STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Honorable Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. 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?

II. Did the trial court err in denying Appellant's request for a jury charge on the end of mutual combat?

III. Did the trial court err in denying Appellant's directed verdict motion on the attempted murder charge?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. Whether the trial judge abused his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby deny Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.

II. Whether the trial judge abused his discretion by denying Appellant's request to charge the withdrawal from mutual combat when no evidence existed to support such a charge.

III. Whether the trial judge abused his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant, Aaron Scott Young, Jr., in October 2014 for the murder of Khalil Singleton (Indictment Number 2012-GS-07-1932) and for the attempted murder of Tyrone Robinson (Indictment Number 2014-GS-07-1940).

On February 23, 2015, Appellant's case was called to trial before the Honorable Thomas W. Cooper. (Tr. p. 1). Roberts Vaux, Esquire, represented Appellant during the trial. (Tr. p. 2). Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean P. Thornton represented the State. (Tr. p. 2). On February 25, 2015, the jury returned verdicts of guilty on both charges. (Tr. p. 569, lines 18-21). Judge Cooper sentenced Appellant to incarceration for thirty (30) years on the murder conviction and to incarceration for thirty (30) years on the attempted murder conviction. (Tr. p. 587, line 21- p. 588, line 1). The sentences were set to run concurrently. (Tr. p. 587, line 21- p. 588, line 1).

Appellant filed a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF FACTS

On the afternoon of September 1, 2012, eight-year-old Khalil Singleton's life abruptly ended. Khalil Singleton[1], an innocent bystander, was shot to death in the midst of an ongoing gun battle. One of the three men responsible for taking the child's life was the Appellant, Aaron Young, Jr. Within the course of an hour, a volatile conflict between Appellant, Aaron Young, Sr., and Tyrone Robinson traversed several different locations on Hilton Head Island, eventually ending in front of a group of children jumping on a trampoline.

Jontu Singleton[2] and Tyrone Robinson were socializing at a mutual friend's house on September 1, 2012. (T. p. 328, line 2 – p. 329, line 12). Around 4:00 p.m., Jontu decided to ride with Robinson to the store. (T. p. 330, lines 16-17; T. p. 346, lines 12-13). On the way, the two stopped by the house of Aaron Young, Sr., Appellant's father, on Wild Horse Road because Jontu needed money. (T. p. 330, line 14 – p. 331, line 2). Both Appellant and Young, Sr. were outside in the yard when Jontu and Robinson drove up. (Tr. p. 332, lines 22-24). Robinson and Appellant had animosity towards each other due to prior altercations (State's Ex. 38, Video 4). They exited the car and Jontu spoke with Young, Sr. while Robinson approached Appellant with a .38 caliber gun in his hand. (T. p. 333, lines 2-5; State's Ex. 38, Intro Video at 2:55-3:39). After seeing Robinson with a gun, Young, Sr. moved towards Robinson and tried to take the gun away but it accidently fired. (T. p. 333, lines 18-22). Young, Sr. backed away as Robinson fired one or two more shots into the ground near Young Sr.'s feet. (T. pp. 333, line 18 – p. 334, line 12; p.

[1] Respondent will refer to Khalil Singleton as "Khalil" in this section for clarity.
[2] Respondent will refer to Jontu Singelton as "Jontu" in this section for clarity.

349, lines 4-6). Robinson then got into his vehicle and drove away while Jontu stayed with Appellant and Young, Sr. (T. p. 334, line 25 - p. 335, line 4).

Moments after Robinson left, Appellant and Young, Sr. went inside their house and emerged with a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (T. p. 335, lines 7-10; T. p. 379, lines 1-2; T. p. 381, lines 13-16). The three men got into Young, Sr.'s grey truck and began searching for Robinson. (Tr. p. 338, lines 5-12).

Young, Sr. drove the truck while Appellant and Jontu were in the passenger seats. (Tr. p. 339, lines 1-4). They drove down Spanish Wells Road and veered off on Oak View Road after Young, Sr. thought he saw Robinson driving down the road. (Tr. p. 339, lines 6-9). Appellant then pulled the contents out of his black bag and began assembling his weapon. (Tr. p. 339, lines 13-25). Unable to find Robinson, they continued their search and headed towards Robinson's house on Allen Road off of Marshland Road. (Tr. p. 340, lines 23-25). When they arrived, Robinson was nowhere to be found. (Tr. p. 341, line 1). Jontu got out of the car on Allen Road to talk to his son who lived in that neighborhood but no one was home so the three men left Allen Road. (Tr. p. 341, line 2 – p. 343, line 9). They drove back to Young, Sr.'s house and Jontu exited the car while Appellant and Young, Sr. drove off. (Tr. p. 343, line 8 – p. 244, line 21).

Minutes later, Appellant and Young, Sr. finally tracked down Robinson on Bryant Road. (State's Ex. 38, Video 7 at 00:23-00:36). Appellant pulled out his weapon and tried to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson's home on Allen Road. (State's Ex. 38, Video 7 at 2:00-2:50).

While driving down Allen Road, Appellant saw a group of children playing on a trampoline a short distance away from where they spotted Robinson's car. (State's Ex. 38, Video 1 at 00:10-1:00; Video 1 at 1:39-1:41). Appellant drew his weapon and began firing bullets into Robinson's car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car twenty times and when he was done it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and they began to drive away down Allen Road. (State's Ex. 38, Video 3). Within moments, Robinson fired three shots back at Appellant and Young, Sr. as they turned onto Marshland Road. (State's Ex. 38, Video 3 at 00:45-00:55). The bullets did not hit their intended targets, but instead one found its way to eight year old Khalil. Robinson fled in his bullet-riddled car and Appellant and Young, Sr. absconded in the other direction. (Tr. p. 318, lines 1-6; State's Ex. 38, Video 3). Immediately, 911 dispatch began fielding reports of the incident. (State's Ex. 2). Khalil was struck in the chest and died within minutes. (Tr. p. 473, lines 12-14; p. 475, lines 20-23).

One witness that called to report the crime told the 911 dispatcher that two cars were shooting at each other near Spanish Wells Road. (State's Ex. 2). She identified the two cars involved as a grey truck and a grey Lexus. (State's Ex. 2). The woman told the dispatcher that the man driving the Lexus was Tyrone Robinson. (State's Ex. 2).

Between 5:00 and 5:30 p.m. that same day, Appellant, Young, Sr., and his girlfriend, Ebony Campbell, were pulled over by police in Young, Sr.'s grey truck. (Tr. p. 362, lines 1-10; p. 369, lines 13-24). While on the side of the road, Officers located spent shell casings matching a 9 MM firearm in the back of the truck. (Tr. p. 363, lines 11-13). The two men were then taken to the police station where they were Mirandized and

interviewed. (Tr. p. 365, line 15 – p. 367, line 15). Young, Sr. told officers where they could retrieve the black bag containing the gun and ammunition. (Tr. p. 372, line 24 – p. 374, line 8). Appellant gave a statement to Investigator Albertin admitting to the shootout with Robinson, firing numerous bullets into Robinson's vehicle, and his failed attempt to kill Robinson. (Tr. pp. 442-464; State's Ex. 38, Introduction Video – Video 8).

After officer's located and arrested Robinson, they processed his vehicle for evidence. (Tr. p. 390, lines 14-24). They were able to locate numerous bullets that were lodged in Robinson's car. (Tr. p. 401, line 22 – p. 402, line 3). These bullets, along with Appellant's weapon and shell casings, were sent off for examination. (Tr. p. 402, lines 12-23). Agent Frank DeFreese, an expert of firearm's marks and ballistics with the South Carolina Law Enforcement Division, was able to determine that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (Tr. p. 437, line 15 – p. 438, line 6).

At Appellant's trial for the murder of Khalil, numerous witnesses testified to what they observed on September 1, 2012. Charlese Mitchell, a woman who lived in the neighborhood off Allen Road, testified that she heard three sets of gunshots around 4:00 p.m. that afternoon. (Tr. p. 271, line 23 – p. 300, line 15). After the first round of shots, she saw a grey truck driven by Young, Sr. speeding down the road. (Tr. p. 299, lines 3-21). Robinson, a relative of Mitchell's, came to her door after she heard the first round of gun shots. (Tr. p. 280, lines 5-17). She let him inside the house and observed a gun sticking out of his pocket. (Tr. p. 280, line 19 – p. 281, line 7). Robinson, who appeared scared, told Mitchell, "those M. F. was shooting at me". (Tr. p. 281, lines 8-11). At that point, Mitchell's fiancé, Tyrone Delaney, came home and the two men stepped outside to

talk. (Tr. p. 281, lines 14-25). Robinson left the yard and minutes later Mitchell heard another set of rapid gunshots. (Tr. p. 282, lines 1-13). A few minutes after the second round of shots, Mitchell heard three more shots and again observed Young, Sr. speeding down Allen Road. (Tr. p. 294, line 22 – p. 296, line 14).

Tyrone Delaney testified he was driving down Spanish Wells Road between 4:00 and 5:00 p.m. on his way home when a grey truck sped towards him and forced him to pull over to the side of the road. (Tr. p. 301, line 20 – p. 303, line 14). When he arrived home, Robinson was there and asked Delaney if he had seen a grey truck. (Tr. p. 304, lines 1-2). Delaney told Robinson of his encounter with the grey truck. (Tr. p. 304, lines 17-18). Robinson replied, "yeah they was shootin at me so I shoot back at them". (Tr. p. 304, lines 18-19). Delaney testified that he heard rapid gun shots after Robinson left their house. (Tr. p. 305, lines 20-25). Minutes later, he heard three gunshots that seemed to have come from a different type of weapon. (Tr. p. 306, lines 5-17).

The last witness to testify at Appellant's trial was Dr. Lee Tormos, the forensic pathologist who performed the autopsy on Khalil. (T. p. 471, lines 2-12). She observed that one bullet had entered into Khalil's chest, piercing his lungs and heart, before coming to rest in his arm. (T. p. 473, line 1 - p. 474, line 24). Dr. Tormos concluded that the cause of death was a gunshot wound to the left lateral chest and the manner of death was homicide. (T. p. 476, lines 15-17).

The bullet was removed and turned over to the Beaufort County Sheriff's Office for analysis. Indisputably, the bullet recovered from Khalil's body was fired from Tyrone Robinson's gun. (Tr. p. 252, lines 11-12; Tr. p. 539, lines 22-24).

ARGUMENT

I. The trial judge did not abuse his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby properly denied Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.

Notwithstanding Appellant's argument to the contrary, Respondent submits that the trial judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base a murder charge. (Tr. pp. 237-240). Furthermore, the trial judge properly denied Appellant's motion for a directed verdict because the State presented both direct and circumstantial evidence that Appellant and Robinson were engaged in mutual combat when Khalil was killed. (Tr. pp. 285-489). Additionally, Appellant's argument that the mutual combat had ended, and thus a directed verdict should have been granted, is not preserved for review. Regardless, this argument is without merit since no evidence was presented that Appellant withdrew from the conflict. Accordingly, the trial judge did not abuse his discretion in denying the motion for directed verdict. This issue must be dismissed.

<u>Relevant Facts and Proceedings</u>

Motion to Quash the Indictment

After jury selection, Appellant made a motion to quash the murder indictment. (Tr. p. 182, lines 22-25). Appellant claimed the indictment provided inadequate notice and was improper because of the included language regarding mutual combat. (Tr. p. 183, lines 9-13). The indictment read that Appellant was engaged in mutual combat with Tyrone Robinson and thereby caused the death of Khalil Singleton. (Tr. p. 183, lines 9-18). Specifically, Appellant argued that mutual combat was not a criminal offense, but

rather a bar to self-defense. (Tr. p. 182, lines 13-18). In response, the State argued that the indictment was sufficient under current case law and provided more notice than what was actually required. (Tr. p. 190, lines 11-18). Additionally, the State argued that mutual combat was a recognized theory under which one could be charged of murder. (Tr. p. 190, lines 19-21; p. 191, line 8-p. 193 line 10). Citing numerous South Carolina cases[3], the State asserted that mutual combat was a valid legal theory in South Carolina despite the fact it had fallen out of common use. (Tr. p. 192, lines 12-23). The State conceded mutual combat was a bar to a self-defense claim, but explained that the theory was not limited to that one purpose. (Tr. p. 193, lines 1-10). The State argued *State v. Brown* used mutual combat to convict multiple defendants for the death of one of the combatants[4]. (Tr. p. 191, lines 14-16). Finally, the State argued that transferred intent would be applicable to Appellant's case since an innocent bystander was killed, instead of a combatant. (Tr. p. 193, line 24-p. 194, line 12).

After reviewing all the case law from the parties, the judge denied Appellant's motion to quash the indictment. (Tr. p. 240, lines 6-7). The judge considered three legal theories in concluding the charge was proper. (Tr. p. 237, line 1). The first was the theory of accomplice liability. The judge stated, "those who are aiding and abetting each other, all [are] responsible for the act of a shooter...All then are equally at fault whether they actually were the agent that caused the harm or just an accomplice to the one that did." (Tr. p. 237, lines 1-7). The second theory considered was transferred intent. (Tr. p. 237, lines 8-21). According to the trial judge, the doctrine of transferred intent would

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[3] The State cited the following case law: *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Taylor*, 356 S.C. 227 (2003); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906).
[4] *Brown*, 108 S.C. 490, 95 S.E. 61.

hold the shooter and the accomplices liable for the harm caused to an innocent bystander. (Tr. p. 237, lines 8-12). "The state of mind of the individual and not the identity of the victim controls." (Tr. p. 237, lines 13-15).

Finally, the judge discussed the theory of mutual combat. (Tr. p. 238, line 1). At the onset, the judge explained the relationship between mutual combat and self-defense. (Tr. p. 238, lines 8-11). "Mutual combat has its most significant application in the law in that it denies anybody who is involved in mutual combat the defense of self-defense because none of them can claim to be without fault in bringing about the incident." (Tr. p. 238, lines 8-11). Citing to *State v. Brown*[5], the judge recited the current law on mutual combat[6]. (Tr. p. 238, lines 12-22). He then explained that if Young, Sr. had been killed, instead of an innocent bystander, the law makes clear that Appellant and Robinson would both be guilty. (Tr. p. 239, lines 1-8). Linking mutual combat to transferred intent, the judge illustrated Robinson's intent to shoot Appellant would transfer to Young, Sr. in this scenario. (Tr. p. 239, lines 8-12). The judge concluded:

> **"Here an innocent person, not a combatant, was killed. The question is whether the law relieves the mutual combatants of the responsibility of that. The responsibility of which had been of their's if they had killed an equally guilty party involved, are they now not responsible because an innocent party was involved. And I hold that they would be responsible."** (Tr. p. 239, line 19 – p. 240, line 1).

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[5] *Brown*, 108 S.C. 490, 95 S.E. 61.

[6] Specifically, in reciting the law on mutual combat, the judge stated:

> "Everyone is presumed to know the consequences of his act and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used and death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used the deadly weapon or not and regardless of whether he was on one side or the other makes no difference. And where all are participating in the mutual combat all are equally guilty for the natural consequences." (Tr. p. 238, lines 12-22).

In denying Appellant's motion, the judge reiterated that "it is not the identity of the victim that controls, it is the intent, the state of mind which led to the mutual combat in the first place and the consequences that followed from that." (Tr. p. 240, lines 2-5).

Motion for Directed Verdict

At the close of the State's case, Appellant made a motion for a directed verdict on both charges. (Tr. p. 478, lines 24-25). Particularly to the murder charge, Appellant argued that no evidence was presented of a mutual combat between Appellant and Robinson. (Tr. p. 483, lines 2-3). Appellant claimed there was no evidence of a running gun battle. (Tr. p. 483, lines 9-10). In response, the State asserted that there was ample evidence of mutual combat. (Tr. p. 485, line 17). "Both are armed…, they both know each other is armed…, Young chases Robinson through two neighborhoods and in fact into Allen Road twice and a result of that Khalil Singleton is dead. I think that is exactly the language that *Brown*[7] uses when they describe and define mutual combat." (Tr. p. 485, lines 17-23).

In denying Appellant's motion for a directed verdict, the judge correctly stated that he was not concerned with the weight of the evidence but only its existence. (Tr. p. 487, lines 8-9). The judge explained the primary evidence of mutual combat came from the combatants own statements. (Tr. p. 488, lines 5-14). In concluding, the judge stated that there was substantial circumstantial evidence from which the jury could conclude Appellant and Robinson were involved in a running gun battle. (Tr. p. 488, lines 15-19).

Jury Instructions

After the State and defense rested, the judge gave the following instruction regarding the theory of mutual combat:

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[7] *Brown*, 108 S.C. 490, 95 S.E. 61.

> And so the state seeks and ask[s] for a conviction at your hands under the <u>theory of mutual combat</u>. Now I tell you that mutual combat exist[s] when there is a mutual intent and willingness to fight between persons or groups of people. Mutual intent is shown by acts and conduct of the parties and circumstances attending and leading up to the combat. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting evil or ill will between the parties, or, any dispute between the parties, and whether the combatants agree to be armed because the history of ill will and an agreement to be armed are necessary before a defendant is engaged or deemed to have been engaged in mutual combat. Now if you find that mutual combat exist[s] in this particular case I tell you that everyone is presumed to know the consequences of his acts. And if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and if death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another, that is, on the side of the one who fires the shot or not, all are equally responsible for the act where all are participating in mutual combat...
>
> ...And on the question of intent, ladies and gentlemen, we deal with what we call in the law <u>transferred intent</u> because once again it is undisputed that Mr. Robinson fired the shot that killed Khalil Singleton. It is also undisputed that Mr. Robinson had no intent of killing Khalil Singleton. Mr. Robinson was found guilty of the crime under the law of transferred intent because if a defendant with malice aforethought tries to kill another person, but by mistake injures or kills a different person, the defendant still has the intent to kill. The intent to kill is merely transferred from the original person that the defendant intended to kill to the actual person who was killed or injured.
>
> Now in this particular case you have to decide whether or not the transferred intent that followed Mr. Robinson in that case also followed to Mr. Young under the mutual combat theory that all who are involved are equally responsible for the acts of anyone. That's a decision that you, ladies and gentlemen, have to decide...

(Tr. p. 539, line 24 – p. 542, line 12).

<u>Standard of Review</u>

In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. *Id.* The court must

concern itself solely with the existence of evidence from which a jury could reasonably infer guilt. *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). This objective test is founded upon reasonableness. *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *State v. Weston*, 625 S.E.2d 641 (S.C. 2006).

The "any evidence" standard also requires that "the existence of 'any direct evidence' proving the defendant's guilt mandates the denial of a directed verdict motion." *State v. Phillips,* 411 S.C. 124, 133, 767 S.E.2d 444, 448 (Ct. App. 2014), *reh'g denied* (Jan. 27, 2015). Direct evidence is based on personal knowledge or observation which, "*if true,* proves a fact without inference or presumption." *Id.* (quoting *State v. Rogers,* 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (internal quotation marks and citation omitted) (alteration in original)). This is because "[t]he presentation of direct evidence 'immediately establishes the main fact to be proved.'" *Phillips* at 133, 767 S.E.2d at 448 (quoting *State v. Salisbury,* 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n.1 (2001)).

Moreover, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. Recently, in *State v. Pearson*, our Supreme Court made it clear the State need not present evidence sufficient to exclude every other hypothesis at the directed verdict stage. *State v. Pearson*, 783 S.E.2d 802 (S.C. 2016).

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts**.

Jackson, at 319 (second emphasis added).

Discussion

A. Mutual combat is a valid legal theory under South Carolina law to form the basis of a murder charge.

The doctrine of mutual combat has existed in South Carolina law since 1843. *Taylor*, 356 S.C. at 231. The Supreme Court in *Taylor* acknowledged the doctrine had "fallen out of common use in recent years" but still found it to be binding law. *Id.* The escalating urban warfare in present-day society has resurrected the need for the doctrine of mutual combat. Here, the State took the long-standing and viable theory of mutual combat and applied it to modern day facts. Appellant argues that the doctrine of mutual combat can only be used for the sole purpose of barring a plea of self-defense. This is an

incorrect limitation of the law on mutual combat. Although mutual combat is commonly analyzed when a claim of self-defense is raised[8], that is not its only application.

Numerous South Carolina cases have used the theory of mutual combat to hold a defendant guilty of murder. "Where two persons mutually engage in combat, and one kills the other, and at the time of the killing it be maliciously done, it is murder. If, on the other hand, it be done in sudden heat and passion on sufficient provocation without premeditation, or malice, it would be manslaughter." *Andrews*, 53 S.E. at 424; *see also State v. Hammond*, 36 S.C.L. 91, 102 (S.C. App. L. 1850) ("Even in cases of mutual combat, if one begin the fight with a mortal weapon, it is murder..."); *State v. Turner,* 63 S.C. 548, 41 S.E. 778 (1902) ("Where there is evidence from which a jury may infer that there was mutual combat, on a trial for murder an instruction as to such combat is not error."); *State v. Mathis*, 177 S.E. 318, 319 (S.C. 1934) ("There was evidence of threats which, if true, justified a verdict of premeditated murder. There was testimony that the appellant 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. There was no error in charging and arguing the law of mutual combat.").

The 1918 case of *State v. Brown* utilized the doctrine of mutual combat to hold multiple defendants accountable for the death of one of the combatants. 108 S.C. 490, 95 S.E. 61. Much like the facts of Appellant's case, all of the defendants were held responsible for the death of the victim even though only one of them had inflicted the fatal injury. In *Brown*, many employees at a local mill began to strike and picket after the mill organized a labor union. *Id.*, 95 S.E. at 62. One morning, a fight erupted between

[8] "Whether or not mutual combat exists is significant because the plea of self-defense is not available to one who kills another in mutual combat." *Taylor*, 356 S.C. at 232; *Graham*, 260 S.C. at 450, 196 S.E.2d at 495.

current employees and strikers. *Id.* One of the men involved in the melee pulled out a knife and killed David Freize, another participant in the fight. *Id.* Two of the strikers and three of the employees were indicted for the murder of the Freize. *Id.* On appeal, the defendant's alleged that it was improper to charge the law of mutual combat. *Id.* at 61. The Supreme Court affirmed the convictions and held, "That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences." *Id.* at 63.

In order for the doctrine of mutual combat to be asserted and an instruction on the law given to the jury, multiple factors must be shown. In determining whether mutual combat exists, there must be evidence of a "mutual intent and willingness to fight." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003), *quoting Graham*, 260 S.C. at 450, 196 S.E.2d at 495. One looks to the "acts and conduct of the parties and circumstances attending and leading up to the combat" to determine mutual intent. *Id.* Also, there must be an antecedent agreement to fight. *Taylor,* 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of "ill-will between the parties", threats, and an "apparent willingness of each to engage in an armed encounter with the other" *Id.* The parties must also be armed and know the other to be armed. *Id.*

As discussed below in sub-issue B, the State presented evidence of all the factors for mutual combat and thus the theory was appropriately applied to this case. Appellant

contends that it was error for the State to use the theory of mutual combat to prove murder. Specifically, Appellant claims that the State must prove the elements of murder in general. Respondent submits that the jury was instructed on the law of murder and they found that the State had met its burden of proof in establishing the elements of murder. The judge explained, "Murder is defined in our law as the killing of any person with malice aforethought either express or implied." (Tr. p. 538, lines 5-12). The judge then defined the terms "malice" and "aforethought". (Tr. p. 538, line 13 – p. 539, line 17). Furthermore, he instructed the jury, "the state is required to prove malice beyond a reasonable doubt". (Tr. p. 539, lines 19-21). Thereafter, the judge explained to the jury that the murder charge rested on the theory of mutual combat. (Tr. p. 539, line 24 – p. 540, line 1). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder as well.

Next, Appellant asserts that it was error for the trial judge to include the theory of transferred intent in the jury instructions. Respondent submits the trial judge properly charged the law of transferred intent during the instruction on Appellant's criminal intent. (Tr. p. 540, line 24 – p. 542, line 12). The law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant. Nevertheless, it is only logical that transferred intent would apply in such a situation. Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim. South Carolina recognizes that "if there was malice in [defendant's] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake." *State v. Heyward,* 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent holds the defendant liable for the harm

caused to an innocent bystander. *See, e.g., State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) (A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.).

The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. *People v. Sanchez*, 26 Cal. 4th 834, 29 P.3d 209 (2001). In referencing the concurring opinion's analysis of transferred intent, the majority opinion stated in a footnote:

> For purposes of applying the rule of transferred intent, it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant's culpable mental state is determined as if the person harmed were the person defendant meant to harm.

26 Cal. 4th at 850, 29 P.3d at 220.

In concluding that each defendant was equally liable for the innocent bystander's death, the Court stated:

> Because defendant and co-defendant, rival gang members, had equally culpable mental states and engaged in precisely the same conduct at the same time and place in exchanging shots in a gun battle, it was not unfair to hold them equally responsible for an innocent bystander's death, without regard to which of them actually fired the bullet

26 Cal. 4th at 854, 29 P.3d at 144.

Accordingly, the doctrine of transferred intent was properly applied to Appellant's case. As the trial judge stated, if Young, Sr. had been killed, then there would be no question that both Appellant and Robinson would be responsible for his death under mutual combat. Since an innocent bystander was killed rather than one of the combatants, the doctrine of transferred intent was properly utilized to transfer Appellant's

and Robinson's criminal intent to the unintended victim. Hence, there was no error in charging the jury on the law of transferred intent.

Additionally, Appellant argues that the State must present evidence of some doctrine that would allow for one defendant to be responsible for another defendant's actions. Appellant's examples of such doctrines are conspiracy, accomplice liability, and felony murder. However, much like the above theories, mutual combat is a recognized doctrine in which a defendant can be held accountable for the actions of another defendant. *See Brown*, 95 S.E. at 63 ("[E]very one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not.); see also, *Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered *when both parties contribute* to the resulting fight.").

To further counter Appellant's argument, Respondent submits a review of other states' case law on mutual combat with relation to other theories of culpability is beneficial. *See State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) ("Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant."); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) ("While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged

the other to engage in urban warfare."). *See also Reyes v. State*, 783 So.2d 1129, 1133 - 1134 (Fla.App. 3 Dist. 2001) (noting *Alston* and adopting logic citing other jurisdictions with similar holdings). The logic of these cases are instructive.

In *State v. Spates*, 779 NW.2d at 772, the Supreme Court of Iowa reviewed a murder conviction where the victim had been a bystander killed "during a gun battles between rival groups...." The state court considered both theories of aiding and abetting and mutual combat. In light of the applicability of those theories, the court concluded:

> We agree with those courts that have concluded participants in mutual combat encourage each other to engage in the potentially lethal conduct that leads to the injury of innocent bystanders, thereby supporting liability as an aider and abettor.

779 N.W.2d at 780.

The Iowa courts had previously reached a similar conclusion in *State v. Brown,* 589 N.W.2d 69 (Iowa App. 1998), *reversed on other grounds, State v. Reeves*, 636 N.W. 2d 22 (Iowa 2001). In that case, the victim was killed when she unwittingly drove between rival gangs in the midst of a shootout. However, a rival gang member, not Brown, actually fired the fatal bullet. Brown contested his second degree murder conviction as there was no evidence connecting him personally to the fatal bullet.[9] The appeals court, considering proximate cause, rejected Brown's assertion finding:

> Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See State v. Marti,* 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the

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[9] Though "second degree murder," the malice requirement is substantially the same. In Iowa, "[m]alice is required for both degrees of murder. *See* Iowa Code § 707.1 (1997) ('A person who kills another person with malice aforethought either express or implied commits murder.'). However, first-degree murder requires proof of deliberation and premeditation in addition to malice aforethought. *See* Iowa Code §§ 707.1, 707.2(1). Second-degree murder, on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare* Iowa Code § 707.2(1) *with* § 707.3." *Reeves*, 636 N.W.2d at 25. Thus, it appears that the charge would be in definition, though not statutory structure, comparable to the murder charge in this State.

> shot that killed the innocent bystander. *See id.* ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death").

589 N.W.2d 69, 74 -75.

A Maryland Court of Appeals considered similar circumstances in regard to a conviction for a "depraved murder"[10] conviction, and reasoned as follows:

> The "bottom line" is that when a group, or two groups, of hoodlums deliberately engage in a gang-war style of shoot-out in a crowded urban area, they collectively trigger an escalating chain reaction creating a high risk to human life. When instead of taking their gunslinging vendetta to an uninhabited island or some remote spot in the desert, they arrogantly indulge in their homicidal insanity in the middle of a crowded block of residences, each participant in such collective madness displays a wanton and depraved indifference to any human life that might randomly fall within their overlapping and deadly enfilades. Should death to one of the innocent bystanders or homeowners ensue, each participant in the lethal encounter has exhibited the *mens rea* that qualifies him for depraved-heart murder.

Alston v. State, 643 A.2d 468, 469 (Md. App.1994). The affirmance was upheld on appeal, with the higher court noting: " Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare." *Alston v. State*, 662 A.2d 247, 254 (Md. 1995). *See also Reyes*, 783 So.2d at 1133 -1134 (noting *Alston* and adopting logic citing other jurisdictions with similar holdings).

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[10] Again, though we have no such offense, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See Owens v. State*, 906 A.2d 989, 1026 (Md. App. 2006)(describing one way of proving second degree murder as "what has become known as depraved heart murder--a killing resulting from ' the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. *Robinson v. State*, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, however, places the charge on similar footing with our requirement of malice. *State v. Wilds*, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct.App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life').

Similarly, in a 2005 case, the court in the District of Columbia, in reviewing a causation charge, reasoned that "while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a 'gun battle' on city streets, as in this case, is relatively new." *Roy v. United States*, 871 A.2d 498, 507 (D.C. 2005), *cert. denied*, 547 U.S. 1162, 126 S.Ct. 2346 (2006). The court easily acknowledged the "the application of proximate cause liability to those participants who willfully choose to engage in these battles." *Id.* In upholding the application in that specific case as reflected in the contested charge on causation, the court reasoned: "While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered." 871 A.2d at 509.

Therefore, under the law of South Carolina and many other states, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury.

Finally, Appellant argues that South Carolina should not allow for a murder conviction to rest upon the legal theories of mutual combat and transferred intent because, if the legal theory was accepted, any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. Respondent submits that is the precise reason it can be and should be

used for a murder conviction. Much like accomplice liability[11], both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *Reyes,* 783 So.2d at 1133 -1134. Here, Appellant and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Appellant's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire of the havoc the two men created. Therefore, not to hold Appellant accountable for the death of Khalil would be an injustice, for this case and future cases.

In conclusion, the deep-rooted doctrine of mutual combat is valid theory on which to base a murder charge. Here, Appellant and Robinson mutually engaged each other in an armed conflict in which it was reasonably foreseeable that someone could be killed. The fact that an eight year old child was killed, instead of Appellant or Robinson, does not excuse the combatants of their culpability. The State properly prosecuted Appellant of murder under the theory of mutual combat and the trial judge correctly instructed the jury on that theory. Therefore, the trial judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base Appellant's murder charge. The motion for directed verdict was appropriately denied, and thus, this issue must be dismissed.

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[11] "Under the 'hand of one is the hand of all' theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *State v. Gibson,* 701 S.E.2d 766, 769 (S.C. App. 2010)

B. Overwhelming direct and circumstantial evidence of mutual combat was presented at trial to withstand a directed verdict motion.

Appellant argues that no evidence was produced at trial that Appellant and Robinson were engaged in mutual combat on the incident date. In failing to view the evidence in the light most favorable to the State, Appellant's argument is wholly without merit. At trial, the State produced ample direct and circumstantial evidence showing Appellant and Robinson were engaged in mutual combat on the afternoon of September 1, 2012.

As previously stated, there must be a "mutual intent and willingness to fight" to constitute mutual combat. *Taylor*, 589 S.E.2d at 3. The required mutual intent can be inferred from the parties' acts and conduct, and the circumstances of the combat. *Id.* Mutual combat also requires the combatants to be armed and know the other to be armed with deadly weapons. *Id.*; *see also State v Mathis*, 174 S.C. 344, 177 S.E. 318 (1934) (finding mutual combat charge proper based on testimony that appellant and deceased were on the lookout for each other, that each was armed in anticipation of meeting the other, and that each drew and fired his pistol at the other); *Brown*, 95 S.E. at 63 ("That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences."). In finding that evidence of mutual combat existed to submit the issue to the jury, the Court in *Graham* held:

> "There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination."

260 S.C at 452, 196 S.E.2d at 496.

Mutual intent and willingness to fight

The State presented direct and substantial circumstantial evidence that Appellant and Robinson mutually intended to fight. At trial, the chain of events surrounding Appellant and Robinson's extensive armed chase were presented to the jury by numerous witnesses.

Robinson approached Appellant with a .38 caliber gun in his hand. (T. p. 333, lines 2-5; State's Ex. 38, Intro Video at 2:55-3:39). Young, Sr. tried to take the gun away but it accidently fired. (T. p. 333, lines 18-22). Young, Sr. backed away as Robinson fired another shot into the ground. (T. p. 333, lines 18-22). Robinson then got into his vehicle and drove away. (T. p. 334, line 25 - p. 335, line 4). Seconds after Robinson left, Appellant and Young, Sr. retrieved a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (T. p. 335, lines 7-10; T. p. 379, lines 1-2; T. p. 381, lines 13-16). In Young Sr.'s grey truck, Appellant and Young, Sr. began searching for Robinson. (Tr. p. 338, lines 5-12).

After one failed attempt at locating Robinson, Appellant and Young, Sr. finally tracked him down on Bryant Road. (State's Ex. 38, Video 7 at 00:23-00:36). Appellant pulled his weapon out and tried to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson's home on Allen Road. (State's Ex. 38, Video 7 at 2:00-

2:50). After spotting Robinson's vehicle, Appellant began firing bullets into the car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car "**twenty damn times**" and when he was done it looked like "**swiss cheese**". (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and began to drive away when Robinson fired three shots at Appellant and Young, Sr. (State's Ex. 38, Video 3 at 00:45-00:55).

Delaney testified Robinson approached him during the conflict and told him "yeah they was shootin at me so I shoot back at them". (Tr. p. 304, lines 18-19). A woman who called 911 dispatch reported that a grey truck and Robinson were shooting at each other. (State's Ex. 2)

Appellant and Robinson's actions and conduct that afternoon indisputably prove the required mutual intent and willingness to fight for mutual combat. This intent is further demonstrated by Appellant's own admission to participating in a gun battle with Robinson. (State's Ex. 38, Intro Video - Video 8).

Pre-existing ill will

The State presented direct evidence of Appellant and Robinson's animosity towards each other. Appellant had the following conversation with Investigator Albertin discussing his relationship with Robinson:

> *Investigator Albertin*: When it came down to it, did you really wanna shoot Tyrone?
>
> *Appellant:* **Man, Tyrone tried to kill me in the gardens a couple of days ago, man...<u>I don't like that dude, man</u>.**
>
> *Investigator Albertin*: I've been hearing you boys have been going at it.
>
> *Appellant*: **He crazy. Something wrong with that boy. He think he the shit or something. I don't know. He thinks he got power around here. Cause people scared...I'm little? But I'm not scared of you big**

> **dude...Ever since I knocked him out that one time <u>he don't like me</u>. Me and him got in a fight, I knocked his ass out right there. I swear to God. Ask everybody. I knocked that bitch clean out.**

(State's Ex. 38, Video 4).

This colloquy, coupled with the chain of events on September 1, 2012, clearly shows Appellant and Robinson had ill-will towards each other.

Armed and knew the other to be armed

The State presented direct and circumstantial evidence that Appellant was armed with a 9MM semi-automatic pistol. During Appellant's interview with Investigator Albertin, Appellant admitted to using his 9MM handgun to shoot Robinson's car. According to Appellant, **"Boy, I swiss cheese that car...I swear I did."** (State's Ex. 38, Video 3 at 00:20). Appellant bragged, **"I mean shit, I shot the car a good, what, twenty damn times."** (State's Ex. 38, Video 6 at 00:55). Additionally, Appellant admitted he attempted to shoot Robinson with the gun but it jammed. **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25). The State presented circumstantial evidence that Appellant was armed through Jontu's testimony. According to Jontu, Appellant pulled a gun out of a black bag and began assembling the weapon while they were searching for Robinson. (Tr. pp. 335-339). Agent DeFreese's testimony corroborated Jontu's testimony and Appellant's admission in determining that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (Tr. p. 437, line 15 – p. 438, line 6).

Also, the State introduced direct evidence that Appellant knew Robinson was armed with a weapon. During Appellant's interview, he discussed knowing what type of gun Robinson used during the conflict:

> **"Cause at the end of the day, Y'all still don't got T's shit…T's shit is a revolver, man. That's the most important gun. Fuck a automatic and a hand gun is nothing 'cause it automatically drop shells. But nigga if he got a revolver, how the fuck y'all gonna get his gun casings? …You know how many people done got hit with a nine millimeter and ain't die, but bitch you get hit with a 38 your ass is dead."**

(State's Ex. 38, Intro Video at 2:55-3:39)

Furthermore, the State produced circumstantial evidence that Appellant knew Robinson was armed. Jontu testified that Robinson approached Appellant with a gun in his hand off Wild Horse Road. (T. p. 333, lines 2-22). Robinson then fired the gun twice in front of Appellant. (T. p. 333, lines 2-22).

Natural Consequences

Additionally, the State presented direct evidence Appellant knew Khalil and the other children were playing outside. During Appellant's interview, he admitted multiple times to engaging in a gun fight with children present:

> **"We came down the road. There was children outside playing already…"** (State's Ex. 38, Video 1 at 00:11-00:28); **"The little children was the ones who saw us 'cause they was pointing at us…they was pointing at us…I saw the trampoline and all, that's the crazy thing about it"** (State's Ex. 38, Video 1 at 1:10-1:16); **"In order to ride up the road, you gotta pass by the children"** (State's Ex. 38, Video 1 at 1:39-1:41).

While discussing seeing the children, Appellant stated, **"We got there and all hell broke loose"** (State's Ex. 38, Video 1 at 00:34-00:37). This evidence clearly demonstrated that Appellant was aware that innocent bystanders were in the vicinity. But this fact did not stop Appellant from continuing the conflict with Robinson. Accordingly, it is reasonable to presume Appellant knew the natural consequences of his actions could lead to Khalil's death.

In conclusion, overwhelming direct and circumstantial evidence was presented to the jury tending to prove Appellant was engaged in mutual combat with Robinson. The State introduced evidence Appellant and Robinson had a mutual intent to fight, they had ill-will between each other, and both came to the fight armed and knew the other to be armed. The elements of mutual combat have clearly been established. Thus, the trial court did not abuse his discretion in denying Appellant's motion for directed verdict on the murder charge, and this Court should affirm the trial court's ruling.

C. This issue is not preserved for review since Appellant did not request a directed verdict on the basis of a withdrawal from mutual combat, but also, there was no evidence presented at trial that Appellant had withdrawn from the mutual combat that would warrant a directed verdict.

As a preliminary matter, it appears from a review of the trial record that this issue is not preserved for review. Appellant only discussed the end of mutual combat when he requested a jury instruction on the law after he had already argued his motion for a directed verdict. The judge properly denied the request for such an instruction, which is discussed further in Issue II. Even so, this argument is easily dispatched as there was no evidence that Appellant withdrew from the conflict.

In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. *State v. Kennerly*, 503 S.E.2d 214, 221 (S.C. App. 1998), aff'd, 524 S.E.2d 837 (S.C. 1999); *State v. Jordan,* 255 S.C. 86, 177 S.E.2d 464 (1970). A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below. *See State v. Bailey,* 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."). Here, Appellant did not argue that the mutual combat ended when he made a

motion for a directed verdict. The trial judge only had the opportunity to consider this issue when Appellant asked for a jury charge on the law of withdrawal. Therefore, Appellant is barred from asserting this point as a basis for a directed verdict in his appeal.

Regardless, Appellant would not be entitled to relief even if he raised this issue at trial. In order to bring mutual combat to an end, one of the combatants must withdraw from the conflict in good faith and make that fact known to his adversary. *Graham*, 260 S.C. at 451, 196 S.E.2d at 495–96. Here, there was no evidence presented at trial that would allow for the jury or the judge to deduce that Appellant withdrew from the conflict. This matter is discussed in much greater detail in Issue II. Appellant's action of driving away after firing multiple bullets into Robinson's car must be taken in context with entire conflict. The chain of events that unfolded on September 1, 2012, included numerous instances of Appellant and Robinson driving to and away from multiple locations. Appellant's other comings and goings were not viewed as withdrawals because they were simply in furtherance of his pursuit of Robinson. This instance should not be viewed as any different. Also, Appellant's recorded statements that were published to the jury directly show he did not intend to withdraw. When Appellant was discussing his driving away after firing shots into Robinson's car, he stated, "**the dude knew we were gonna come back for him**". (State's Ex. 38, Video 1 at 1:10). Also, Appellant stated he told his father "**man, turn around**" after he heard Robinson's gun shots. (State's Ex. 38, Video 3 at 00:45). Both of these statements undoubtedly show Appellant's intent was not to withdraw but to continue fighting. Thus, Appellant's own words completely contradict his assertion that he withdrew from the conflict.

Therefore, this issue is not preserved for appellate review. The result would be the same had the issue been preserved because there was no evidence presented at trial that tended to prove he withdrew in good faith from the combat. This issue is without merit and must be dismissed.

II. The trial judge did not abuse his discretion in denying Appellant's request to charge withdrawal from mutual combat because no evidence existed to support such a charge.

Appellant contends the trial court erred in denying Appellant's request for a jury charge on the end of mutual combat[12]. This claim is not supported by a review of the trial record. Absolutely no evidence was produced at trial tending to show that Appellant withdrew from the combat in good faith. Thus, Appellant was not entitled to a jury charge on withdrawal from mutual combat and the judge did not abuse his discretion in declining to give such an instruction.

Discussion

Motion for Jury Charge

After Appellant's directed verdict motion was denied, Appellant then requested a jury instruction on the ending of mutual combat. According to Appellant, the actions of Appellant and Young, Sr. driving down the road after shooting Robinson's car constituted an end to the mutual combat. Essentially, Appellant's position was that driving away should be viewed as a withdrawal from the conflict. The judge found there was no evidence of a withdrawal that would warrant such an instruction and denied Appellant's request. In explaining his reasoning, the judge stated:

> The case law in mutual combat and ending a mutual combat requires that the ending of the combat and the breaking off be clear and unequivocal; that it be more than just an escape or trying to avoid the consequences of the continuing battle. This battle had been back and forth...
>
> ...I'm not thinking that they were necessarily at that point in time breaking off the combat, they were just going to live to fight another day because he was not there and he was not there to carry it on and they left, or they were leaving at the time the fatal shots occurred.

---

[12] Appellant uses the language "ending mutual combat" in his argument. However, mutual combat case law uses the term "withdraw" when discussing this issue. *See Graham*, 260 S.C. at 451, 196 S.E.2d at 495–96. Therefore, Respondent shall use "withdraw" when addressing Appellant's argument on "ending mutual combat".

> I don't think leaving the scene under those circumstances indicates clear and unequivocally the breaking off of this given the extent of the chase and the level that they had gone to try to get him before then 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.
>
> I don't think that the retreat ends it. I don't think that there is a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat no longer exists.

(T. p. 490, line 18 – p. 492, line 10)

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Consequently, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* "An appellate court will not reverse the trial judge's decision absent an abuse of discretion." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2008). If there is any evidence to support a charge, the circuit court should grant the request. *State v. Brandt,* 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011); *State v. Brown,* 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury." *State v. Blurton*, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). Specifically, "providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury." *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts.

Analysis

"Where a person voluntarily participates in mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self-defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the homicide is committed, he **withdraws and endeavors in good faith to decline further conflict**, and, either by word or act, **makes that fact known to his adversary**."; *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Thus, two elements must be satisfied in order to successfully withdraw from mutual combat. Here, neither of these elements have been met.

Appellant argues that he withdrew from the conflict when he drove away from the scene, thereby ending the mutual combat. However, the key component to withdrawal from a conflict is that it must be done in **good faith**. In order to actually withdraw in good faith from a conflict, the aggressor must have truly desired to withdraw from or abandon the conflict, and must not have merely paused in his assault. *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self-Defense*, 55 A.LR.3d 1000, 1003 (1974). Thus, there is no withdrawal where he simply steps back to assume a better strategic position or if he leaves and then returns to the scene with the same threatening or hostile intentions. *Id.* An aggressor does not abandon a conflict if he merely leaves to obtain a weapon, to wait for his adversary in ambush elsewhere, or because he is convinced that he has disabled or killed his adversary. *Id.*

Although South Carolina case law maintains that a withdrawal must be done in good faith, it does not specifically address what constitutes a "good faith withdrawal".

However, other states have addressed this very issue. In addressing this issue, the Supreme Court of Missouri explained the difference between a good faith withdrawal and a mere retreat. "There is a wide difference between a withdrawal and a mere retreat. A retreat may be and often is a continuance of hostilities. A withdrawal is the abandonment of the struggle by one of the parties, and such abandonment must be perceived by the other." *State v. Heath,* 237 Mo. 255, 141 S.W. 26, 29 (1911).

Additionally, the Kentucky Court of Appeals in *Hellard v. Commonwealth* rejected the defendant's assertion that he withdrew from the combat in good faith. *Hellard v. Commonwealth,* 84 S.W. 329, 329 (Ky. 1905). The court held, "A retreat is not necessarily an abandonment. It may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it." *Id.* Also, the Supreme Court of Louisiana, in *State v Kellogg,* analyzed the reinstatement of a claim of self-defense if the defendant withdrew from the combat in good faith. *State v. Kellogg,* 29 So. 285 (La. 1901). The court stated that self-defense could not be asserted under the basis of withdrawal if the conduct was "a mere momentary cessation of hostilities, with no bona fide, clearly expressed intention to withdraw from the conflict". *Id.* at 291.

Here, there was certainly no evidence presented at trial that indicated Appellant withdrew or desired to withdraw from the conflict in good faith. Appellant's act of driving away moments after firing multiple bullets into Robinson's car was not a desire to end the fighting. Appellant's actions were not a withdrawal or a retreat, but a continuation of the hunt for Robinson. His act of driving away must be viewed in relation to the whole incident. The entire conflict revolved around Appellant and Robinson

chasing after each other. Appellant traveled down numerous roads and made many stops in his search for Robinson. These other comings and goings were not withdrawals but rather mere continuations of Appellant's pursuit of Robinson. Appellant's act of driving down the road after shooting Robinson's vehicle should not be viewed as any different.

Additionally, Appellant's statements introduced at trial further support that he did not withdraw in good faith. During the interview with law enforcement, Appellant disclosed that after hearing Robinson shoot at Young, Sr.'s truck, he told his father, **"man turn around".** (State's Ex. 38, Video 3 at 00:45). Also, when discussing driving away after shooting Robinson's car, Appellant told investigators, **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that."** (State's Ex. 38, Video 1 at 1:10). Appellant's admissions that he intended to return to the fight directly refute any intent to withdraw.

Assuming Appellant intended to withdraw, which the evidence suggests otherwise, neither his words nor actions communicated this intent to Robinson. The Court in *Graham* explained that a withdrawal must be "communicated to the victim by word or act". 260 S.C. at 451, 196 S.E.2d at 496. Appellant did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, Appellant's act of driving down the road would not have been reasonably interpreted by Robinson that Appellant intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations that did not amount to a withdrawal. It would be unreasonable to assume Robinson viewed this instance as anything different.

Therefore, since Appellant did not withdraw from the conflict in good faith or inform Robinson of an intended withdrawal, a jury instruction on the ending of mutual combat would be improper.

As stated above, a judge's refusal to give a requested charge will not be reversed unless appellant shows an abuse of discretion. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts. If, however, any error did occur, such error would be harmless in light of the remainder of the charge and specifically the carefully crafted charge on mutual combat. *See, e.g., State v. Logan*, 405 S.C. 83, 94, 747 S.E.2d 444, 449 (2013) ("erroneous jury instructions are subject to a harmless error analysis"); *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583 ("'A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.'") (*quoting State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App. 2003). Yet, a review of the record undoubtedly shows the requested charge was not warranted. Therefore, there was no error. Appellant's argument to the contrary should be rejected.

III. The trial judge did not abuse his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

In this appeal, Appellant contends that the State failed to present evidence tending to prove Appellant's guilt of attempted murder. Specifically, Appellant asserts that the evidence was "scant" and merely raised a suspicion of guilt. However, Appellant's argument is without merit when not only was there significant circumstantial evidence introduced; there was direct evidence from Appellant's own admissions. As there was substantial circumstantial and direct evidence presented by the State to the jury proving Appellant's guilt, the trial court properly denied Appellant's motion for directed verdict at the conclusion of the State's case. (Tr. pp. 485-489).

Discussion

Directed Verdict Motion

After the State rested its case, Appellant moved for a directed verdict on the murder and attempted murder charges. With regard to the attempted murder charge, Appellant argued that there was no evidence presented that showed Appellant attempted to kill Tyrone Robinson. Specifically, Appellant argued the State offered no evidence that Appellant pointed a gun at Robinson. (Tr. p. 479, lines 10-13). Furthermore, Appellant alleged it was never confirmed that Robinson was referring to Appellant when he stated "those M.F. was shooting at me". (Tr. p. 479, lines 16-20). The State responded that there was in fact at least three pieces of evidence presented during trial proving Appellant's attempted murder of Robinson. (Tr. p. 485, lines 9-11). These three pieces of evidence were: (1) Robinson's statement to Mitchell, "those M.F. was shooting at me", (2) Robinson's statement to Delaney, "yeah they was shootin at me so I shoot back at

them" after asking about a grey truck, and (3) the 911 call reporting a shootout between a grey Lexus driven by Robinson and grey truck. (Tr. p. 484, line 20 – p. 485, line 11). The State further argued that Appellant's admission to attempting to kill Robinson but failing because the gun jammed was an important indication that Appellant intended to kill Robinson. (Tr. p. 485, lines12-15).

Correctly reviewing the evidence in the light most favorable to the State, the trial judge held that there was substantial circumstantial and direct evidence introduced at trial. Specifically, the court emphasized "that the attempted murder of Mr. Robinson is borne out by [Appellant's] own statement". (Tr. p. 488, lines 18-19). Accordingly, the trial judge denied Appellant's motion for a directed verdict on attempted murder.

Standard of Review

As stated above, when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *Weston*, 367 S.C. at 292, 625 S.E.2d at 648. "When reviewing a denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the state." *Id.* at 292-93, 625 S.E.2d at 648. "If there is <u>any direct evidence</u> or <u>any substantial circumstantial evidence</u> reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *Id.* "[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354.

The "any evidence" standard also requires that "the existence of 'any direct evidence' proving the defendant's guilt requires the denial of a directed verdict motion."

Phillips, 411 S.C. at 133, 767 S.E.2d at 448. Direct evidence is based on personal knowledge or observation which, "*if true,* proves a fact without inference or presumption." *Id.* (quoting *Rogers,* 405 S.C. at 563, 748 S.E.2d at 270). This is because "[t]he presentation of direct evidence 'immediately establishes the main fact to be proved.'" *Phillips* at 133, 767 S.E.2d at 448 (quoting *Salisbury,* 343 S.C. at 524 n. 1, 541 S.E.2d at 249 n.1).

Analysis

Once again, Appellant's brief fails to view the evidence in the light most favorable to the State. Furthermore, Appellant's brief completely omits reference to Appellant's statements to police that illustrate his intent to kill Robinson. Contrary to Appellant's assertion, there is ample direct and circumstantial evidence supporting the trial judge's denial of Appellant's directed verdict motion on the attempted murder charge, and his ruling should be affirmed.

Attempted murder is defined as "a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied". S.C. Code Ann. § 16-3-29. Respondent submits that substantial circumstantial and direct evidence was presented at trial showing Appellant intended to and attempted to kill Robinson with malice aforethought. The following are the key pieces of direct and circumstantial evidence from the trial record, that when taken together, unmistakably point to Appellant's guilt of attempted murder:

Witness Testimony

- Jontu's testimony about Appellant retrieving a gun and looking for Robinson. (Tr. p. 335, lines 7-10; p. 338, lines 5-8).

- Jontu's testimony about Appellant assembling the gun while looking for Robinson. (Tr. p. 339, lines 13-25).
- Robinson's statement to Mitchell "those M.F. was shooting at me". (Tr. p. 281, lines 8-11).
- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck. (Tr. p. 304, lines 1-19).
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck[13]. (State's Ex. 2).

Appellant's Admissions

- Appellant's statement **"Should've never moved my ass from Ridgeland. Could've killed any nigga I wanted to and nobody'd ever fucking find out."** (State's Ex. 38, Intro Video at 4:01).
- Appellant's statement when he was talking about driving away after shooting Robinson's car: **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that."** (State's Ex. 38, Video 1 at 1:10).
- Appellant's statement **"Boy, I swiss cheese that car...I swear I did."** (State's Ex. 38, Video 3 at 00:20).
- Appellant's statement to Young, Sr. after Robinson shot at them in the truck, **"man turn around"** (State's Ex. 38, Video 3 at 00:45).

[13] Appellant argues in his brief that the caller referred to the car as a "grey Lexus", but that Robinson was driving a green Acura on the incident date. Respondent submits that this argument is meritless because the caller positively identifies the driver of the car as Tyrone Robinson. Therefore, the color of the car is insignificant.

- Appellant's statement **"I mean shit, I shot the car a good, what, twenty damn times."** (State's Ex. 38, Video 6 at 00:55).
- Appellant's statement **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25).
- Appellant's statement **"It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it was a dead road, nobody would've knew nothing...But the gun just wouldn't go off"** (State's Ex. 38, Video 7 at 2:11).
- Investigator Albertine's question "So what were you shooting at then?" and Appellant's response "**Him**" (State's Ex. 38, Video 7 at 1:10).

The chain of events evidences that the Appellant clearly intended and attempted to kill Tyrone Robinson with malice aforethought. Appellant's intent was unmistakably illustrated by eyewitness testimony about Appellant obsessively chasing Robinson down numerous roads in Hilton Head while armed with a semi-automatic weapon. Moreover, Appellant's admission that he attempted to kill Robinson but the gun was inoperative further supports his guilt. Even though Appellant does not specifically state he pointed the gun at Robinson, he admitted he was shooting at "**him**". (State's Ex. 38, Video 7 at 1:10). This admission constitutes direct evidence of the Appellant's involvement in the crime, "immediately" establishing his intent to murder Robinson. *Phillips, supra.* If Appellant's statements were not persuasive enough, Robinson's statements about Appellant shooting at him surely aided the jury in their determination of Appellant's guilt

beyond a reasonable doubt. Although Appellant argues that Robinson's statements could have meant someone besides Appellant was shooting at him, the statements must be taken in the context of the events that afternoon. This was a question for the jury to decide and the only reasonable inference was that Robinson was referring to Appellant in his statements. Accordingly, the State did indeed present substantial direct and circumstantial evidence, when viewed in the light most favorable to the State, proving Appellant's guilt of the attempted murder of Robinson.

The Appellant's apparent reliance on various state cases is grossly misplaced. Appellant seeks to compare his case to the following cases: *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Hepburn*, 409 S.C. 416, 753 S.E.2d 402 (2013). In each of those cases, the South Carolina Supreme Court found that a directed verdict was warranted based on the evidence presented by the State at trial. However, the instant case is distinguishable from all of those cases. *Accord State v. Bratschi*, 413 S.C. 97, 106-14, 775 S.E.2d 39, 44-48 (Ct. App. 2015).

The Court in *Bostick* and *Odems* held a directed verdict was proper because the State had failed to present evidence placing the defendant at the scene of the crime. *Bostick*, 392 S.C. at 141, 708 S.E.2d at 778; *Odems*, 395 S.C. at 592, 720 S.E.2d at 53. Here, there is no question Appellant was present at the crime. Not only do multiple witnesses place him at the scene, he places himself there by his own admission. Therefore, both of these cases cited by Appellant are inapplicable to the case at hand.

Also, Appellant's contention that his case is comparable to *Hepburn* is erroneous. The Court in *Hepburn* held that the State failed to present substantial circumstantial

evidence that the defendant killed the victim, and thereby a directed verdict was warranted. *Hepburn,* 406 S.C. at 440, 753 S.E.2d at 415. The Court emphasized that while the State presented substantial evidence the defendant was at the scene, it failed to present evidence tending to prove that this defendant, rather than the codefendant, inflicted the harm on the victim. *Id.* Thus, unlike this case, the underlying issue was "**who**" committed the crime. Here, there is no question about "who" attempted to kill Robinson. Undoubtedly, it is known that Appellant was the person who tried to kill Robinson due to his own confessions. Appellant admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). Appellant admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates Appellant's own statements that he was the shooter. Jontu testified Appellant was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (Tr. p. 339, lines 13-25). Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (Tr. p. 299, lines 3-21). Since the identity of the person who committed the crime is not at issue in this case, *Hepburn* is not appropriate for comparison.

Respondent submits that the evidence presented in this case is akin to evidence presented by the State in *State v. Lane*, where the South Carolina Supreme Court reversed the Court of Appeal's reversal of the trial judge's denial of the defendant's motion for a directed verdict. *State v. Lane*, 765 S.E.2d 557, 557 (S.C. 2014). In reversing the Court of Appeals decision, the Court held "in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt." *Id.* In that case, the State presented evidence of the

following: eyewitness testimony observing a red Mitsubishi parked in the victim's driveway on the afternoon of the burglary, a piece of paper found in victim's driveway after the burglary that was later identified as belonging to the defendant, officer testimony that they observed a red Mitsubishi in the driveway when they went to interview the defendant at his girlfriend's house, and defendant's admission to driving a red Mitsubishi on the day of the burglary and ownership of the piece of paper. *Id.*

Here, the State presented evidence regarding Appellant's ill-will towards Robinson, Appellant and Robinson's confrontation earlier in the day, Appellant's actions in retrieving and assembling a weapon, Appellant hunting down Robinson in a grey truck, eyewitness testimony placing Young, Sr.'s grey truck near the scene, officers testimony that they pulled over Appellant in Young, Sr.'s grey truck shortly after the shooting, eyewitness testimony about a shootout between a grey truck and grey Lexus shooting at each other near the scene, Appellant's own admission of his chasing down Robinson while riding in his father's grey truck, and Appellant's admission of his intent and attempt to shoot Robinson. (Tr. pp. 258-477; State's Ex. 38, Intro Video to Video 8; State's Ex. 2). Indeed, there was exceedingly more evidence presented in this case than in *Lane* to withstand a directed verdict motion.

Respondent submits that the State presented substantial circumstantial evidence in the instant case of the same caliber, if not more, as the evidence presented in *Lane*, and Respondent asks the Court to find, just as the Court did in *Lane*, that "the aforementioned evidence was sufficient to withstand Respondent's motion for a directed verdict." *Id.* Respondent submits that the State presented direct and substantial circumstantial evidence of Appellant's guilt at trial and the State further excluded other reasonable

hypotheses through its presentation of the evidence. Therefore, the trial judge did not abuse his discretion in denying Appellant's motion for directed verdict on the attempted murder charge, and this Court should affirm the trial court's ruling.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

August 26, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 26 2016
SC Court of Appeals

Appeal from Beaufort County

Honorable Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

PROOF OF SERVICE

I, Margaret Boykin, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

F. Elliotte Quinn, IV, Esquire
200 Meeting Street
Suite 301
Charleston, SC 29401

I further certify that all parties required by Rule to be served have been served.

This 26th day of August, 2016.

MARGARET G. BOYKIN
Assistant Attorney General
SC Bar No. 101017

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
AUG 26 2016
SC Court of Appeals

August 26, 2016

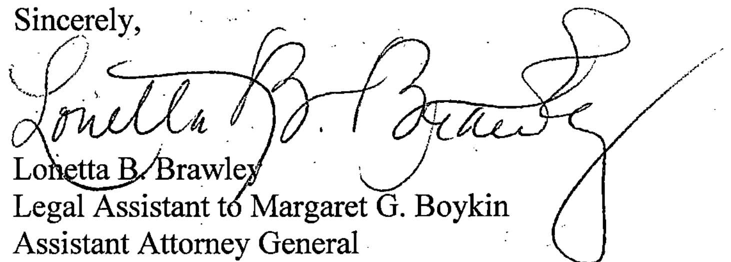
Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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

Dear Ms. Kitchings:

Enclosed please find the ***Initial Brief of Respondent and Designation of Matter*** in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,



Lonetta B. Brawley
Legal Assistant to Margaret G. Boykin
Assistant Attorney General

/lbb
Enclosures

cc: F. Elliotte Quinn, IV, Esquire
Isaac McDuffie Stone, III, Solicitor
Trisha Allen, Victim Assistance