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 REPLY BRIEF OF APPELLANT

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ARGUMENTS

Appellant's convictions for murder and attempted murder result from gross overcharging to the point of pushing the boundaries of South Carolina law beyond its breaking point. While Appellant may have committed a criminal act, for example by shooting Robinson's unoccupied vehicle, Appellant *did not* kill, *did not* proximately cause the death of, and *did not* attempt to kill anyone. Regardless, the Solicitor chose to charge Appellant with murder and attempted murder on legally tenuous and factually unsupported theories and forego charging Appellant with charges, for example destruction of property,[1] that may have a legal and factual relationship to Appellant's actions.

The State now incredibly asserts Appellant's convictions and the underlying distortion of South Carolina law are necessary given the "escalating urban warfare in present-day society." To the contrary, the State has not shown any "escalating urban warfare" necessitating a change in South Carolina law, and South Carolina law has adequately addressed, and will continue to adequately address, the public use of firearms and the death of bystanders through the felony murder, accomplice liability, and transferred intent theories of criminal liability.

Moreover, not only is there no need to recognize a mutual combat theory of murder in South Carolina, recognizing mutual combat as a stand-alone basis for a murder conviction for the death of a bystander creates legal problems as highlighted by the use of the theory in this case. The harms resulting from recognizing such a theory include:

- The theory would conflict with the requirement that a defendant proximately cause a

1 *See, e.g.*, S.C. Code Ann. § 16-11-510 (malicious injury to personal property).

death to be held criminally responsible for that death.

- The theory would conflict with the settled law of transferred intent which serves only to expand the malice element of a murder charge and does not serve to expand the criminal liability of one actor to include the results of another person's actions.

Not only is the State's attempt to expand South Carolina law unnecessary, ill-advised, and legally tenuous, the facts of this case fall outside the State's proposed theory of mutual combat. Thus, even were the State's theory legally valid, this is not the case to recognize such a theory. Appellant and Robinson never engaged in mutual combat on the day in question, much less engaged in mutual combat at the time Robinson fired the shot that killed Khalil. Therefore, even were South Carolina to recognize the State's mutual combat theory, Appellant could not be convicted for murder under such a theory.

To stretch the State's mutual combat theory to affirm Appellant's murder conviction would create absurd results. Were the facts of this case sufficient for a murder conviction under a mutual combat theory, a person could be convicted of murder regardless of the facts that the person's "combatant" hides to avoid actual combat, the combatant ambushes the person at a time and place of the combatant's choosing, and the passage of days, weeks, or months since the last interaction between the person and the combatant. In short, if ill-will and any violence or threat of violence occurs between a person and another, the State's theory would permit the person to be held criminally responsible for the other's violent acts at any future time or place.

The State may contend that a person should be held responsible for any criminal act that occurs as a result of his engaging in mutual combat, but the criminal law exists to punish offenders for prohibited conduct and harms that were the foreseeable result of such conduct. *See, e.g.*, 1

Wharton's Criminal Law § 26 (15th ed.). Here, Appellant could not reasonably foresee that Robinson would fire a weapon at him with children in the line of fire, and thus, even if engaged in mutual combat, the law should not hold Appellant criminally responsible for Robinson murdering Khalil. Appellant had no control over Robinson's actions, had no control over where and when Robinson chose to fire his weapon, and thus, had no control over Khalil's death.

Appellant, as seen in the videotaped interviews admitted at his trial, acknowledged that his actions were rash and expressed his anguish that Khalil died as a result of Robinson's actions. However, Robinson is the party responsible for Khalil's death, and he has been held accountable for his actions. Appellant may have acted foolishly and even criminally that day, but during the one instance when Appellant fired his weapon that day—when he shot Robinson's car—he knew that there were no children around the vehicle or in the direction he fired. (State's Ex. 38, Videos 1, 2, & 7.) Robinson, however, chose to ambush Appellant resulting in Khalil's death. Robinson chose not only to fire at Appellant, but he chose the time and place at which to do so. Thus, even were the State's mutual combat theory a valid legal basis for a murder conviction, the facts of this case do not support a conviction under such a theory.

Finally, the State fails to point to any evidence from which a jury could reasonably conclude that Appellant attempted to murder Robinson. The State mischaracterizes Appellant's statements to the police as an admission that Appellant attempted to shoot Robinson on Bryant Road, but a full consideration of those statements shows Appellant clearly stated he never tried to shoot Robinson. The State also points to two statements Robinson made to witnesses on September 1, 2012, and to a 911 telephone call recording, but none of those items of evidence identify Appellant as firing a weapon at or even pointing a weapon at Robinson. Therefore, because there was no evidence that

Appellant tried to fire a weapon at Robinson, there was no evidence from which a jury could reasonably find Appellant attempted to murder Robinson and the trial court erred in denying Appellant's directed verdict motion on the attempted murder charge.

I. MUTUAL COMBAT ALONE DOES NOT SUPPORT A MURDER CONVICTION

Appellant asserts that South Carolina law *does not* recognize mutual combat as a basis for a murder conviction and South Carolina *should not* recognize mutual combat as such. The State contests both of these assertions, but the State's arguments on each ground are flawed.

Rather than supporting its contention that mutual combat is recognized in South Carolina as a basis to hold a defendant guilty for murder, and to the contrary, the decisions cited by the State show that South Carolina recognizes mutual combat only in relation to self-defense. As discussed in detail in Appellant's Brief, all of the decisions cited by the State employ mutual combat in its role as a bar on a claim of self-defense.

The State also cites decisions from other jurisdictions as supporting the recognition of a mutual combat theory in South Carolina, but does not address the distinctions between the use of mutual combat in other jurisdictions and the theory advanced here. The State also fails to address the problems with the theory applied by the trial court and advanced on appeal. Other jurisdictions use mutual combat as a relevant to establishing the elements of murder, whereas here the trial court used mutual combat as a *stand-alone* basis for a murder conviction.

The mutual combat theory used by the trial court and advanced by the State on appeal here is problematic in ways that the use of mutual combat by other jurisdictions as merely relevant to establishing the elements of murder is not. Recognizing the State's mutual combat theory would conflict with the proximate causation requirement for a murder conviction. *See, e.g.*, *State v. Fields*, 314 S.C. 144, 146 n.1, 442 S.E.2d 181, 182 n.1 (1994) ("Where two persons combine to commit an

unlawful act and in its execution a homicide is committed as a probable or natural consequence thereof, all present and participating in the unlawful act are as guilty as the one who committed the fatal act."); *State v. Des Champs*, 126 S.C. 416, —, 120 S.E. 491, 492 (1923) ("The law applicable in ascertaining and appraising the consequential damage resulting from such criminal act is the familiar law of proximate cause."); *State v. McCall*, 304 S.C. 465, 469–70, 405 S.E.2d 414, 416 (Ct. App. 1991) ("Except in rare situations, a person committing an unlawful act is legally responsible for all natural or necessary consequences thereof."), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). All that would be required for a murder conviction using the State's mutual combat theory would be for two parties to engage in mutual combat and the acts of one of the two parties results in the death of a bystander. As shown by the facts of this case, this theory is problematic because it makes Appellant criminally liable for the death of a bystander even when Appellant had no control over where and when his alleged combatant fired and was not able to reasonably foresee that his alleged combatant would fire his weapon with children in the line of fire.

The State's mutual combat theory is also problematic due to its misapplication of the doctrine of transferred intent. Under the State's theory, the doctrine of transferred intent is absorbed into the mutual combat theory so that a mutual combatant is responsible for any death of a bystander resulting from his combatant's actions. However, the doctrine of transferred intent operates so that "the actor's intent to kill his intended victim is said to be transferred to his actual victim." *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent operates to constructively shift an actor's malice, not as a doctrine for holding an actor criminally liable for the acts of another person.

Because South Carolina does not recognize mutual combat as a basis for a murder conviction,

the recognition of mutual combat as a basis for a murder charge conflicts with South Carolina law, and South Carolina law already addresses the death of a bystander, the Court should not recognize mutual combat as a basis for Appellant's conviction and should reverse Appellant's murder conviction.

II. THERE WAS NO MUTUAL COMBAT

Even could mutual combat support a murder conviction under South Carolina law, no evidence was presented at trial from which a jury could find Appellant and Robinson engaged in mutual combat. As acknowledged by the State, for mutual combat to exist: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must be armed with deadly weapons, and (3) the parties must engage in mutual combat with deadly weapons. (State's Resp. at 24; Appellant's Br. at 13.) No evidence was introduced at trial to establish that these requirements for mutual combat existed at any time on September 1, 2012, as shown by considering the evidence presented as to each of the four incidents of that day.

A. Wild Horse Road Incident

During the first incident at Appellant's home on Wild Horse Road, Robinson confronted Appellant and his father with a pistol, but there was no evidence of any of the three elements required for mutual combat. First, there was *no* evidence that Robinson intended to and was willing to engage in mutual combat with Appellant or his father at that time. Rather, the only evidence presented was that Robinson exited the vehicle with a pistol, approached Appellant, was "argumentative" and "loud and cussing," (Tr. 348), and after regaining control of the gun from Appellant's father and firing at his feet, Robinson drove away rather seeking combat with Appellant (Tr. 334–35). The State offers nothing further as evidence to show Robinson had an intent and willingness to engage in mutual combat. (State's Br. at 25.) There also was *no* evidence that

Appellant intended to or was willing to fight with Robinson. Rather, the evidence showed only that Appellant was standing in his yard as Robinson approached him, and the State presents nothing further. (State's Br. at 25.)

Second, there was *no* evidence that Appellant, or anyone other than Robinson, was armed with a deadly weapon at the time of this incident.

Third, there was *no* evidence that Appellant engaged in mutual combat with Robinson. Robinson approached Appellant with a pistol, Appellant's father interceded and wrestled with Robinson for control of the gun, Robinson gained control of the gun, and Robinson fired at Appellant's father's feet and fled. (Tr. 333–49.) There is no evidence that Appellant and Robinson ever came into physical contact with or fired at the other, and the State fails to point to any such evidence. (State's Br. at 25.)

B. Bryant Road

There also was no evidence of mutual combat on Bryant Road. First, when Appellant arrived on Bryant Road, Robinson fled. (State's Ex. 38, Video 7.) Robinson fleeing indicates he did *not* intend to and was *not* willing to engage in mutual combat with Appellant. Second, Appellant and Robinson did not engage in combat on Bryant Road. There is no evidence that the two, or any other person, made physical contact with or fired at the other. The State fails to point to any evidence to the contrary. (State's Br. at 25.)

C. First Allen Road Incident

Similarly, there was no evidence of mutual combat at the first incident on Allen Road. First, *no* evidence was introduced to show that Robinson was even present when Appellant fired his weapon at Robinson's car. With Robinson not present at the scene, there is no evidence that he intended to or was willing to engage in combat with Appellant at that location and time.

Second, there was *no* evidence that Appellant and Robinson engaged in combat during the first incident on Allen Road. Again, Robinson was not present, and Appellant fired only at Robinson's vehicle. The State fails to point to any other evidence as showing mutual combat at that time. (State's Br. at 26.)

D. Second Allen Road Incident

For the second incident on Allen Road, when Robinson fired from an unobserved position at the corner of Allen Road and Marshland Road and his bullet struck and killed Khalil, there was no evidence of mutual combat. First, there was no evidence that Appellant was even aware that Robinson was present at the intersection of Allen Road and Marshland Road, and Robinson fired at Appellant's father's vehicle from a hidden position. Therefore, while Robinson may have been willing to ambush from a hidden position, Robinson did not intend to and was not willing to engage in combat with Appellant.

Second, Appellant and Robinson did not engage in mutual combat during this incident. Robinson fired at Appellant's father's truck from a hidden position as it was driving away from Allen Road. Appellant did not fire at Robinson at this time. Again, the State fails to point to any other evidence to satisfy the missing elements of mutual combat. (State's Br. at 26.)

E. There Was No Mutual Combat at Any Other Time on September 1, 2012

The State points to two items of evidence—Robinson's statement to Delaney and a 911 telephone call—presumably to support an argument that there is evidence that at some time on September 1, 2012, other than the four incidents discussed above, Robinson and Appellant engaged in mutual combat. (State's Br. at 26.) However, as discussed in relation to the attempted murder charge, these two items of evidence do not establish that Appellant fired a weapon at or otherwise engaged in mutual combat with Robinson.

Robinson told Delaney: "[Y]eah they was shootin at me so I shoot back at them." (Tr. 304.) Robinson never identified who "they" was. He did reference a grey truck and Appellant's father's truck was grey, but Robinson did not identify the grey truck as Appellant's father's truck and did not identify who in a grey truck fired at him. Robinson also did not state when "they" allegedly shot at him. The evidence presented at trial indicated there had been previous incidents between Robinson and Appellant, and Robinson's statement to Delaney does not provide any indication as to whether he was referring to shots fired at him on September 1, 2012, or on some previous day. One logical interpretation, consistent with the evidence presented at trial, is that someone in or connected to Appellant's father's truck fired a weapon at Robinson on a previous date, and Robinson's aggression and firing a pistol on Wild Horse Road on September 1, 2012, were in response to the earlier event.

F. There Was Not One Continuous Instance of Mutual Combat

The State may suggest that the four incidents during the afternoon of September 1, 2012, constitute one continuous mutual combat between Appellant and Robinson. If this is the State's position, it too is unavailing. For there to be mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed. To the contrary and as discussed previously, at no point in time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. At every point in time that afternoon, one or more of these elements were missing. Most importantly, at no point in time did Robinson ever exhibit an intent or willingness to engage in combat with Appellant. At all times, Robinson was only willing to attack when the attack could not result in mutual combat, *i.e.*, on Wild Horse Road, Appellant and his father were not armed and Robinson fled before they could obtain a weapon, and on Allen Road, Robinson attacked from a hidden position as Appellant and his father drove away. Therefore, there was no point in time at which mutual combat could have begun and

continued from, and thus, there cannot have been one continuous instance of mutual combat.

III. THE END OF MUTUAL COMBAT AS A BASIS FOR A DIRECTED VERDICT WAS PRESERVED

Appellant preserved as a basis for a reversal the argument that any mutual combat had ended at the time Robinson fired the fatal shot and thus the trial court erred in not granting Appellant a directed verdict on the murder charge.

To preserve an error at trial, a party must raise the issue to and obtain a ruling from the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However, the issue preservation rule does not require a party to use a specific phrase or exact legal terminology to raise an issue to the trial court. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 902, 907 (2007) (finding argument preserved despite not being phrased "in the exact terms" used on appeal because the objection was stated at trial with "sufficient specificity to allow the trial court to rule on the issue"); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding argument preserved despite failure to use exact words in objecting because it was clear from the record that the argument was made on that ground). A party preserves an issue for appeal whenever the trial judge would have been reasonably able to understand the nature of the error alleged. *See, e.g., Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.").

In support of his motion for a directed verdict on the murder charge, Appellant raised the argument that to the extent there was any mutual combat, it ended before Robinson fired the fatal shot:

- Appellant argued there was "no evidence of mutual combat" (Tr. 483) and "no evidence of

back and forth or a running gun battle or any kind of mutual combat" (Tr. 483), thus arguing there was no mutual combat at the time Robinson fired the fatal shot.

- Appellant also more specifically argued that at the time Robinson fired the fatal shot, Appellant did not even know Robinson was there—that "he never saw Mr. Robinson"—and that therefore there was no mutual combat at that time—"You don't see somebody you can't be running a gun battle." (Tr. 484.)
- Upon the trial court rejecting Appellant's argument that there generally was no mutual combat between Appellant and Robinson, Appellant then continued his directed verdict argument as to mutual combat. Appellant argued that even accepting the trial judge's ruling that there was evidence of mutual combat, "the problem in the next step of [the] mutual combat" analysis "is that obviously when you begin to retreat it ends the mutual combat." (Tr. 489.) Appellant more specifically argued: "And in this instance clearly the evidence is that [Appellant's father and Appellant] drove the truck down Allen Road, took a left on Marshland Road and were some considerable distance away at the time the three shots were fired. . . . And therefore the mutual combat had ended." (Tr. 489.)
- After arguing that any mutual combat ended before Robinson fired the fatal shot, the colloquy between the trial court and Appellant's counsel blurred into a discussion of both the directed verdict motion and the jury charges to be given. However, despite the blurred discussion, the trial court found there was no evidence to support Appellant's argument that any mutual combat had ended and therefore rejected both the directed verdict argument and the argument for a jury charge on the end of mutual combat without the trial judge ever specifying that the ruling was specifically as to either the directed verdict argument, the jury

charge argument, or both. (Tr. 490–92.)

Accordingly, Appellant raised to the trial court the argument that any mutual combat ended before Robinson fired the fatal shot, the trial court refused to grant a directed verdict on that ground, and the issue is preserved for appeal.

IV. ANY MUTUAL COMBAT ENDED BEFORE ROBINSON FIRED THE FATAL SHOT

The State conflates the legal doctrine of withdrawal *from a conflict* with an idea that any animosity between the parties or any intent to cause future harm to an adversary must have dissipated for a conflict to end. South Carolina caselaw instructs that mutual combat ends when "the defendant withdraws from the conflict," *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); "after a withdrawal from the initial difficulty . . . if that withdrawal is communicated . . . by word or act," *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); and when the defendant "withdraws from the conflict and communicates that decision to his adversary," *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). Thus, while two persons may still have a personal conflict—for example, animosity towards one another or a desire to cause harm to one another—, their physical conflict and combat may have come to an end for purposes of mutual combat. Despite this legal standard, the State contends Appellant and his father driving away from Allen Road was not a withdrawal but was "a continuation of the hunt for Robinson" and was part of a plan to find and attack Robinson at a later time. (State's Br. at 36.)

The law only requires that Appellant withdrew from the conflict and that Robinson knew of the withdrawal for any mutual combat to have ended. While the State intimates that Appellant needed to verbally communicate the withdrawal to Robinson, the law does not require a statement of an intent to withdraw and a person leaving the scene with his adversary's knowledge is sufficient for

withdrawal. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322. Appellant and his father drove away from the location of Robinson's vehicle and did not see Robinson. Thus, there was no ongoing conflict or combat at that time. Robinson was not being attacked, was safe in his hiding place, and saw Appellant and his father driving away as evidenced by him shooting. Yet Robinson decided to initiate a conflict by firing upon Appellant and his father from his hidden position.

Furthermore, the State's conception of withdrawal would render it impossible for a person to withdraw from combat in such a situation. If Appellant decided that shooting Robinson's car was enough and quit looking for Robinson after his father drove them away from Allen Road, under the State's theory this still would not constitute withdrawal, and the alleged mutual combat would be ongoing if Robinson and Appellant saw each other a week or month later and Robinson began firing a weapon at Appellant. There has to be some point at which mutual combat ends, and South Carolina law defines that point as when a combatant withdraws from the scene of combat with his adversary's knowledge of the withdrawal. Here, Robinson made the choice to ignore Appellant and his father departing from the area and his safety in a hidden position, and instead chose to fire a weapon at them while they departed. Robinson made a terrible and unnecessary choice to fire at Appellant in an area where children were in the line of fire, and Robinson, not Appellant, should be held responsible for that act.

V. THE TRIAL COURT ERRED IN REFUSING TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT

As accepted by the State, a trial court must give a requested jury charge if there is *any* evidence to support the charge and a refusal to give a charge supported by some evidence is a reversible error. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The State asserts the trial court did not err in failing to give the requested charge on the end of mutual combat

on the basis that there was *no* evidence to support such a charge, but the State's brief establishes that there was at least *some* evidence to support a charge on the end of mutual combat.

The State first argues that Appellant and his father driving away from Allen Road "was not a desire to end the fighting" and thus was not a withdrawal from the conflict. (State's Br. at 35.) In doing so, the State implicitly acknowledges that Appellant and his father driving away from Allen Road is evidence that could support a finding of withdrawal. The State goes on to characterize the act of driving away as "a continuation of the hunt for Robinson" and states the "act of driving away must be viewed in relation to the whole incident." (State's Br. at 35.) Again, the State's argument acknowledges that whether Appellant and his father leaving the scene constituted a withdrawal from and the end of mutual combat requires an assessment of their driving away in relation to the other evidence presented in the case, and thus, the State's argument shows that this is a factual issue to be determined by the jury.

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

The State points to four items of evidence as permitting a jury to reasonably infer that Appellant attempted to murder Robinson: (1) Appellant's statements to the police about the events on Bryant Road; (2) Robinson's statement to Mitchell that "those M.F. was shooting at me"; (3) Robinson's statement to Delaney that "yeah they was shootin at me so I shoot back at them"; and (4) a 911 recording. Those items of evidence are insufficient for a jury to reasonably conclude that Appellant shot at or tried to shoot at Robinson, and accordingly, the trial court erred in denying Appellant's directed verdict motion on the attempted murder charge.

First, the State relies on a critical misstatement of the record in relation to Appellant's statements to the police about the events on Bryant Road. The State repeatedly asserts Appellant

"tried to shoot Robinson [on Bryant Road] but the gun jammed" and that "Appellant admitted he attempted to shoot Robinson [on Bryant Road] with the gun but it jammed." (State's Br. at 4, 25 27, 39, 42). To the contrary, Appellant made clear in his statement to the police that the gun was jammed when he and his father were on Bryant Road and because he knew the gun was jammed *he did not point the gun at or try to shoot Robinson on Bryant Road*, as made clear by reviewing his statement:

> Appellant: What you mean the first time we caught his ass? But the shit wouldn't shoot. It wouldn't shoot. It wouldn't shoot.
>
> Investigator Albertin: So you saw him on Bryant?
>
> Appellant: That's how we knew where he was at. Cause, alright.
>
> Investigator Albertin: Alright, let's try to figure this out.
>
> . . .
>
> Investigator Albertin: Did you come across him over there?
>
> Appellant: Yeah we did, but that shit wouldn't shoot. It wouldn't, the gun wouldn't shoot.
>
> Investigator Albertin: So what were you shooting at then?
>
> Appellant: Him, but I didn't shoot. It didn't go off. The gun didn't go off.
>
> Investigator Albertin: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?
>
> Appellant: *I didn't even point the gun at him.* The gun just wouldn't go off. I knew it wasn't, cause when you cocked it back it wouldn't . . . It jammed up on me. So that shit was a no go. . . .
>
> . . .
>
> Appellant: The first time we went down there ain't nothing happened cause we saw him but it didn't go down like wanted it to. If it would have went down like that we wouldn't even be here and nobody would know nothing cause it was a dead road and

nobody would've knew nothing but the gun just didn't go off.

(State's Ex. 38, Video 7 (emphasis added).) Contrary to the State's assertions, Appellant's statement was that he did not attempt to shoot Robinson. While he may have wanted to shoot at Robinson, he knew the gun was jammed when he saw Robinson on Bryant Road so he did not try to shoot at Robinson and did not even point the gun at Robinson.

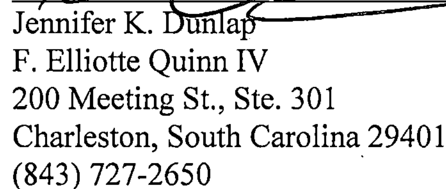
For the remaining three items of evidence the State relies on, as discussed in Appellant's brief, none of those items of evidence identify Appellant as shooting at Robinson. Robinson never identified who "those M.F." or "they" were. Additionally, the 911 caller only stated that two vehicles shot at each other and did not identify Appellant as having fired a weapon at Robinson.

CONCLUSION

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

Respectfully submitted,

September 6, 2016



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CERTIFICATE OF SERVICE

The undersigned certifies on September 6, 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:

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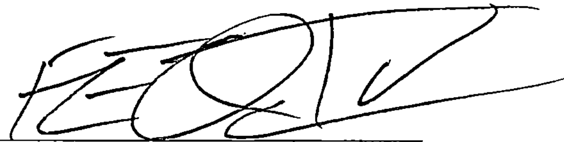

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September 6, 2016

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SEP 09 2016
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 one copy of the Initial Reply Brief of Appellant in connection with the above referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Elliotte Quinn

FEQiv/tlr

Enclosures

cc: Margaret G. Boykin, Esq.
Robert M. Dudek, Esq.
Donald J. Zelenka, Esq.
Alan McCrory Wilson, Esq.
Susan Barber Hackett, Esq.
John W. McIntosh, Esq.
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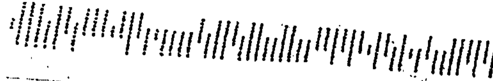

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To:

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SC Court of Appeals