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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
R. Lawton McIntosh, Circuit Court Judge

Op. No. 2017-UP-015 (S.C. Ct. App. filed Jan. 11, 2017)

THE STATE, ...RESPONDENT,

v.

JALANN WILLIAMS, ... PETITIONER.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Appellate Case No. 2017-000727

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PETITIONER'S QUESTION PRESENTED

Whether the Court of Appeals erred by holding it was not error for the trial court to refuse to instruct the jury on self-defense where there was evidence of self-defense, and particularly where the court's two reasons for refusing to charge self-defense were erroneous as a matter of law?

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals properly affirmed the trial court's ruling refusing to instruct the jury on self-defense where the evidence presented at trial did not support the charge and the record demonstrates the court carefully considered the elements of self-defense prior to its ruling?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted petitioner for murder, armed robbery, and possession of a weapon during the commission of a violent crime. (R.p.4, lines 15-17, p.5, lines 4-7). Petitioner proceeded to a jury trial on January 5, 2015 and was represented by Christopher Murphy, Esquire. (R.p.1). Greg Voigt, Esquire, and David Osborne, Esquire, of the Ninth Circuit Solicitor's Office represented the State. (R.p.1).

The jury found petitioner guilty of murder and possession of a weapon, but could not reach a verdict on the armed robbery charge and the Honorable R. Lawton McIntosh declared a mistrial on that count. (R.p.390, lines 2-11; p.392, lines 3-4). Judge McIntosh sentenced petitioner to concurrent terms of thirty (30) years' imprisonment for murder and five (5) years' imprisonment for the weapons charge. (R.p.393, lines 8-12).

Petitioner timely filed a notice of appeal and after briefing by both parties, the Court of Appeals issued an unpublished opinion affirming petitioner's convictions and sentences. (App.pp.1-2); *State v. Williams*, Op. No. 2017-UP-015 (S.C. Ct. App. filed Jan. 11, 2017). On January 26, 2017, petitioner filed a petition for rehearing which the Court of Appeals denied by order dated February 23, 2017. (App.pp.3-12).

On April 17, 2017, petitioner filed a petition for writ of certiorari seeking review from this Court.

This return follows.

WHY CERTIORARI SHOULD BE DENIED

Petitioner argues this Court should grant certiorari because the Court of Appeals "overlooked" several "legally erroneous" conclusions made by the trial court in ruling petitioner was not entitled to a self-defense instruction. Petitioner contends the trial court erred in applying the elements of self-defense to the evidence presented in this case. The Court of Appeals properly affirmed the trial court's decision not to instruct the jury on self-defense because the evidence presented did not support the charge and the court carefully considered the elements prior to its ruling. Notably, the trial court found petitioner failed the first element of self-defense because he was not without fault in bringing on the difficulty in that "he armed himself early on in the situation" and started the argument with the victim. Contrary to petitioner's assertions, the trial court relied on more than simply the facts that petitioner did not possess a concealed weapons permit and that he was involved in a drug deal to determine petitioner was not entitled to a self-defense charge. The trial court relied on all of the evidence presented and did not abuse its discretion in making its ruling.

Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this case. Indeed, the decision was a straightforward exercise of reviewing and affirming the trial court's application of established precedent, logic, and practical consideration of the particular facts and circumstances of petitioner's case. Therefore, respondent respectfully requests the petition for a writ of certiorari be denied and dismissed.

STATEMENT OF FACTS

An SUV found resting against the side of a mobile home, with the doors thrown wide open, and a man dead inside. (R.p.24, lines 7-14; p.25, lines 6-9). The subsequent investigation led police to petitioner. At trial, Robert Mitchell (Mitchell) testified he wanted to buy marijuana from the victim, Akim Ladson (Ladson), on the day of the shooting. (R.p.197, line 21-p.198, line 5). However, Mitchell did not have enough money, so he asked petitioner if he could borrow some from him. (R.p.198, lines 8-17). Mitchell testified he went to get money from petitioner and he, his girlfriend, and petitioner smoked some marijuana while they waited for Ladson to arrive. (R.p.199, lines 5-14). They waited at a mobile home park in North Charleston, where petitioner was staying with his girlfriend. (R.p.63, lines 23-24; p.198, lines 15-21). Mitchell further stated petitioner told him he needed to make some money fast. (R.p.199, line 19-p.200, line 3, p.200, lines 8-11). Mitchell explained petitioner told him he wanted to rob Ladson and, when Mitchell told petitioner he did not think Ladson would have any money, petitioner told him, "if [Ladson's] got money you know I'll get that." (R.p.200, line 22-p.201, line 5). Moreover, Mitchell testified he knew petitioner had a gun with him that day, that petitioner had the gun for as long as Mitchell knew him because in their "line of business some people carry guns."[1] (R.p.202, lines 20-25; p.223, line 24-p.225, line 19).

Once Ladson arrived, Mitchell testified he and petitioner got in the back seat of the SUV, while Ladson was in the front passenger seat and Ladson's girlfriend was driving. (R.p.201, lines 6-18; p.202, lines 10-11). Mitchell was weighing the marijuana when he "heard a commotion"

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[1] On cross-examination, Mitchell testified he got into an argument earlier in the day with two men who had tried to steal drugs from him in the past. (R.p.210, line 9-p.211, line 10). Mitchell testified one of the men said he was going to get a gun, so Mitchell contacted petitioner because he knew petitioner also had a gun. (R.p.210, lines 22-25). Mitchell admitted the argument was unrelated to the planned drug deal involving Ladson. (R.p.210, lines 1-5).

and looked up and saw petitioner and Ladson struggling over the gun. (R.p.201, lines 19-21; p.203, lines 9-12). Mitchell stated it did not appear Ladson was hitting petitioner, or that Ladson was reaching for the gun, but he saw the gun in petitioner's hand. (R.p.204, lines 1-20; p.216, lines 15-16). Mitchell testified he heard one shot and he got out of the SUV and ran back toward the mobile home park where they had been waiting for Ladson. (R.p.206, lines 13-21). Mitchell stated he saw petitioner run from the SUV as well and hide the gun under a mobile home. (R.p.206, lines 16-17, p.206, lines 22-23). Mitchell further testified he told his girlfriend that petitioner robbed Ladson. (R.p.223, lines 11-18).

The victim's girlfriend, Alayah Hamlin (Hamlin), testified she and Ladson had been dating for two years at the time of his murder. (R.p.29, lines 19-20). Hamlin was driving the SUV on the day of the shooting and testified Ladson did not have a gun or other weapon with him.. (R.p.32, lines 1-6; p.32, lines 19-20; p.33, lines 2-11). Hamlin was on the phone when she noticed a change in Ladson's tone of voice—Hamlin stated she heard Ladson say "I'm serious" and then a long "no." (R.p.37, line 22-p.38, line 1; p.38, line 8). Hamlin testified she heard petitioner say "give it to me," and assumed he was demanding the marijuana from Ladson. (R.p.38, lines 9-13). Hamlin looked over to see what was going on and saw petitioner holding a gun over his head in one hand and holding Ladson's arm down with the other hand. (R.p.37, lines 5-7; p.38, line 23-p.39, line 10; p.39, line 14-p.40, line 1). Hamlin saw Ladson and petitioner struggling and testified Ladson was trying to fight off petitioner. (R.p.40, lines 2-10). Hamlin stated she did not see Ladson hit petitioner, and never heard Ladson curse or yell at petitioner. (R.p.58, line 18-p.60, line 11). Hamlin testified she heard one shot and then another one a few seconds later. (R.p.38, lines 17-20).

Hamlin testified she got out of the SUV to find help and, because her foot was on the

brake, the vehicle kept rolling and hit a nearby mobile home. (R.p.40, line 23-p.41, line 2; p.41, lines 12-14). During her 911 call and on cross-examination, Hamlin stated she believed Ladson was being robbed as soon as she saw the gun in petitioner's hand. (R.p.44, lines 11-20; p.51, line 25-p.52, line 7). Moreover, when petitioner's trial counsel pressed Hamlin on what she saw during the struggle, counsel stated, "I mean, I don't think there was room for people throwing fists right?" (R.p.54, lines 2-3).

Lauren Thrower (Thrower), Mitchell's girlfriend, also testified at trial. She stated, prior to Ladson's arrival, petitioner showed them his gun and talked about his plan to take any marijuana Ladson had with him. (R.p.89, line 19-p.90, line 4; p.91, lines 13-18). Thrower testified she did not go with petitioner and Mitchell, but she waited outside at a picnic table for them to get back. (R.p.91, lines 1-4). Thrower stated, after the shooting, she saw petitioner hide the gun under a mobile home, that both men were acting paranoid and, when she asked them what had happened, they finally told her petitioner had robbed and shot Ladson. (R.p.93, lines 8-24). Thrower further testified petitioner and Mitchell split up the marijuana petitioner had stolen from Ladson. (R.p.93, line 25-p.94, line 12).

The first officer to arrive at the scene saw the SUV against the mobile home, with three doors open. (R.p.24, lines 5-6; p.24, lines 8-14). He testified he found Ladson dead inside the vehicle—stretched out, face down, with his feet in the floor of the passenger seat, and his head toward the back seat. (R.p.25, lines 8-9; p.25, lines 17-19). Fingerprints collected from the SUV were later matched to petitioner. (R.p.120, lines 4-6; p.184, lines 21-23). Moreover, the gun used in the murder was found under the mobile home and petitioner admitted to police that he used it to shoot Ladson twice. (R.p.142, lines 5-7; p.152, lines 1-3). A firearms expert with SLED testified petitioner used hollow point bullets to kill Ladson, which expand on impact to

cause the most amount of damage. (R.p.193, lines 18-22; p.194, lines 6-13).

The investigator who interviewed petitioner after his arrest testified petitioner gave conflicting details as to what happened—first stating he never showed the gun to Ladson, but then telling police Ladson reached for it. (R.p.147, lines 10-11; p.148, lines 2-8). Police believed the struggle began after petitioner pointed the gun at Ladson, who then realized petitioner and Mitchell were not going to pay him for the marijuana. (R.p.146, line 24-p.147, line 8).

Petitioner testified Mitchell was going to give him a "couple of grams" of marijuana to smoke after the drug deal and, while he was willing to loan Mitchell some money, he needed it back by the end of the week. (R.p.232, lines 2-9; p.236, lines 18-21). Petitioner also made it clear during his testimony that he had the gun because he was worried about the men Mitchell argued with earlier in the day—he **was not** protecting himself from Ladson. (R.p.233, lines 11-17; p.235, lines 2-5). On cross-examination, in response to the question if he was scared of Ladson, petitioner testified:

> A: Not in the sense of—I didn't really know him to be afraid of him to be honest with you.
>
> Q: You waited all day for him to show up with that gun but it wasn't because you were afraid of him?
>
> A: No, sir.
>
> Q: Or anything that he would do to you?
>
> A: No, sir.

(R.p.270, lines 10-17). Petitioner testified Ladson got "loud" and yelled when petitioner asked Mitchell to open the bag of marijuana so he could see what kind it was, and Ladson grabbed petitioner's shirt near his neck and pulled him toward the center console. (R.p.241, line 24-

p.242, line 9; p.242, lines 13-15; p.243, lines 12-24). Petitioner testified he "ended up just pulling out the gun" and shooting Ladson—shooting a man whom he knew did not have a gun. (R.p.244, lines 8-9). Petitioner admitted he never saw another gun, never saw Ladson with a gun, and he was the only one in the SUV to pull out a weapon. (R.p.271, lines 20-25; p.272, lines 15-17). Moreover, petitioner admitted he did not tell police Ladson grabbed his neck and never told anyone details of the struggle—until he testified at trial. (R.p.275, line 8-p.276, line 9). Petitioner further testified he ran away from the scene of the deadly shooting and hid the gun under a mobile home. (R.p.248, lines 12-14; p.248, line 24-p.249, line 2).

ARGUMENT

The Court of Appeals properly affirmed the trial court's ruling refusing to instruct the jury on self-defense where the evidence presented at trial did not support the charge and the record demonstrates the court carefully considered the elements of self-defense prior to its ruling.

Petitioner argues the Court of Appeals erred in affirming the trial court's determination that he was not entitled to a self-defense charge, maintaining the trial court erred in its reasoning and application of the elements of the defense. Specifically, petitioner asserts the trial judge "overstepped his bounds when he took the issue of self-defense out of the province of the jury, and imposed his own erroneous legal analysis upon the facts, or the disputed facts." (Pet.p.15). Respondent disagrees and submits the Court of Appeals properly affirmed the trial court's ruling as the record shows the court carefully considered all of the evidence presented at trial before finding petitioner did not meet the elements of self-defense, including testimony from multiple witnesses that petitioner went to the drug deal armed with a gun with the stated purpose of robbing the victim, witnesses who testified they did not see the victim hit petitioner or "beating him up," and petitioner's own testimony that he "didn't really know [the victim] to be afraid of him" and he never saw the victim with a gun. (R.pp.37-40; pp.58-60; pp.89-91; pp.93-94; pp.199-201; p.204; p.216; pp.270-72). Therefore, the trial court did not abuse its discretion in ruling the evidence did not support a self-defense charge, the Court of Appeals properly affirmed the lower court's ruling, and the petition for writ of certiorari should be denied.

Standard of Review

In criminal cases, appellate courts only review errors of law. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The law to be charged is determined by the evidence presented at trial. *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). When

reviewing the trial judge's charge, the charge must be viewed as a whole. *State v. Rabon*, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). If the charge as a whole is substantially correct and adequately covers the law, then reversal is not necessary. *Id.* at 462, 272 S.E.2d at 636.

A self-defense charge is not required unless it is supported by the evidence. *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and that the circumstances were such that would warrant a person of ordinary prudence, firmness, and courage to strike the deadly blow to save himself from serious bodily harm or the loss of his life; and, (4) the defendant had no other probable means of avoiding the danger. *State v. Bryant*, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999); *see also Slater*, 373 S.C. at 70; 644 S.E.2d at 52; *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to an instruction on the defense, and the trial judge's refusal to do so is reversible error. *State v. Muller*, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). However, to warrant reversal, a trial judge's refusal to give the requested charge must be both erroneous and prejudicial. *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Analysis

Despite petitioner's contention that the evidence supported a charge on self-defense, respondent submits the trial court properly denied the requested instruction because there was no

evidence that petitioner shot the victim in self-defense. The State's evidence at trial showed the victim was not armed, petitioner was the only one in the SUV with a gun, and petitioner shot the victim twice even though the victim "wasn't beating him up."

In reviewing the requested jury instruction, the Court of Appeals rejected petitioner's argument. The court held:

> **PER CURIAM**: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion."); *State v. Lemire*, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) ("A self-defense charge is not required unless it is supported by the evidence."); *Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988) ("Upon request, a defendant is entitled to a jury instruction on self-defense *if he has produced evidence tending to show the four elements of that defense*." (emphasis added)).

(App.pp.1-2). The court's treatment and decision is supported by a fair reading of the record and certiorari is not warranted.

First Element of Self-Defense

At the end of the defense's case, petitioner's trial counsel requested a jury instruction on self-defense. (R.p.290, lines 12-14). The trial court stated it did not think it would charge self-defense, but would look at the elements again and rule the next day. (R.p.290, lines 15-20). The court stated it was also considering a jury instruction on voluntary manslaughter. (R.p.290, lines 5-7).

The following day, the trial court rejected a charge on self-defense, stating:

> I've looked through some cases and consulted with my fellow brethren up here and I'm not charging self-defense. I understand

> your objection and I'll let you put your grounds for objection on the record but in my mind [petitioner] fails on the very first element and that is that he was not without fault in bringing on the difficulty.
>
> The basis behind that one is; he armed himself early on in the situation. He wasn't allowed to carry—there is no evidence he had a concealed weapons permit. He voluntarily went to a drug transaction. While he's at the drug transaction he himself engaged in an argument with the victim in this case. There was no basis of the drug deal argument—but he actually started the altercation himself with the victim.

(R.p.295, lines 3-17). The court further found the evidence failed to support the last element of self-defense because there was no evidence that once the altercation started, petitioner did anything to extricate himself from the situation. (R.p.295, lines 18-21). Instead, the court found the evidence showed petitioner "went straight to his weapon and killed" Ladson. (R.p.295, lines 21-22). Petitioner's trial counsel noted his exception to the ruling. (R.p.296, lines 1-3).

The trial court also ruled it would charge the jury on voluntary manslaughter. (R.p.296, lines 15-16). However, petitioner asked the court not to give that instruction and to proceed solely on the murder charge. (R.p.298, lines 8-12). Prior to agreeing to the waiver, the court held a lengthy colloquy with petitioner to make sure he understood the consequences of going "all or nothing" on the murder charge and the possible sentencing outcome, including the possibility of a life sentence if convicted of murder. (R.p.300, line 3-p.301, line 4). Petitioner indicated he understood the consequences and it was his decision to freely and voluntarily waive the voluntary manslaughter charge. (R.p.301, lines 5-12).

The trial court was correct in finding the evidence failed to support the first element of self-defense because it was clear from the testimony of multiple witnesses that petitioner was not without fault in bringing on the difficulty. *See Slater*, 373 S.C. at 70; 644 S.E.2d at 52 (holding a defendant must prove four elements to show he is entitled to a self-defense charge, including that

he was without fault in bringing about the difficulty); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (same); *Bryant*, 336 S.C. at 344-45, 520 S.E.2d at 321-22 (same). Robert Mitchell (Mitchell) and Lauren Thrower both testified petitioner told them about his plan to take marijuana and money from the victim, and that petitioner had a gun with him on the day of the shooting. (R.pp.89-91; pp.199-200; p.202; pp.223-25). Moreover, Mitchell and Alayah Hamlin (Hamlin) testified they never saw a gun in the victim's hand, and Hamlin stated further that the victim did not have a weapon with him in the SUV when he was murdered, and she saw petitioner holding the gun in the air and pointing it at the victim. (R.p.33; pp.37-40; p.204; p.216).

Additionally, petitioner's own testimony does not support a self-defense instruction. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense."). Petitioner admitted to the jury that he: (1) was not scared of the victim; (2) never told investigators the victim grabbed his neck and waited until he testified at trial to give details of the struggle; (3) was carrying the gun as protection in **an unrelated** incident; (4) never saw the victim with a gun; and, (5) was the only one in the SUV to pull out a weapon. (R.p.233; p.235; p.244; pp.270-72; pp.275-76).

Petitioner seems to contend the trial court based his ruling regarding the first element solely on the fact that there was no evidence to show petitioner had a concealed weapons permit. However, the trial record clearly disputes that assertion because the court's statements that petitioner armed himself with a gun "early on in situation" and petitioner "himself engaged in an argument with the victim in this case" demonstrate that the court considered **all** of the testimony and evidence presented to the jury when finding petitioner was not without fault in bringing on

the difficulty. (R.p.295).

Furthermore, while respondent agrees with petitioner that the unlawful possession of a weapon does not preclude a self-defense claim, *Slater* held the unlawful possession can, under some circumstances, constitute an unlawful activity so as to preclude the defense "if the weapon is the proximate cause of the killing." *Slater*, 373 S.C. at 71, 644 S.E.2d at 53. Here, petitioner's unlawful possession of a weapon was the proximate cause of the victim's murder. Petitioner was not merely in unlawful possession of a gun; he carried the weapon with him to a drug deal, he began the argument that led to the struggle with the victim, and, in petitioner's own words, "ended up just pulling out the gun" and shooting an unarmed man twice. (R.p.244). Accordingly, petitioner's actions, including the unlawful possession of the gun, proved he failed to meet the requirement that he be without fault in bringing on the difficulty and he was not entitled to a charge on self-defense.

Remaining Elements of Self-Defense

The trial court was also correct in finding the evidence failed to support the other three elements of self-defense because the testimony of multiple witnesses demonstrated the circumstances of the struggle were not such as would warrant a man of ordinary prudence and courage to strike the deadly blow to save himself and that petitioner had probable means of avoiding the danger other than to act as he did. *See Slater*, 373 S.C. at 70; 644 S.E.2d at 52 (enumerating the four elements a defendant must prove to show he is entitled to a self-defense charge); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (same); *Bryant*, 336 S.C. at 344-45, 520 S.E.2d at 321-22 (same). Robert Mitchell (Mitchell) testified, from what he witnessed of the struggle, it did not appear that the victim was hitting petitioner, or that the victim ever reached for the gun. (R.p.204; p.216). Alayah Hamlin testified she saw the victim trying to fight off

petitioner, she did not see the victim hit petitioner, and never heard the victim yell or curse at petitioner. (R.p.40; pp.58-60). Additionally, as noted above, petitioner's own testimony shows an ordinary man would not be in fear of death or serious injury where petitioner admitted the victim did not have a gun and that he was not scared of him, and he never told investigators that the victim grabbed him. (R.p.233; p.235; p.244; pp.270-72; pp.275-76).

Moreover, petitioner's contention that the position of the victim's body is evidence of self-defense, sufficient to warrant a jury instruction, is without merit. The position of the body does not overcome the overwhelming evidence presented in this case that proves the victim did not have a weapon and never grabbed petitioner's gun. Therefore, no reasonable person of ordinary prudence and courage would have believed he was in imminent danger such that he had to strike the deadly blow to save himself from death or serious injury.

Finally, contrary to petitioner's contention, the trial court properly found the evidence showed petitioner did nothing to extricate himself from the situation and went straight for his gun. It was never argued or asserted at trial that petitioner was required to jump out of a moving vehicle to remove himself from situation. (Pet.p.12). There were two other people in the SUV, in addition to petitioner and the victim, who witnessed the struggle. (R.pp.37-40; pp.58-60; p.201; pp.203-204). At trial, petitioner testified Mitchell was "[n]ot even helping" him, and Mitchell looked at him like he did not know what to do. (R.p.244, lines 3-7). From this testimony, it could be inferred that petitioner did not ask Mitchell to help stop the altercation and petitioner did not look for other ways of avoiding the deadly confrontation. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 (stating that, to be entitled to an instruction on self-defense, the evidence must show the defendant had no other probable means of avoiding the danger). Accordingly, petitioner's actions proved he failed to meet the remaining elements to be entitled

to a self-defense instruction and the trial court's ruling must be affirmed.

Therefore, respondent submits the trial court properly refused to instruct the jury on self-defense, and petitioner has failed to show error regarding the ruling or with the decision of the Court of Appeals reviewing the finding.

CONCLUSION

Based on the foregoing reasons, respondent submits petitioner has failed to show the question presented warrants certiorari review. The Court should deny the petition for writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 17, 2017.

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
R. Lawton McIntosh, Circuit Court Judge

Op. No. 2017-UP-015 (S.C. Ct. App. filed Jan. 11, 2017)

THE STATE, ...RESPONDENT,

v.

JALANN WILLIAMS, ... PETITIONER.

Appellate Case No. 2017-000727

PROOF OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the Return to Petition for Writ of Certiorari on Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

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

This 17th day of May, 2017.

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