STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issues with the trial judge's presentation of jury instructions on mutual combat and voluntary manslaughter were not properly preserved for appellate review because defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law.

STATEMENT OF THE CASE

In June of 2012, Appellant Joseph Bowers was arrested following an investigation into a deadly shooting at a club located in Saint Helena Island, South Carolina. In August of 2012, the Beaufort County Grand Jury indicted Appellant for one count of murder and one count of possession of a weapon during the commission of a violent crime. Thereafter, in May of 2013, the Beaufort County Grand Jury additionally indicted Appellant with one more count of murder along with two counts of attempted murder. On September 29, 2014, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. During the course of trial, the solicitor withdrew one of the murder indictments. Subsequently, at the conclusion of trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter, one count of the lesser-included offense of assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime while acquitting Appellant of all other charges. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of fifteen years for voluntary manslaughter, fifteen years for assault and battery of a high and aggravated nature, and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 1:21 a.m. on June 21, 2012, the Beaufort County Sheriff's Office's 911 call center began receiving calls about a shooting at Midnight Soul Patrol, a club located in Saint Helena Island, South Carolina. (R. pp. 35-37; pp. 40-41; pp. 43-44; p. 47). In response, multiple law enforcement officers and other emergency responders quickly headed to the scene. (R. p. 40; pp. 44-46; p. 69; p. 138; p. 171). On the way, they located a vehicle with the body of Dante Bailey inside a short distance away from the club. (R. pp. 60-61; p. 70; p. 139; p. 171). Bailey had been shot in the chest, and the bullet struck his heart and one of his lungs, which led to his death. (R. p. 60; p. 70; p. 171; pp. 234-235). The officers and other emergency responders then continued onto the club, and, upon arriving, they encountered a "chaotic" scene with numerous people yelling, running around, and calling for help. (R. p. 45; p. 62; p. 65; p. 70). Furthermore, they found Michael Morgan ("Michael") near the back steps of a residence located in front of the club with gunshot wounds to his buttocks and pelvis and Richard Green on the ground outside of the club in close proximity to a propane tank with a gunshot wound to his back. (R. pp. 63-64; pp. 66-67; p. 222; p. 236). Based on their injuries, both men were then rapidly transported to the hospital. (R. pp. 64-65; p. 71; pp. 221-223).

After the victims were transported to the hospital, the officers and other emergency responders began investigating the shooting and speaking to the large crowd of approximately eighty people still present at the scene. (R. p. 72). As they did so, several people, including an individual called "Opie," were specifically identified as having fired shots during the incident. (R. p. 41; p. 43; p. 73). Furthermore, while processing the scene, officers located numerous pieces of evidence, including a nine-millimeter pistol that was registered to Bailey near a wooded area next to the club's parking lot, numerous nine-millimeter shell casings near the

propane tank where Green was found and in the club's parking lot, a flare gun near where Michael was located, a live round for the flare gun near a pool of blood, a casing from a fired flare near the propane tank, multiple fired projectiles and shell casings from various locations inside the club, and broken glass from a vehicle in the parking lot. (R. pp. 47-48; pp. 50-53; pp. 56-57; pp. 143-145; pp. 147-151; p. 155; p. 173; p. 178). Those items were then collected as evidence, and many of them were subsequently submitted for analysis. (R. pp. 173-175; p. 209; pp. 211-215; pp. 217-219; p. 242; p. 260).

Meanwhile, Investigator Jeremiah Fraser of the Beaufort County Sheriff's Office responded to Beaufort Memorial Hospital to speak with the victims who were taken there following the shooting at the club. (R. pp. 183-184; p. 221). At the hospital, Investigator Fraser made contact with Richard Goodwine, who had been shot in the leg during the incident and was subsequently dropped off at the hospital, and Michael, but was unable to speak with Green due to the fact he was unconscious as a result of his injuries. (R. pp. 78-79; p. 99; pp. 101-102; pp. 184-186; p. 222). During his conversation with Michael, Michael positively identified Appellant Joseph Bowers, who was also known as "Opie," as the person who shot him.[1] (R. p. 8; p. 76). Investigator Fraser then relayed the information he obtained at the hospital to his fellow officers. (R. p. 187).

Thereafter, Michael's condition began to deteriorate, and he was flown to the Medical University of South Carolina for further treatment. (R. pp. 222-223; p. 229). However, Michael had sustained an injury to his iliac vein during the shooting, which was an extremely serious injury. (R. pp. 229-231). By the time Michael made it to an operating room at the hospital, he

[1] During trial, the trial judge ultimately ruled Michael's statement identifying Appellant as his shooter could not be admitted into evidence after concluding the statement was not a dying declaration. (R. pp. 8-14).

was in cardiac arrest, and he died a short time later as a result of his injuries.[2] (R. pp. 229-230; pp. 236-237).

Several hours later, Appellant was apprehended near his home and placed under arrest, and Investigator Fraser made contact with him following his arrest.[3] (R. p. 188). During their ensuing conversation, Appellant claimed he did not have a gun, shoot a gun, or touch Bailey's gun during the incident. (R. pp. 188-189; p. 198; p. 201). Instead, while refusing to identify the people with him at the time, Appellant asserted he went to the club with Bailey on that date, Bailey got into an argument with someone at the club, he pulled Bailey back to their van, someone started shooting at them, Bailey pulled out a gun, Bailey stepped out from behind the van despite his efforts to stop him, and Bailey was shot and killed.[4] (R. pp. 190-191). Following the interview, Appellant went through the booking process, Investigator Fraser took possession of the clothing Appellant was wearing at the time of his arrest, and, after the booking process was completed, Appellant requested to speak with Investigator Fraser again.[5] (R. p. 191; p. 193). Investigator Fraser then again met with Appellant, and, during the subsequent interview, Appellant identified the people he went to the club with while claiming "T Dog," whom the officer knew to be Terry Thornton, was the shooter. (R. pp. 192-193).

Subsequently, Appellant was indicted for multiple offenses, including the murders of Michael and Bailey, and he elected to proceed forward to trial. (R. pp. 2-3; pp. 357-370).

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[2] During his trial testimony, Dr. Bruce Cookes, a trauma surgeon at the Medical University of South Carolina, indicated Michael's chance of survival was virtually non-existent after he received the injury he sustained in such a rural area. (R. p. 228; p. 231).

[3] Appellant was apprehended around 10:00 a.m. on the date of the shooting. (R. p. 196).

[4] During trial, testimony was presented establishing Appellant and Bailey were from the same area. (R. p. 165). Regarding their relationship, defense counsel characterized Bailey in her opening statement to the jury as "a daddy and a best friend and a big brother" to Appellant. (R. p. 30).

[5] Appellant's clothing was subsequently submitted for analysis. (R. pp. 214-215).

During trial, Investigator Fraser presented Appellant's statements regarding the shooting to the jury while several other witnesses offered multiple differing accounts. (R. pp. 74-137; p. 190).

Regarding those accounts, Stanley Humphries testified he went to the club with Bailey, Appellant, and several other people in a van. (R. pp. 74-76). A little while after they arrived, Humphries stated an individual called "Krum" approached them and started trouble with Bailey. (R. p. 77). At that point, Humphries stated someone that might possibly have been Appellant indicated they should go, they started to leave, and gunshots rang out. (R. p. 77). Humphries asserted he then got into the van with Appellant while Bailey attempted to direct them out of the parking spot from behind. (R. pp. 77-78). After that, Humphries testified Bailey was shot by someone, he and Appellant exited the van, and then he left the area in the van without Appellant after realizing Bailey was dead. (R. pp. 78-79; p. 81). Humphries further claimed he did not see Bailey with a gun, did not personally have a gun, and was not aware of Appellant having a gun that night. (R. p. 81).

Additionally, Joe Nathan Pope testified he went to the club and saw several people, including Appellant, Bailey, and Humphries, standing in the parking lot on the night of the shooting. (R. pp. 83-84). Shortly after he arrived, Pope testified an argument broke out, someone got into a verbal altercation with Bailey, he tried to calm them down, and another individual broke up the argument. (R. pp. 87-90). At that point, Pope stated several individuals came up behind Bailey, he began to retreat into the club because he believed something was going to occur, and he observed Lucas Morgan ("Lucas"), who was armed with a gun, arguing with Irvin Smalls. (R. pp. 90-91; p. 94). Pope indicated multiple gunshots were then fired, he saw Lucas fire numerous shots into the parking lot, everyone ran for cover, and Appellant and

Lucas left the scene before law enforcement officers arrived. (R. pp. 92-94). Pope further stated he never saw Appellant with a gun. (R. p. 94).

Likewise, Goodwine testified he was present at Midnight Soul Patrol on the night of the shooting, was there with Bailey and Joey Chaplin, and was inside the club when an argument broke out. (R. p. 98). In response, Goodwine stated he went outside, saw Green on the ground, observed Lucas and Bailey shooting, ran from the gunfire, and was shot by Lucas as he fled. (R. pp. 98-101). After that, he stated he observed Appellant standing over Bailey, and he was taken to the hospital a short time later by Humphries. (R. pp. 101-103).

Similarly, Green testified he was at the nearby home of the owner of the club on the night of the incident and went outside.[6] (R. pp. 105-106). After he went outside, Green stated he heard a gunshot and began walking away. (R. p. 106). As he did so, Green indicated he was shot in the back by an unknown individual and was paralyzed from the waist down. (R. pp. 106-107).

Furthermore, Alvin Wilson testified he was working at Midnight Soul Patrol on the night of the incident. (R. pp. 109-110). On that night, Wilson indicated approximately seventy-five people were at the club and those people were mostly inside until a group of guys arrived. (R. pp. 110-111). After the guys arrived, Wilson stated he went outside, saw an altercation, went back inside to shut the music off, and then heard gunshots ring out and come through the windows of the club. (R. pp. 112-113; p. 116; p. 118). Wilson indicated he then went back outside, saw Michael and Green on the ground, and armed himself with a rifle that he never fired. (R. p. 113; p. 115; pp. 118-120). He further noted he saw Lucas with a gun on the night of the incident. (R. p. 120).

[6] During his testimony, Green identified Lucas as a member of his family. (R. p. 108).

Finally, regarding the last account of the shooting presented during trial, Magnum Smalls testified he was at the club on the night of the incident and observed Bailey and another group of guys arrive at the club. (R. pp. 121-122). Shortly after Bailey arrived, Smalls indicated he observed Bailey become involved in a heated verbal altercation with an individual identified as "Arthur." (R. pp. 122-123). Smalls stated Derrick Grant then attempted to diffuse the situation, Michael fired a flare gun, and chaos ensued. (R. pp. 123-124; pp. 134-135). After the flare gun was fired, Smalls indicated everyone with a gun started shooting, and he stated he personally observed Lucas, Appellant, Lewis Melvin Johnson, and Arthur Chaplin, who was also known as "Krum," firing shots before he took cover behind a tree. (R. pp. 124-126; pp. 133-134). He further stated he observed Appellant near Bailey after Bailey was shot and Appellant was in possession of a gun that looked like Bailey's weapon at that time. (R. pp. 126-127; p. 136). However, as his testimony continued, Smalls offered a somewhat contradictory account of what transpired and stated he did not see Appellant with a gun until after Bailey had been shot and never personally saw Appellant shoot a gun during the incident. (R. pp. 130-132).

In addition to those accounts of the shooting, a recording of a phone call Appellant made while incarcerated at the Beaufort County Detention Center subsequent to the incident was admitted into evidence and played for the jury. (R. pp. 203-206). During that call, Appellant appeared to state: "Even though I ain't kill the boy, I only shoot the boy." (State's Ex. # 39 (Jail Call Recording)). Additionally, the officers and other individuals involved in the investigation into the incident testified about what they discovered in the aftermath of the shooting, and Investigator Andrew Rice of the Beaufort County Sheriff's Office specifically noted he verified the rear window of Humphries's vehicle was missing after he had learned Humphries had his vehicle's window shot out when he visited the club earlier on the evening of the shooting. (R.

pp. 35-58; pp. 60-67; pp. 69-73; pp. 138-181; pp. 189-201; pp. 209-219; pp. 221-223; pp. 228-231; pp. 233-237). Furthermore, testimony was presented establishing one of the components of gunshot residue was found on the shirt and shorts Appellant was wearing at the time of his arrest, the shell casings collected in the parking lot at the club were fired from Bailey's nine-millimeter pistol, the fired projectiles collected from inside the club were fired by Bailey's weapon, and a total of approximately six or seven different guns were fired during the incident based on the variety of shell casings that were found at the scene. (R. p. 155; pp. 244-245; pp. 250-251; pp. 259-264; p. 268).

Subsequently, at the conclusion of the evidentiary phase, the trial judge conducted an informal, off-the-record charge conference with the parties. (R. p. 271; p. 288; p. 290; p. 291). Following that informal discussion, the trial judge indicated on the record he intended to instruct the jury on mutual combat at the solicitor's request and over defense counsel's objection. (R. p. 291). In support of that instruction, the trial judge noted the testimony that had been presented during trial was somewhat contradictory but could support a mutual combat charge. (R. p. 291). Furthermore, the trial judge indicated he intended to instruct the jury on murder, voluntary manslaughter, and self-defense. (R. p. 292). At that point, defense counsel objected to an instruction on voluntary manslaughter, but she provided no grounds in support of her objection. (R. p. 292). The trial judge then indicated the fact a heated altercation occurred immediately before the shooting supported a charge on voluntary manslaughter. (R. pp. 292-293). Following that explanation, the trial judge asked the parties if they had anything they wished to put on the record, and defense counsel responded she did not. (R. p. 293).

Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 295-340). In instructing the jury on the

applicable law, the trial judge specifically charged the jury in regard to murder, voluntary manslaughter, attempted murder, assault and battery of a high and aggravated nature, possession of a weapon during the commission of a violent crime, mutual combat, and self-defense.[7] (R. 324-333). Following the presentation of the jury instructions, the trial judge asked the parties if there were any "[e]xceptions or additions" to the charge as presented. (R. p. 340). Defense counsel responded: "None, Your Honor."[8] (R. p. 340).

Subsequently, at the conclusion of trial, the jury convicted Appellant of voluntary manslaughter, one count of assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime while acquitting him of all other charges.[9] (R. pp. 352-353). The trial judge then sentenced Appellant to an aggregate term of imprisonment of fifteen years. (R. p. 356).

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[7] Specifically, regarding mutual combat, the trial judge instructed: "Now, I want to discuss with you a part of the theory that you'll have to consider, and it's known as mutual combat. And this law provides that if a Defendant voluntarily participated in mutual combat for the purpose other than protection, the killing of a victim would not be self-defense. This is true even if during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed the Defendant withdraws and tried in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat there must be a mutual intent and a willingness to fight. This intent may be shown by the acts and conduct of the parties and circumstances surrounding the combat. In addition, it must be shown that – be shown that both parties were armed with a deadly weapon." (R. pp. 329-330).

[8] Later on, during deliberations, the jury submitted a question to the trial judge, and the trial judge responded to the question by re-instructing the jury on the law related to mutual combat. (R. pp. 347-350). Following that re-charge, the trial judge again inquired if there were any exceptions or additions to his instructions, and defense counsel again stated she did not have any objections. (R. p. 350).

[9] Before the jury began its deliberations, the solicitor withdrew the murder indictment related to Bailey's death. (R. pp. 293-294).

ARGUMENT

Any issues with the trial judge's presentation of jury instructions on mutual combat and voluntary manslaughter were not properly preserved for appellate review because defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law.

Appellant contends the trial judge committed two separate reversible errors by instructing the jury on mutual combat and voluntary manslaughter during trial. Importantly though, Appellant's appellate issues with the trial judge's jury instructions cannot properly be raised or addressed on appeal because they were not properly preserved for appellate review in the trial court. Critically, in Appellant's case, defense counsel never presented any specific grounds to the trial judge as to why instructions on mutual combat and voluntary manslaughter were allegedly improper and did not raise any objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge. Moreover, defense counsel waived any issues she may have had with the mutual combat and voluntary manslaughter charges by specifically indicating to the trial judge she had no objections to those instructions after they were presented to the jury. As a result, Appellant's issues with the trial judge's jury instructions were not properly preserved for appellate review, and those issues cannot properly be raised or addressed on appeal. Accordingly, Appellant's convictions should be affirmed.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and **arguments**." I'On,

L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Importantly, "[i]f a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Regarding the necessity of sufficient specificity to preserve an issue, an issue must be raised in a sufficiently specific manner "to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge." State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001); see Johnson, 363 S.C. at 58, 609 S.E.2d at 523 ("The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error."). Although an objecting party need not use the exact name of a legal doctrine in order to preserve an objection, it must be clear that the argument has been presented on the ground alleged. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Critically, a general objection not specifying any grounds upon which the objection is based is **not** sufficient to preserve an issue for appeal. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). Thus, if there are no grounds stated for an objection, there is nothing for the appellate court to review. State v. Bennett, 328 S.C. 251, 260, 493 S.E.2d 845, 849 (1997); see State v. Hughes, 160 S.C. 474, 476, 158 S.E. 833, 833 (1931) ("The objection made at trial was general, not showing the specific grounds on which it was based, and an exception based on it cannot,

therefore, be considered by this court."); see also State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) ("Where an objection **and the ground therefor** is not stated in the record, there is no basis for appellate review." (emphasis added)).

Furthermore, in addition to the general requirements of South Carolina's issue preservation rules, the South Carolina Rules of Criminal Procedure also provide specific guidance in regard to raising and preserving an objection to a jury charge. See Rule 20, SCRCrimP (outlining the requirements for requesting jury instructions and objecting to a jury charge). Pursuant to our criminal procedure rules, a defendant must object to the jury charge as given or request an additional charge when afforded the opportunity to do so in order to properly preserve an objection to a charge. State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); see Rule 20(a), SCRCrimP ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct."); Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to **and the grounds for objection**." (emphasis added)). The rule in South Carolina "is firmly established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge." State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976); see Rule 20(b), SCRCrimP ("Failure to object in accordance with this rule shall constitute a waiver of objection.").

Moreover, even if a party properly raises an objection during trial, a party may still waive his right to argue error in regard to that objection on appeal under certain circumstances. See

State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Significantly, one of the ways a party can waive an objection is by indicating to the trial judge the party does not have an objection to an issue to which the party previously raised an objection. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); cf. Commonwealth v. Moury, 992 A.2d 162, 178 (Pa. Super. Ct. 2010) ("Generally, a defendant waives subsequent challenges to the propriety of the jury charge on appeal if he responds in the negative when the court asks whether additions or corrections to a jury charge are necessary.").

In the case sub judice, the trial judge instructed the jury on mutual combat and voluntary manslaughter after evidence was presented from which the jury could conclude Appellant shot the victims during the course of a gunfight that erupted following a heated verbal altercation that began when he travelled to the club with Bailey, Humphries, other individuals, and at least one firearm after Humphries's vehicle had been fired upon at that location earlier in the evening. See State v. Taylor, 356 S.C. 227, 231-232, 589 S.E.2d 1, 3 (2003) (explaining mutual combat exists

when parties engage in combat with mutual intent and willingness to fight one another); State v. Knoten, 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001) ("There can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested [voluntary manslaughter] charge."); State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) ("[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing]."); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was engaged in a heated argument with the victim and the victim's sister prior to the killing); State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) ("Here, a witness testified that appellant and the victim had been 'fighting.' From this circumstance of 'provocation' and 'heat of passion,' guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination."); State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (finding mutual combat obviated Porter's plea of self-defense where the evidence established Porter "returned with a gun to Slagle's property at least twice in spite of prior verbal abuse, threats and gunshots"); see also State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) (explaining a trial judge must instruct the jury on a lesser-included offense if **any** evidence warrants the giving of a charge on that offense and should only refuse to instruct the jury on such an offense when there is no evidence whatsoever from which the jury could conclude the defendant committed the lesser rather than the greater offense); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If any evidence exists to support a charge, it should be given."). Now, on appeal, Appellant is challenging the trial judge's mutual

combat and voluntary manslaughter instructions on a variety of different grounds. However, any issues with the trial judge's presentation of instructions on mutual combat and voluntary manslaughter during his jury charge were not properly preserved for appellate review for several different reasons.

Specifically, Appellant failed to preserve any issues with the challenged charges because defense counsel did not provide the trial judge with **any** grounds as to why those charges should not have been presented to the jury during trial. See Rule 20(b), SCRCrimP (mandating "[a]ny objection [to a jury instruction] shall state distinctly the matter objected to **and the grounds for the objection**" (emphasis added)); see also Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."). Instead, following an off-the-record discussion with the trial judge, defense counsel generally objected to the presentation of jury instructions on mutual combat and voluntary manslaughter during an on-the-record charge conference but, critically, did not provide any grounds in support of those objections despite the fact the trial judge specifically afforded her an opportunity to do so at the conclusion of the charge conference. See State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) ("Kennerly did not raise this issue to the trial court in her directed verdict motion. Instead, she simply moved for a directed verdict without stating any specific grounds. In reviewing a denial of a directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. 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 also York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review."). Furthermore, Appellant failed to preserve any

issues in regard to the mutual combat and voluntary manslaughter jury instructions because defense counsel did not raise any objections after the trial judge presented those instructions to the jury and then expressly asked defense counsel whether she had any objections to the jury charge as given. See Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection."). In light of the fact defense counsel only, at best, raised general objections to the mutual combat and voluntary manslaughter charges without stating any grounds in support of those objections during a charge conference and did not raise any objection to the jury instructions as presented when afforded an opportunity to do so, no issues in regard to the mutual combat and voluntary manslaughter charges were preserved for appellate review in Appellant's case. See State v. Hall, 253 S.C. 294, 295, 170 S.E.2d 379, 380 (1969) ("The defendant did not raise the objections to the instructions at the trial although full opportunity was afforded to do so . . . . The failure of the defendant to object or request additional instructions, when opportunity was afforded, constituted a waiver of any right to complain on appeal of errors in the charge."); cf. State v. Thomas, 159 S.C. 76, 83, 156 S.E. 169, 171 (1930) ("Counsel for the defendant interposed with what may be liberally construed as a general objection to the admission of this testimony on the ground of irrelevancy. The objection did not set forth the specific grounds contained in the exception, and these grounds, therefore, cannot be considered."); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) ("This precise argument was neither raised to nor ruled upon by the trial court. Appellant

argued only that the evidence did not rise to the 'level of a reasonable doubt as to counts 1, 2, and 3.' . . . Adams's argument, therefore, is not preserved for our review.").

Moreover though, even assuming the issues had somehow been properly preserved for appellate review by defense counsel's general groundless objections during the charge conference, any issues with the mutual combat and voluntary manslaughter jury charges **still** could not appropriately be raised or addressed on appeal because defense counsel subsequently expressly waived the issues at a later point during trial. See O'Neal, 210 S.C. at 312, 42 S.E.2d at 526 (recognizing a previously-raised objection can be waived). Specifically, after the trial judge presented a jury charge that included instructions on mutual combat and voluntary manslaughter, the trial judge inquired of defense counsel if there were any objections to the jury charge as presented, and defense counsel expressly affirmed she had no objections to the charge.[10] See Brown, 402 S.C. at 125, 740 S.E.2d at 496 ("[Brown]'s trial counsel stated explicitly that he had no objection to the trial court's instruction. Thus, [Brown]'s argument that the trial court erred in failing to apply section 16-13-30 as amended is unpreserved."); Rios, 388 S.C. at 342, 696 S.E.2d at 612 ("Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, 'None.' By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal."); see also Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."). Accordingly, in light of the fact defense counsel directly affirmed she had no objections to the jury instructions after they were given, any issues

[10] Notably, when the trial judge subsequently re-instructed the jury on the law related to mutual combat, defense counsel again affirmed she had no objections to the charge. (R. p. 350).

Appellant may have had in regard to the trial judge's jury instructions were expressly waived, and no issues regarding the mutual combat and voluntary manslaughter instructions can properly be raised or addressed on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

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April 26, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

Appellant.

CERTIFICATE OF COUNSEL

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

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