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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

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*Certiorari to the Court of Appeals*
Appeal from Charleston County
R. Lawton McIntosh, Circuit Court Judge

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THE STATE, Respondent,

v.

JALANN WILLIAMS, Petitioner.

Appellate Case No. 2017-000727

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**BRIEF OF RESPONDENT**

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## PETITIONER'S ISSUE ON CERTIORARI

Whether the Court of Appeals erred by ruling it was not error for the trial court to refuse to instruct the jury on self-defense where there was evidence of self-defense, 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 ISSUE ON CERTIORARI

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, before the Honorable R. Lawton McIntosh. (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 Judge McIntosh declared a mistrial on that count. (R.p.390, lines 2-11; p.392, lines 3-4). The judge 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 appealed. After briefing by both parties, the Court of Appeals issued an unpublished opinion affirming petitioner's convictions and sentences.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, and the State filed its return on May 17, 2017. On December 14, 2017, this Court granted the petition for review and directed additional briefing. Petitioner submitted his brief on January 16, 2018.

This brief of respondent follows.

## STATEMENT OF FACTS

Officers in North Charleston found an abandoned SUV resting against a mobile home after a panicked 911 call, with the doors thrown wide open, and a man dead inside. (R.p.24, lines 7-14; p.25, lines 6-9; p.42, line 24-p.43, line 6). 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, where petitioner was staying with his girlfriend. (R.p.63, lines 23-24; p.198, lines 15-21).

Mitchell testified petitioner told him he needed to "hit a lick" to pay his bondsman, and 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 cash, petitioner told him, "if [Ladson's] got money you know I'll get that." (R.p.200, line 22-p.201, line 5; p.223, line 24-p.225, line 19). Mitchell testified he knew petitioner had a gun with him that day because in their "line of business some people carry guns."[1] (R.p.202, lines 20-25).

Once Ladson arrived, Mitchell 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;

[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 told his girlfriend to "go get" 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).

p.202, lines 10-11). Mitchell was weighing the marijuana when he "heard a commotion" 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 Ladson was not hitting petitioner or reaching for the gun, and 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. (R.p.206, lines 13-21). Mitchell stated he saw petitioner run from the SUV and hide the gun under a mobile home. (R.p.206, lines 16-17, p.206, lines 22-23).

When asked whether petitioner took the marijuana from the SUV after the shooting, Mitchell testified, "I mean all I know is when we got to my house [petitioner] had weed. I gave him his money back and he had weed and he gave me some." (R.p.207, lines 1-4). Mitchell stated petitioner did not have any marijuana with him prior to the murder. (R.p.207, lines 5-6). Mitchell admitted again during re-direct examination petitioner's plan all along was to rob the victim:

> [STATE]: Think very carefully about this answer. When you went to meet up and get in [Ladson's] car, in that car right there [indicates] you knew [petitioner] intended to jack him up didn't you?
>
> [MITCHELL]: I mean we had talked about that. I didn't know that he was going to do it you know what I'm saying but we had talked about that.
>
> Q: You knew it was a very good possibility didn't you?
>
> A: Yeah.
>
> Q: And you knew he brought a gun that would let him do it right?
>
> A: Right.
>
> Q: And you knew that after he did it you'd still have the money and weed right?

> A: Right.
>
> Q: So you come out ahead right?
>
> A: Right.
>
> Q: [Petitioner] gets some weed and he comes out ahead right?
>
> A: Right.
>
> Q: The only person who doesn't come out ahead is [Ladson] right?
>
> A: Right.
>
> Q: And you knew that going to meet [Ladson] because y'all talked about it right?
>
> A: Right.
>
> Q: I mean very clearly you knew exactly what he meant to do right?
>
> A: Right.

(R.p.223, line 19-p.225, line 19). Mitchell further testified he later told his girlfriend 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 had been on her cell 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). Further, Hamlin testified on cross-examination she did not think the victim grabbed petitioner until he saw the gun first. (R.p.52, lines 8-22). Hamlin stated 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 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, 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 took 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—stretched out, face down, with his feet in the floor of the front 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 a mobile home and petitioner admitted to police he used it to shoot Ladson twice. (R.p.142, lines 5-7; p.152, lines 1-3). A firearms expert 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 realized petitioner and Mitchell were trying to rob him. (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 returned quickly. (R.p.232, lines 2-9; p.236, lines 18-21). Petitioner also testified 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 anyone with a 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 shirt and never told anyone details of the struggle—until he testified at trial. (R.p.275, line 8-p.276, ine 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.

The Court of Appeals properly affirmed the trial court's determination petitioner was not entitled to a self-defense charge 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 and, while they saw a struggle, only saw the gun in petitioner's hand, 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 weapon. (R.pp.37-40; pp.58-60; pp.89-91; pp.93-94; pp.199-201; p.204; p.216; pp.270-72). Moreover, petitioner never told anyone the victim allegedly grabbed his shirt and only gave such details of a struggle during his testimony at trial. (R.pp.275-76). 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 this Court should either affirm the Court of Appeals or dismiss as improvidently granted.

<u>Standard of Review</u>

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 the evidence supported a self-defense charge, respondent submits the trial court properly denied the requested instruction because there was no evidence petitioner shot the victim in self-defense. The State's evidence showed petitioner brought on the difficulty himself because he took a gun to the drug deal with the stated purpose of stealing the

victim's marijuana or any cash he had with him. In addition, there was evidence presented the victim did not have a weapon 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 decision is supported by a fair reading of the record and this Court should either affirm the Court of Appeals or dismiss as improvidently granted.

*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 or 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). Mitchell admitted he knew all along about petitioner's plan to steal from the victim, and acknowledged petitioner did not have marijuana before the shooting, had some after, and gave him some. (R.p.207; pp.223-25). Moreover, Mitchell and Alayah Hamlin (Hamlin) testified they never saw a gun in the victim's hand or saw the victim reach for petitioner, and Hamlin stated further the victim did not have a weapon with him when he was murdered, and she saw petitioner holding the gun in the air and pointing it at the victim, while petitioner held the victim's arm down. (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 him 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 on the fact that there was no evidence to show petitioner had a concealed weapons permit or because petitioner was engaged in an illegal drug transaction. However, the trial record disputes

that assertion because the court's statements 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 with the expressed purpose of robbing the victim or for protection in an unrelated incident, 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.pp.89-91; pp.223-25; p.233; p.235; p.244); *see also Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense . . .") (citation omitted). Petitioner's actions, including the unlawful possession of the gun, proximately caused the struggle and ultimately the death of the victim. Accordingly, petitioner 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, he did not see the victim hit petitioner first, 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 evidence presented in this case that demonstrates petitioner started the altercation by trying to take the victim's marijuana, the victim tried to stop petitioner and the two struggled, and the victim did not have a weapon. 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 the situation. 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 petitioner did not ask Mitchell to help stop the altercation or otherwise help subdue the victim. Petitioner did not look for other ways of avoiding the deadly confrontation—he "ended up just pulling out the gun" and shooting. *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 the Court of Appeals properly affirmed his ruling. Respondent asks this Court to either affirm the Court of Appeals or dismiss as improvidently granted.

## CONCLUSION

For all the foregoing reasons, respondent submits the Court of Appeals properly affirmed the trial court's ruling. Respondent respectfully urges this Court to either affirm the Court of Appeals or dismiss as improvidently granted.

Respectfully submitted,


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February 15, 2018.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

*Certiorari to the Court of Appeals*
Appeal from Charleston County
R. Lawton McIntosh, Circuit Court Judge

THE STATE, Respondent,

v.

JALANN WILLIAMS, Petitioner.

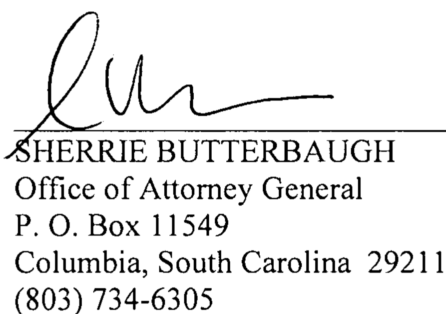
Appellate Case No. 2017-000727

**PROOF OF SERVICE**

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Brief of Respondent on the 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., SCCID\Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, SC 29201.

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

This 15th day of February, 2018.



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