CASE

Appellant Aaron Scott Young, Jr. ("Appellant") was indicted for the offenses of murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940) in the Beaufort County Court of General Sessions. (Tr. 18.) On February 23–25, 2015, the case was tried by the Honorable Thomas W. Cooper, Jr. before a jury which found Appellant guilty on both charges. (Tr. 569.) The trial court sentenced Appellant to concurrent thirty year sentences on the murder and attempted murder charges. (Tr. 587–88.) On March 6, 2015, Appellant served a Notice of Appeal.

FACTS

This case arises from four different incidents that occurred at four different locations on Hilton Head Island over the course of the afternoon of September 1, 2012. Viewing the evidence in the light most favorable to the State due to Appellant's challenge to the denial of his directed verdict motion, the evidence introduced regarding each of those incidents was as follows.

A. Wild Horse Road Incident

Around 3:30 to 4:00 p.m., Tyrone Robinson ("Robinson") drove his vehicle, with Jontu

Singleton ("Jontu")[1] as a passenger, to Appellant's home off of Wild Horse Road. (Tr. 330, 346.) Appellant, his father, Aaron Young, Sr. ("Young, Sr."), and Young, Sr.'s girlfriend Ebony Campbell ("Campbell") were talking in the yard as Robinson's vehicle pulled in. (Tr. 331.) Jontu exited the vehicle and spoke to Young, Sr., and Robinson exited the vehicle with a pistol in his hand, began screaming profanities at Appellant, and moved towards Appellant. (Tr. 333, 348–49.) Young, Sr. rushed over and wrestled with Robinson for the gun, and as the two struggled, the gun fired. (Tr. 333–34.) Young, Sr. backed away, and Robinson fired the pistol at Young, Sr.'s feet. (Tr. 334.) Robinson then got into his vehicle and drove away. (Tr. 335.)

Young, Sr. and Appellant went inside the home and returned with a black bag. (Tr. 335.) Appellant, Young, Sr., and Jontu got into Young, Sr.'s pickup truck, with Young, Sr. driving, and drove around Hilton Head Island looking for Robinson's vehicle, including driving down Spanish Wells Road, Oakview Road, Marshland Road, and Allen Road. (Tr. 338–39.) While Young, Sr. drove, Appellant removed pieces of a gun from the black bag and began assembling the gun. (Tr. 339.) After driving for approximately ten minutes, the three stopped at Jontu's son's home on Allen Road, and Jontu exited the truck and knocked on the door, but no one answered. (Tr. 341–43, 345, 349.) They then drove back to Young, Sr.'s home off of Wild Horse Road, where Jontu exited the truck and Campbell got into the truck, and Appellant, Young, Sr., and Campbell drove off. (Tr. 343–45.)

B. Bryant Road

Appellant and Young, Sr. then traveled to Robinson's home on Bryant Road where they

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1 Because the victim in this case was Khalil Singleton, Appellant's Brief refers to Jontu Singleton and Khalil Singleton by their first names.

found Robinson. (State's Ex. 38, Video 7.) Appellant's gun was jammed at that point, and he did not try to shoot at Robinson or even point the gun at him. (State's Ex. 38, Video 7.) After Robinson fled, Young, Sr. drove them back to their homes on Wild Horse Road where they debated whether to continue searching for Robinson and ultimately decided to search more. (Tr. 456–57; State's Ex. 38, Video 7.)

C. First Allen Road Incident

Appellant and Young, Sr. traveled to Allen Road where they found Robinson's vehicle, but did not see Robinson. (Tr. 456; State's Ex. 38, Videos 1 & 2.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the area of Allen Road. (Tr. 271–72.) The gunshots heard were Appellant firing a magazine of bullets from his handgun into Robinson's unoccupied vehicle. (State's Ex. 38, Videos 2, 3, & 6.) The windows of Robinson's vehicle were not tinted and a person could see through the windows to see if anyone was in the car. (Tr. 459–500.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the corner of Marshland Road and Allen Road. (Tr. 280–92, 305.) Mitchell let Robinson into her home where the two spoke, and Robinson told her that "those M F was shooting at him." (Tr. 280–81, 292.)

Around the same time and between 4:00 and 5:00 p.m., Tyrone Delaney was driving from work to his home on Allen Road. (Tr. 301-03.) At the intersection of Spanish Wells Road and Marshland Road, he passed a grey F-150 truck headed the opposite direction, away from Allen Road. (Tr. 301-03.) As Delaney arrived at his home, Robinson was walking out, and the two met in the yard. (Tr. 275, 281, 304.)

Delaney and Robinson spoke in the yard for approximately ten minutes, and during their

conversation, Robinson asked Delaney if he saw a grey truck on his way home from work. (Tr. 282, 304.) When Delaney responded that he saw a grey truck, Robinson stated: "yeah they was shootin' at me so I shoot back at them." (Tr. 304.) Delaney observed that Robinson had a gun and asked that he leave. (Tr. 282, 305.)

Robinson left, and ten to fifteen minutes after he left and twenty to thirty minutes after the first round of rapid gunshots, Mitchell and Delaney heard a second round of rapid gunshots. (Tr. 272, 291, 305.) Several children playing in their yard scattered at the sound of the gunfire. (Tr. 282.)

D. Second Allen Road Incident

Approximately ten minutes after the second round of rapid gunshots, Young, Sr.'s grey truck sped down Allen Road and began turning onto Marshland Road. (Tr. 273–74, 293–96.) As the truck reached the end of Allen Road and began to turn, Robinson fired three times from a location near the intersection of Allen Road and Marshland Road. (Tr. 293–96, 306; State's Ex. 38, Videos 1 & 3.)

A child who had been playing in Mitchell's yard ran toward his home pointing at Robinson and screaming to his step-father that Robinson shot Khalil Singleton. (Tr. 317.) Robinson quickly got into his vehicle and drove away from Allen Road, and Khalil was found lying in the yard with a fatal gunshot wound. (Tr. 283–85, 307, 317–18, 476.)

E. Investigation and Interrogation

Young, Sr.'s truck was stopped by police between 5:00 and 5:30 p.m., and Appellant, Young, Sr., and Campbell were removed from the vehicle. (Tr. 362.) Appellant was taken to the police station where he was interviewed on videotape and eventually described the events of the day. (Tr. 367; State's Ex. 38.) Young, Sr. was also interviewed and he directed the police to a home off of

Wild Horse Road and a black bag in the home containing a handgun. (Tr. 373). The police recovered a round lodged in Robinson's car, compared it to rounds fired from the recovered gun, and determined the round in Robinson's car was fired from the recovered gun. (Tr. 437–38.)

F. Trial, Conviction, and Sentencing

Appellant was subsequently indicted and tried for murder and attempted murder. Prior to the jury being sworn, Appellant moved to quash the murder indictment on the grounds the indictment did not allege he shot the victim, it was undisputed that Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (Tr. 182–208.) Appellant further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a basis for a murder conviction. (Tr. 182–208.) The trial judge denied Appellant's motion to quash, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (Tr. 236–40.)

The jury was sworn, and the State presented its case which included the testimony of several witnesses to the events of September 1, 2012, testimony from law enforcement officers regarding their investigation, portions of the videotaped interview of Appellant, and recordings of 911 calls related to the events. Upon the close of the State's case, Appellant moved for a directed verdict on both the murder and attempted murder charges. (Tr. 478.) As to the murder charge, Appellant asserted three bases for his directed verdict motion: (1) that Appellant did not shoot the victim and the State's mutual combat theory is legally insufficient to hold Appellant criminally responsible for Robinsons' acts; (2) that even if the State's mutual combat theory was legally valid, there was no evidence of mutual combat between Appellant and Robinson; and (3) that even if there was any

mutual combat, the evidence established it had ended at the time Robinson fired the fatal shot. (Tr. 482–84, 489–90.) As to the attempted murder charge, Appellant asserted there was no evidence that Appellant attempted to kill Robinson. (Tr. 479–82.) The trial judge denied the motion, and Appellant presented no additional evidence. (Tr. 485–92, 495.)

Appellant then asked the trial judge to charge the jury on when mutual combat ends, and the judge denied this request. (Tr. 490–92.) The judge then charged the jury on murder, mutual combat, and attempted murder. The court specifically included in its jury charge that Appellant did not fire the shot that killed the victim and could only be convicted through a mutual combat theory, charging: "Now, ladies and gentlemen, as you have heard throughout the trial of this case it is undisputed that [Appellant] did not fire the fatal bullet that killed Khalil Singleton. And so the state seeks and ask for a conviction at your hands under the theory of mutual combat." (Tr. 539.) In addition to his existing objection to the State's mutual combat theory, Appellant objected to the jury charge as erroneously stating mutual combat extends to third-party, non-combatants, and the trial judge denied Appellant's objection. (Tr. 563–65.)

The jury convicted Appellant of murder and attempted murder. (Tr. 569.) Appellant moved to have the conviction set aside under the thirteenth juror doctrine or alternatively for a new trial, and the judge denied both motions. (Tr. 577–78.) The judge sentenced Appellant to concurrent thirty year sentences for the two charges. (Tr. 587.)

ARGUMENTS

I. BECAUSE THE SOLE BASIS FOR APPELLANT'S MURDER CONVICTION WAS A "MUTUAL COMBAT" THEORY NOT RECOGNIZED BY SOUTH CAROLINA LAW AND NOT SUPPORTED BY THE EVIDENCE AT TRIAL, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE.[2]

The trial judge's denial of Appellant's motion for a directed verdict on the murder charge was erroneous and should be reversed for three reasons: (1) mutual combat is not recognized as creating criminal liability under South Carolina law; (2) even if mutual combat were a valid basis for a murder conviction, the evidence introduced at trial did not support a finding of mutual combat; and (3) even if Appellant had engaged in mutual combat, any mutual combat had ended at the time Robinson fired the fatal shot.

Appellant's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State. It is undisputed that Robinson, not Appellant, shot and killed Khalil, and the State presented no evidence or argument to suggest Appellant was engaged in any conspiracy with or otherwise aiding Robinson in his criminal acts. (Tr. 205–06, 213.) Rather, as acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent (Tr. 489.), and the State explicitly disavowed any

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2 Appellant also moved to quash the indictment because mutual combat is not a valid basis for a murder conviction under South Carolina law and moved for a new trial following the jury's verdict on the same grounds as his motion for a directed verdict. While Appellant submits the trial court erred in denying his motion for a directed verdict on all charges and his convictions should be reversed, Appellant further submits that the trial court erred in denying the motion to quash and motion for a new trial for the reasons set forth herein and incorporates those motions as alternative bases for relief. *See State v. Smith*, 316 S.C. 53, 56, 447 S.E.2d 175, 176 (1993) (affirming trial court's grant of a new trial based on a lack of evidence to support the jury's verdict where the defendant failed to appeal the denial of his motion for a directed verdict).

other legal basis for the murder charge. (Tr. 190, 205–06.) Appellant moved for a directed verdict on the murder charge at the close of the State's evidence on the grounds asserted above, and in his ruling denying the motion, the trial judge stated: "[T]he murder of course as you said comes in under the mutual combat thing. That's the only thing that ties [Appellant] to that." (Tr. 478–92.)

On the appeal of a denial of a directed verdict motion, the Court views the evidence in the light most favorable to the State. *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625–26 (1996). Where there is no direct evidence or substantial circumstantial evidence in the record reasonably tending to prove the guilt of the accused, the trial court erred in denying the motion for a directed verdict and the defendant's conviction must be reversed. *See State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); *Copeland*, 321 S.C. at 326, 468 S.E.2d at 625–26.

A. The Trial Court Erred in Denying Appellant's Directed Verdict Motion on the Murder Charge Based on a Mutual Combat Theory that South Carolina Law Does Not, and Should Not, Recognize

South Carolina has never recognized, nor should it recognize, the mutual combat theory espoused by the State as a basis for a murder conviction. Because South Carolina law does not recognize "mutual combat" as a basis for a murder conviction and it was the sole basis for the State's murder charge, the trial court erred in denying Appellant's motion for a directed verdict on the murder charge.

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). Reviewing the common law of murder in South Carolina, our courts have never recognized mutual combat as a basis for a murder charge. Rather, the doctrine of mutual combat is a limitation on self-defense, and

every South Carolina appellate court decision discussing mutual combat considered it only in relation to self-defense.[3]

As the legal basis for the mutual combat theory applied at Appellant's trial, the State and the trial judge primarily relied on language in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003), where the Court quoted language in its earlier opinion in *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906), and language in *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918). In *Taylor*, the Court quoted the following language from *Andrews*:

> Where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter.

Taylor, 356 S.C. at 232, 589 S.E.2d 3–4 (quoting *Andrews*, 73 S.C. at —, 53 S.E. at 424). The State's reading of this language as suggesting the presence of mutual combat alone can support a murder conviction is misplaced. This quotation is the third and final sentence in a paragraph where it is preceded by the following two sentences that provide the necessary context for the quotation:

> If the defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs. A finding that a defendant was engaged in mutual combat does not preclude the jury from convicting the defendant of manslaughter as opposed to murder.

Id. at 232, 589 S.E.2d at 3. The first sentence in the paragraph makes clear that mutual combat is a component of the doctrine of self-defense and acts to exclude certain conduct from that defense. The

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3 A search of South Carolina caselaw produced the following cases discussing "mutual combat" or its equivalent, all of which discuss it in relation to *defenses* to criminal charges: *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003); *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003); *State v. Porter*, 269 S.C. 618, 239 S.E.2d 641 (1977); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934); *State v. Jones*, 113 S.C. 134, 101 S.E. 647 (1919); *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906); *State v. Beckham*, 24 S.C. 283 (1886); *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Barksdale*, 311 S.C.

second sentence makes clear that because mutual combat removes the potential defense of self-defense, a jury can convict a defendant engaged in mutual combat for murder or manslaughter upon a showing of the elements of those crimes. The acknowledgment that a defendant can be convicted for manslaughter clarifies that mutual combat with a death resulting from the combat does not automatically establish the crime of murder. Rather, the State still must prove the elements of murder or manslaughter to obtain a conviction on one of those charges.

In short, as recognized by the *Taylor* decision and all of the other South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State present the required proof to establish the elements of murder. Accordingly, even if Appellant was engaged in mutual combat with Robinson at the time of Robinson's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example conspiracy, aiding and abetting, or the felony murder rule—which would permit Appellant to be convicted for murder when another party undertook the fatal act.

In their reliance on the *Brown* opinion, the State and the trial judge latched onto small, select portions of a jury charge quoted in that opinion, and the trial judge treated that language as stating South Carolina law on mutual combat. (Tr. 191, 195, 238–40, 485–86, 497–98.) However, the language relied upon in the *Brown* opinion comes from a much larger quotation of a jury charge given by the trial court, and the Court did not express any holding as to whether the quoted jury charge correctly stated South Carolina law on mutual combat. *See Brown*, 108 S.C. at —, 95 S.E. at 63. The Court's succinct holding related to the charge was that "[i]nstead of being prejudicial to the appellants, the charge was too favorable to them." *Id.* Additionally, even if the jury charge quoted in

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210, 428 S.E.2d 498 (1993).

the *Brown* opinion was a correct statement of South Carolina law, the quoted charge contains language ignored by the State and the trial judge which directly conflicts with the trial judge's understanding of mutual combat as expressed in his denial of Appellant's motion to quash and motion for a directed verdict. Specifically, the quoted charge provided:

> When no conspiracy has been shown to have existed between the actual perpetrators and the one charged with aiding, it is essential to the guilt of the latter that he should not only have been present when the killing was done, but should have actually participated in the crime. Although it may be positively proven that one or two or more persons committed a crime, yet if it is uncertain which is the guilty party, all must be acquitted. No one can be convicted till it is established that he is the party who committed the offense.

Id. Finally, like all of the South Carolina caselaw on mutual combat, the jury charge in the *Brown* opinion discusses mutual combat in the context of whether a defendant can claim self-defense, stating that "[i]f one comes to the assistance of his friend . . . he enters the combat upon the same footing of the person to whose assistance he comes," "[o]ne who sees another attacked . . . has a right to interfere," and "[i]f one lawfully interferes . . ., inadvertently strikes a bystander, and death results . . . such person would not be guilty of any crime." *Id.*

Not only does South Carolina law not support the trial court's use of mutual combat as a stand-alone basis for a murder conviction, other jurisdictions around the United States recognize that the fact that two parties engaged in mutual combat is not alone sufficient to establish murder, and rather, treat mutual combat as potentially relevant to a murder charge only to the extent it supports proximate causation or an aider and abettor theory. *See State v. Spates*, 779 N.W.2d 770, 776–78 (Iowa 2010) (discussing decisions). Here, the trial court erroneously determined only that there was evidence from which a jury could find Appellant was engaged in mutual combat and failed to make any finding as to how evidence of mutual combat, or any other evidence presented at trial,

established the elements of murder.

Moreover, unlike other jurisdictions that view mutual combat as potentially relevant to proximate causation or aider and abettor status, the trial court erroneously further complicated matters by tacking the concept of transferred intent onto mutual combat despite Appellant's arguments that transferred intent cannot apply in a mutual combat situation. (Tr. 194–95.) The doctrine of transferred intent holds that where a person intends to kill one person, but actually kills another, the actor's intent to kill the intended victim is transferred to the actual victim. *See, e.g.*, *State v. Gandy*, 283 S.C. 571, 573–74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent only serves to expand the concept of malice, is limited to the malice issue, and does not expand the criminal liability of one actor to include the results of another person's actions. *See, e.g.*, *Gandy*, 283 S.C. at 573–74, 324 S.E.2d at 67; *Horne*, 282 S.C. at 446, 319 S.E.2d at 704.

The facts of this case are a textbook example of why South Carolina law should not recognize a mutual combat combined with transferred intent theory of murder. Here, at the time Robinson fired the fatal shots, Appellant did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children. If the legal theory advanced by the State and accepted by the trial court were the law in South Carolina, any time an individual fought with an opponent, the individual would be criminally responsible for any harm caused by his opponent's conduct, even if that harm occurred at a time and place remote from the initial fight and even if the individual would not and did not chose to engage in combat at that time and place.

Therefore, because the trial court created and applied a mutual combat theory of murder not

recognized by South Carolina law and relied on that theory as the sole basis for denying Appellant's directed verdict motion, the court erred in denying Appellant's motion and Appellant's conviction should be reversed.

B. The Trial Court Erred in Denying Appellant's Directed Verdict and New Trial Motions Because There Was no Evidence From Which a Jury Could Find Appellant Engaged in Mutual Combat

Even assuming mutual combat can alone support a murder conviction under South Carolina law, no evidence was presented at trial to support a finding that Appellant and Robinson engaged in mutual combat at any time on September 1, 2012. Robinson and Appellant did not engage one another in combat during any of the four incidents that took place that day. Additionally, while Robinson attacked Appellant and Young, Sr., he then fled and acted only to ambush Appellant and his father as they left the scene, all of which evidences an *unwillingness* to engage in mutual combat.

Lacking any South Carolina caselaw on mutual combat as a basis for a murder conviction and therefore turning to South Carolina caselaw on the relationship between mutual combat and self-defense, our courts define mutual combat as requiring a "mutual agreement to fight" or "mutual intent and willingness to fight" and a "resulting fight." *Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). A mutual agreement and intent to fight "is manifested by the acts and conduct of the parties attending and leading up to the combat." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003). Jurisdictions utilizing the concept of mutual combat as relevant to establishing the elements required for a murder conviction employ the same definition, holding mutual combat requires a "mutual intention, consent or agreement preceding the initiation of hostilities," *People v. Ross*, 66 Cal. Rptr. 3d 438, 447 (Cal. Ct. App. 2007), or requires that "the combatants are armed with deadly weapons and mutually agree to fight," *Sanders v. State*, 659 S.E.2d 376, 380 (Ga. 2008).

Here, no evidence was presented from which a jury could conclude Appellant and Robinson *mutually agreed or intended* to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Appellant. Appellant's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson. While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Appellant or Young, Sr. were armed or that Appellant and Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. 227, 233, 589 S.E.2d 1, 4 (2003). There also was no evidence from which a jury could conclude that Robinson expected Appellant and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle on Wild Horse Road was between Robinson and Young, Sr., and there was no evidence that Appellant was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Appellant's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Appellant found Robinson there. No evidence introduced showed that Robinson, Appellant, or Young, Sr. engaged or attempted to engage in any combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Appellant and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Appellant and Young, Sr. arrived on Allen Road where they

found Robinson's car. The uncontroverted evidence at trial showed that Robinson was not present during this first Allen Road incident. Rather, this incident consisted solely of Appellant firing a weapon at Robinson's unoccupied car. While Appellant's actions in firing at Robinson's car were certainly destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Appellant began firing at his vehicle and did not come to the scene to fight once Appellant began firing. Appellant did not know where Robinson was, Appellant fired exclusively at Robinson's car, and Robinson did not come to the scene.

Finally, approximately ten minutes after Appellant ceased firing at Robinson's vehicle, Young, Sr., with Appellant as his passenger, sped out of Allen Road. As the truck reached the end of Allen Road, Robinson fired three shots, one of which struck and killed the victim. Again, the evidence regarding this incident would not allow a jury to conclude that there was a mutual agreement or intent to fight nor would it permit a jury to conclude Appellant engaged in combat with Robinson. The evidence shows that when Robinson fired, Appellant was leaving the scene and had no knowledge of Robinson's whereabouts. There also was no evidence presented to show that Robinson was firing at Appellant and Young, Sr. when he fired the fatal shot. Finally, there was no evidence that Appellant fired at or took any other action towards Robinson during this incident.

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Appellant only when he believed Appellant could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Appellant and Young, Sr. as they left Allen Road. Neither of these acts are

indicative of an agreement or intent to engage in combat by Robinson. Moreover, Appellant never engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Appellant ever pointed or fired a weapon at Robinson. (Tr. 458.) Appellant fired at Robinson's unoccupied vehicle which, while reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the trial court erred in denying Appellant's directed verdict motion and his conviction should be reversed.

C. The Trial Court Erred in Denying Appellant's Directed Verdict Motion Because The Evidence Established Any Mutual Combat Ended Prior to Robinson Firing the Fatal Shot

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Appellant engaged in mutual combat, Appellant was still entitled to a directed verdict because any mutual combat ended prior to Robinson firing the fatal shot. Appellant moved for a directed verdict on that ground, and the trial court erred in denying the motion based on the erroneous conclusion that there was evidence of ongoing mutual combat at the time of the fatal shot. (Tr. 489–92.) Contrary to the trial court's ruling, all of the evidence presented at trial established that any mutual combat had ended when Robinson fired on Allen Road because Appellant and Young, Sr. were leaving Allen Road and had no knowledge that Robinson was even present in the area.

Mutual combat ends and a person's right to engage in self-defense is restored when the person withdraws from the combat and makes his withdrawal known to his adversary. *See Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322

(1999); *State v. Graham*, 260 S.C. 449, 451, 196 S.E.2d 495, 496 (1973); *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). In *Bryant*, the Court indicated that a person leaving the scene of the combat with his adversary's knowledge of his departure can satisfy both elements of withdrawing from the combat and communicating his withdrawal to his adversary. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 28. There the defendant argued he was entitled to a jury charge on self-defense because he had withdrawn from the conflict, and in support, he offered a statement he gave to the police that he dropped his knife, although without the victim's knowledge, before he then engaged in a fatal struggle with the victim. *Bryant*, 336 S.C. at 344–46, 520 S.E.2d at 321–22. The Court rejected the argument, stating that if the defendant "truly intended to withdraw he could have easily left the open parking lot," and thus, indicated that leaving the scene of the conflict would have been sufficient to establish withdrawal. *Id.* at 346, 520 S.E.2d at 322.

Here, the uncontroverted evidence presented at trial established that Appellant had withdrawn from any combat at the time Robinson fired the fatal shot and that his withdrawal was known to Robinson. A significant period of time elapsed between when Appellant fired at Robinson's vehicle and when Robinson fired the fatal shot. Witness testified that Robinson fired his weapon approximately *ten minutes after* Appellant ceased firing at Robinson's vehicle. (Tr. 273–74, 293–96.) When Robinson fired, Appellant was in his father's truck traveling away from where Robinson's vehicle was parked and had already traveled the length of Allen Road. (Tr. 293–96, 306; State's Ex. 38, Videos 1 & 3.) If Robinson fired at Young, Sr.'s truck, he knew that Appellant and Young, Sr. were speeding away from Allen Road. No evidence was presented to show that Appellant saw Robinson in the area or had any reason to know Robinson was hiding off of Allen

Road. The State's witness, Sergeant Laurel Albertin, testified that there was no evidence to suggest Appellant saw Robinson on Allen Road, (Tr. 456), and in ruling on Appellant's directed verdict motion on this issue, the trial judge stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots," (Tr. 491). Additionally, there was no evidence presented to show that Appellant or Young, Sr. were engaged in any combative or threatening act at the time Robinson fired the fatal shot. To the contrary, the evidence presented indicated Appellant and Young, Sr. were fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road," (Tr. 273), and the trial judge acknowledged this in his statement that "they shot and they left in a hurry" (Tr. 491). Therefore, the uncontroverted evidence at trial established that any mutual combat had ended at the time Robinson fired the fatal shot because Appellant was withdrawing from the scene and Robinson knew Appellant was withdrawing and had no reason to believe Appellant was engaged in combat with him.

Not only did the trial court err in denying Appellant's directed verdict motion because all of the evidence established that the mutual combat had ended, the court also erred in denying the motion because the denial was based on an incorrect legal standard. The court denied the motion on the basis that the evidence did not show "a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat does not exist." (Tr. 492.) As previously discussed, the law requires only that a party withdraw from combat and that his opponent know of the withdrawal and does not require a "clear and unequivocal breaking of the conflict." The court also ruled that leaving the scene did not establish the end of mutual combat because Appellant was "just going to live to fight another day" and it did not show that a "truce has been declared." (Tr. 491–92.) To the contrary, as discussed in relation to the *Bryant* decision, the law recognizes that

leaving the scene can end mutual combat and there is no requirement that the parties agree that any animosity between them has been permanently resolved. Were the law to require combatants to resolve their animosity such that they would not fight again over the same issue at a later time for mutual combat to have ended, such a rule would yield absurd results. Under such a rule, a defendant could engage in combat with another person and then cease fighting and leave the scene. If the other combatant ambushed the unaware defendant months later because the parties had not resolved their animosity towards one another and the ambush resulted in the death of a bystander, the death would be a murder for which the defendant would be criminally responsible.

In conclusion, for three reasons, any of which is alone sufficient for a reversal, the denial of Appellant's motion for a directed verdict and his murder conviction should be reversed and vacated. First, his murder conviction rests on an invalid mutual combat theory of criminal liability, and the trial court erred in not granting Appellant's motion for a directed verdict, or alternatively granting his motion to quash the indictment, on this ground. Second, even if mutual combat were a valid basis for a murder conviction, the evidence at trial established that Appellant was not engaged in mutual combat, and accordingly, the trial court erred in denying his motion for a directed verdict. Third, even if Appellant did engage in mutual combat with Robinson, any mutual combat had ended by the time Robinson fired the fatal shot. For any or all of these reasons, the trial court's denial of Appellant's directed verdict motion should be reversed and his murder conviction should be vacated.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Appellant also requested a jury charge on the end of mutual combat and the trial judge erred in refusing the request. (Tr. 490–

92.)

A trial judge must give a requested jury charge if there is any evidence to support the charge. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). A trial judge's refusal to give a requested jury charge supported by some evidence is a reversible error. *Id.*

As set forth in the previous section, the evidence presented at trial supported a conclusion that any mutual combat had ended at the time Robinson fired the fatal shot. Moreover, the trial judge acknowledged there was some evidence from which a jury could find the mutual combat had ended by stating in his ruling on the directed verdict motion: "given the extent of the chase and the level that they had gone to try to get to him before then [it] is *unlikely* that the shooting of the car and then leaving is a signal that they have chosen at this point in time to fold their tents and move away and that the battle is over and truce has been declared." (Tr. 492 (emphasis added).) Given that there was, at a minimum, some evidence to support a conclusion that any mutual combat had ended, the trial judge's failure to give the requested charge constitutes reversible error, and because Appellant's murder conviction turned on whether the parties were engaged in mutual combat, the failure to give the charge was prejudicial. Accordingly, while Appellant contends the denial of his motion for a directed verdict on the murder charge should be reversed and his conviction vacated, should the Court disagree, the error in the trial court's jury charge should result in a new trial.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE

The Supreme Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). Specifically, the trial court "should grant a directed verdict motion when the evidence

merely raises a suspicion that the accused is guilty." *Id.* (internal citation omitted). In this case, even when viewed in the light most favorable to the State, the evidence presented in support of the attempted murder charge merely raises a suspicion and falls far short of reasonably tending to prove guilt. Accordingly, the trial judge erred in denying Appellant's motion for a directed verdict on the charge.

At trial, the State failed to produce a single witness who saw Appellant fire, or even point, a gun at Robinson.[4] To the contrary, the evidence showed Appellant's gun was jammed and *he did not try to shoot at Robinson* or *even point the gun at him.* (State's Ex. 38, Video 7.) Moreover, Sergeant Albertin testified that she had no evidence that Appellant ever pointed a gun or shot at Robinson. (Tr. 457-58.)

Although Appellant admittedly shot at Robinson's car, the record is clear that Robinson was not in the car at the time and the car's windows were not tinted so Appellant could see that there were no occupants. (Tr. 459-500.) Additionally, Sergeant Albertin confirmed that she had no evidence that Appellant even saw Robinson on Allen Road. (Tr. 456.)

The scant circumstantial evidence the State presented as to Appellant's guilt on attempted murder consists only of the following: (1) Robinson's statement to Mitchell that "those M F was shooting at him" (Tr. 281); (2) Robinson's statement to Delaney that "yeah they was shootin' at me so I shoot back at them" (Tr. 304); and (3) the 911 call from an unidentified woman who stated that two vehicles, a grey truck and *grey Lexus*,[5] were shooting at each other (State's Ex. 2). First, although Robinson clearly knew Appellant, he never identified Appellant by name or otherwise in

4 Notably, the State chose not to call Robinson who presumably may have been the only person who could have corroborated its theory that Appellant tried to kill him.
5 Robinson was driving a green Acura that day. (Tr. 283–84, 316–18, 390–91; State's Exs. 7 & 16.)

statements to Mitchell and Delaney. The fact that Robinson referred to "they" and "those M F" indicates he may not have known who was shooting at him. Regardless, to conclude from that limited evidence that Robinson was referring to Appellant would require to the jury to make an unsupported inference. The evidence did not provide any context for Robinson's statements as to when "they" or "those M F" allegedly shot at him or where the shooting took place. Without additional evidence to identify the shooter or evidence regarding when the alleged shooting took place, anyone could have been in the truck shooting at Robinson and the evidence introduced at trial established that other than Appellant, at least three other individuals were in the truck that day: Young, Sr., Jontu, and Campbell.

Second, with respect to the 911 call, the caller stated that two vehicles were shooting at each other, but the caller did not identify or provide any description of the person shooting from the grey truck. The caller also identified the two vehicles involved as a grey truck and a "grey Lexus," but Robinson was driving a green Acura. The caller also did not identify when or where the shooting occurred. Given that the evidence showed there were at least three other persons in Young, Sr.'s grey truck that day other than Appellant, the caller's statement cannot serve as substantial circumstantial evidence to support a conclusion that Appellant fired at Robinson.

As in this case, in *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001), the State presented entirely circumstantial evidence that the defendant committed murder. 392 S.C. at 140, 708 S.E.2d at 777. The trial court denied the defendant's directed verdict motion, based on the State's presentation of the following evidence: (1) the victim's personal items were found in a burn pile in a neighboring home owned by the defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified that she was afraid to use such

accelerants and did not use them; (3) a pattern of gasoline was found on the defendant's shoes and was used as an accelerant to start a fire in the victim's home after her assailant struck her; and (4) blood was found on the defendant's jeans and the DNA expert testified she could not conclusively state that the blood found on the defendant's jeans was not the victim's, even though she could exclude 99 percent of the population. *Id.* at 141-42, 708 S.E.2d at 778. On this evidence, which is far more substantial than the evidence presented against Appellant in this case, the Court reversed the trial court, finding the State had not presented substantial circumstantial evidence sufficient to submit the case to the jury. *Id.* at 142, 708 S.E.2d at 778.

Similarly, in *Odems*, the South Carolina Supreme Court reversed the trial court after it denied the defendant's directed verdict motion based on the lack of circumstantial evidence on which to base a conviction. 395 S.C. at 592, 720 S.E.2d at 53. In *Odems*, the defendant was convicted of first degree burglary, grand larceny, criminal conspiracy, and malicious injury to an electrical utility system. *Id.* at 582, 720 S.E.2d at 48. The circumstantial evidence was as follows: (1) the defendant was found in a car with the burglars and the stolen goods; (2) the defendant fled from police, and (3) the defendant "asked an uninvolved person to lie for him" to the police. *Id.* The unconvincing reason the defendant supposedly fled was because the driver told him that he had a suspended license. *Id.* at 585, 720 S.E.2d at 49. Nevertheless, the Court held the State presented no evidence that placed the defendant at the scene of the crime and reversed his conviction. *Id.* at 592, 720 S.E.2d at 53.

More recently, in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), the Court found the State did not present substantial circumstantial evidence sufficient to warrant the denial of the defendant's mid-trial directed verdict motion. In *Hepburn*, the defendant was convicted of homicide

by child abuse for the death of her sixteen-month-old daughter. *Id.* at 418, 753 S.E.2d at 403. The defendant and her co-defendant boyfriend were the only two people who could have killed the victim because they were the only people with access to the victim in the time period during which she sustained her fatal injuries. *Id.* The trial court denied the defendant's directed verdict motion based on circumstantial evidence regarding the defendant's state of mind, medical testimony, and testimony from her co-defendant. *Id.* at 440, 753 S.E.2d at 414-15. The Court, disregarding the co-defendant's testimony under the co-defendant exception to the waiver rule, held that the other circumstantial evidence did not present substantial evidence that the defendant killed the victim. *Id.* at 440, 753 S.E.2d at 415. In so holding, the Court stated that, "[w]hile undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that [*this defendant*] harmed the victim . . . [t]hus . . . the State did not put forward sufficient direct or substantial circumstantial evidence of [defendant's] guilt." *Id.* at 440, 753 S.E.2d at 415.

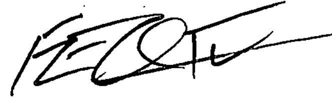
Here, as in *Hepburn*, if we assume Robinson's statements and the 911 call to be true, the only inference is that either Appellant or his father, who was with him in the truck, shot at Robinson. In his statements to Mitchell and Delaney, Robinson never specifically identifies Appellant as the shooter. Instead he refers to the shooter as "they" or "those M F." Similarly, the 911 caller never identifies Appellant as the person shooting at Robinson. Instead, she merely stated that the two vehicles were shooting at each other. Thus, as the Court held in *Hepburn*, *Bostick*, and *Odems*, the State has not put forward sufficient circumstantial evidence of Appellant's guilt on the attempted murder charge. For this reason, the trial court's ruling on Appellant's directed verdict motion should be reversed.

CONCLUSION

For the reasons stated herein, this Court should reverse and vacate Appellant's convictions.

Respectfully submitted,

March 11, 2016



Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

RECEIVED
MAR 14 2016
SC Court of Appeals

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

CERTIFICATE OF SERVICE

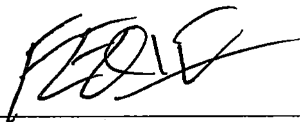
The undersigned certifies on March 11, 2016, he/she caused a copy of the foregoing Initial Brief of Appellant to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Alan McCrory Wilson, Esq.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Susan Barber Hackett, Esq.
S.C. Commission on Indigent Defense
Division Of Appellate Defense
PO Box 11589
Columbia, SC 29211

Donald J. Zelenka, Esq.
Senior Assistant Deputy Attorney General
South Carolina Office of the Attorney General
P. O. Box 11549
Columbia, S.C. 29211

Robert M. Dudek, Esq.
Chief Appellate Defender
1330 Lady Street, Suite 401
Columbia, SC 29201



Jennifer K. Dunlap
F. Elliotte Quinn IV
Parker, Poe, Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Appellant

Parker Poe

F. Elliotte Quinn IV
Associate
Telephone: 843.727.6315
Direct Fax: 843.727.2680
elliottequinn@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Raleigh, NC
Spartanburg, SC

March 11, 2016

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: State v. Aaron Young, Jr.
Appellate Case No. 2015-000508

Dear Ms. Kitchings:

Enclosed for filing please find an original and a copy of each of the following for filing:

1. Initial Brief of Appellant; and

2. Appellant's Designation of Matter to be Included in the Record on Appeal.

Please file the orginals and return file-stamped copies to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Elliotte Quinn

FEQiv/kjg
Enclosures

cc: Robert M. Dudek, Esq.
Donald J. Zelenka, Esq.
Alan McCrory Wilson, Esq.
Susan Barber Hackett, Esq.

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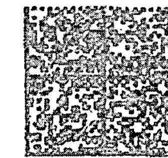

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Parker Poe
200 Meeting Street, Suite 301
Charleston, SC 29401
Post Office Box 160
Charleston, SC 29402

To:

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1220 Senate Street
Columbia, SC 29201