THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Aaron Scott Young,. Jr. respectfully petitions the Court for a rehearing of its Opinion No. 5592, filed on August 22, 2018, based upon the following points overlooked or misapprehended by the Court:

I. THE DECISION MISAPPREHENDS SOUTH CAROLINA LAW IN HOLDING THAT "SOUTH CAROLINA LAW STILL RECOGNIZES MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE."

Mutual combat is only a component of the doctrine of self-defense, and the Court misapprehends South Carolina law in relying on *State v. Brown*, *State v. Mathis*, *State v. Taylor*, and *State v. Andrews* as supporting mutual combat serving as a stand-alone basis for a murder conviction. All of the decisions relied on by the Court discuss mutual combat in relation to *defenses* to criminal charges and *not* as a basis for a murder charge.

Appellant does not dispute that an individual engaged in mutual combat can be convicted of murder or manslaughter for the death of one of the participants in the mutual combat. Rather,

the issue in this case, and the issue overlooked by the Court, is that the State must still prove the elements of murder or manslaughter in such an instance. The fact that mutual combat exists serves only to remove the defense of self-defense. As made clear by the decisions relied on by the Court, the existence of mutual combat does not alone establish guilt for murder or manslaughter.

II. THE DECISION MISAPPREHENDS AND OVERLOOKS SOUTH CAROLINA LAW ON TRANSFERRED INTENT AND MUTUAL COMBAT.

In relation to transferred intent, the Court first overlooks that transferred intent only relates to the malice element and does not expand the criminal liability of one actor to include the results of another person's actions. *See State v. Gandy*, 283 S.C. 571, 573–74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). The Court combines Robinson's intent toward Appellant and Robinson shooting the victim with language from mutual combat decisions referring to mutual combatants being responsible for the "natural consequences" of the combat. However, the Court overlooks that those decisions referring to mutual combatants being responsible for the "natural consequences" are referring to the death of one of the combatants as the "natural consequences." Those decisions do not address the death of an innocent, unintended bystander.

Moreover, not only has South Carolina law on mutual combat not been extended, through the use of transferred intent or otherwise, to include the death of an innocent, unintended bystander within the "natural consequences" of mutual combat, South Carolina law should not recognize such as one of the "natural consequences" of mutual combat. If mutual combat existed between Robinson and Appellant here, which Appellant contests, the facts of this case are a perfect example of why the death of an innocent, unintended bystander is not one of the "natural consequences" of mutual combat for which all mutual combatants are responsible. Here, Robinson chose to fire shots at Appellant at a time and place of his choosing. Robinson chose to fire shots at a location

where children were playing in his line of fire. Appellant had no control over and no role in Robinson firing shots at that location. Therefore, Appellant cannot be held responsible for the death of the victim as a "natural consequence" of his actions. Appellant had no way to foresee or control whether his actions would result in Robinson firing with children in the line of fire.

III. THE DECISION MISAPPREHENDS THE EVIDENCE AND MISAPPLIES SOUTH CAROLINA LAW ON MUTUAL COMBAT IN HOLDING THAT MUTUAL COMBAT EXISTED BETWEEN APPELLANT AND ROBINSON.

The Court acknowledges that the three elements of mutual combat are: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must each be armed with and know the other party is armed with a deadly weapon, and (3) the parties must engage in mutual combat with the deadly weapons. *See Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). However, the Court overlooked that for there to have been mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed.

There was no such point in time. At no time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. The Court holds that there was a *mutual* intent and willingness to fight evidenced by: (1) Robinson firing at the Youngs' feet on Wild Horse Road, (2) Appellant shooting Robinson's car, (3) Robinson stating he shot at the Youngs, and (4) Robinson firing at the Youngs as they left Allen Road. However, none of those incidents evidences a *mutual* intent and willingness to fight. At the most basic level, each incident evidences that Robinson had *no* intent to engage in mutual combat and instead wanted only to ambush the Youngs. When Robinson fired at the Youngs' feet on Wild Horse Road, Robinson fled when the Youngs responded. Robinson then remained hidden through when he fired the fatal shots as the Youngs left Allen Road. A person who is hiding from his supposed "combatants" cannot be said to have a willingness to fight. Hiding from your opponent is the antithesis of being willing to fight.

Additionally and for similar reasons, the Court's decision overlooks that Robinson and Appellant never engaged in mutual combat with deadly weapons. On Wild Horse Road, Robinson approached the Youngs, he was the only person armed at that time, and he fled when the Youngs tried to defend themselves. Thereafter and until when he fired the fatal shots, Robinsons fled and remained hidden from the Youngs. As stated previously, hiding from your opponent is the antithesis of engaging in combat with your opponent. When Robinson fired the fatal shot, it was not in response to any act of combat by the Youngs. At that time, the Youngs were leaving Allen Road, the Youngs did not know where Robinson was, and Robinson was in a hidden position. Therefore, there was no time that day at which Robinson and Appellant had a mutual intent to fight, were both armed, and engaged in combat.

Furthermore, the Court's decision overlooks the distinction between circumstances where parties engage in mutual combat and circumstances where two parties have ill will towards one another and one attacks and kills the other in an act of murder. Under the Court's holdings in this decision, mutual combat would always exist when two persons have animus towards one another and one attacks the other. For a viable distinction between murder, self-defense, and mutual combat to exist, the facts of this case cannot constitute mutual combat. Were the facts of this case to constitute mutual combat, any incident in which one person attacks another who shares feelings of ill will and in which the two parties then exchange gunfire would be mutual combat. However, that clearly is not the case under South Carolina law. If one person attacks another, the person attacked has a right to engage in self-defense, even if there was a pre-existing ill will between the persons.

IV. THE DECISION OVERLOOKS AND MISAPPLIES SOUTH CAROLINA LAW ON THE CESSATION OF MUTUAL COMBAT.

Even if the facts were sufficient to establish mutual combat existed at some point on the day in question, the Court overlooks South Carolina law establishing that any such mutual combat ended prior to when Robinson fired the fatal shot. South Carolina caselaw makes clear that the withdrawal from difficulty and communication of that withdrawal necessary to end mutual combat are both satisfied by leaving the scene of the difficulty. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). South Carolina law establishes that the key to whether mutual combat ended, or in the related context whether the right to self-defense has been restored, is whether the adversary is placed in a safe position in which there is no imminent threat of further violence.

The Court here acknowledges that Appellant was "fleeing the neighborhood before Robinson fired the fatal shots" and had "fled the scene." However, the Court holds that Appellant doing so was not sufficient to constitute a withdrawal because of the "unique nature of the shoot-and-flee conflict." The Court's holding overlooks that South Carolina law only requires that an adversary leave the scene and place his opponent in a safe position. Here, Appellant left the scene and left Robinson in a safe, hidden position. Given that he did not know where Robinson was and that Robinson was hiding, Appellant could not do anything more to withdraw from the conflict than what Appellant did by leaving the scene. The Court also did not find, nor is there any evidence that would support a finding, that Robinson could reasonably expect that further violence was imminent. To the contrary, Robinson was able to call the police from his position. If an adversary is able to call the police and involve law enforcement in the process of ending a conflict, the law cannot reasonably expect that anything more be done to end a conflict. Were the law to be otherwise, mutual combat would never end and a mutual combatant could be held responsible for

the acts of his opponent when his opponent unilaterally reinitiates violence days, weeks, or months after the combatant previously withdrew from the scene of combat.

V. THE DECISION MISAPPLIES THE STANDARD ON WHEN A FAILURE TO GIVE A JURY CHARGE IS REVERSIBLE ERROR AND OVERLOOKS THE EVIDENCE WHICH REQUIRED THE TRIAL COURT TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT.

The decision applies an abuse of discretion standard to the issue of whether the trial court erred in not giving a requested jury charge on the end of mutual combat and holds that "the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat." In support, the Court cites to *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010), and language therein holding that a trial court's decision regarding a jury charge will be reversed on appeal only when there is an abuse of discretion.

However, *Mattison* provides the standard where a party requests specific jury charge language and the trial court declines the request but uses other language addressing the issue of law the requested charge was to address. *See Mattison*, 388 S.C. at 479, 697 S.E.2d at 583–84 ("However, if the trial judge refuses to give a *specific* charge, there is no error *if the charge actually given covers the substance of the request.* . . . Failure to give requested jury instructions is not prejudicial error *where the instructions given afford the proper test for determining the issues.* (emphasis added and internal quotations and citations omitted)). In other words, the abuse of discretion standard set forth in *Mattison* applies to the *content* of a jury charge a trial court gives on a particular point of law. That scenario is not the issue before the Court. The issue before the Court in this case is the trial court's refusal to give *any* charge on when mutual combat ends.

The standard governing a trial court's refusal to give *any* charge on a particular point of law is the standard supplied by *State v. Burriss*: "It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it

should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). In *Burriss*, the Court applied that standard to reverse the appellant's conviction because the trial court refused to charge on the law of accident and involuntary manslaughter, *i.e.*, refused to give a jury charge on a point of law, and some evidence was presented at trial that supported the appellant's claims as to accident and involuntary manslaughter. Accordingly, the abuse of discretion standard applied in the Court's decision is not the proper standard for assessing whether the trial court erred in giving a jury charge on the end of mutual combat as requested by Appellant. Rather, the proper analysis is whether any evidence was presented at trial to support a charge on the end of mutual combat.

Applying the any evidence standard set forth in *Burriss*, there was at a minimum some evidence to support a charge on the end of mutual combat. As discussed previously herein, the Court's decision acknowledges that Appellant was fleeing the scene at the time Robinson fired the fatal shots. The evidence that Appellant was fleeing and was not firing at or engaged in any other violence at the time Robinson fired the fatal shots is some evidence from which a jury could conclude that any mutual combat had ended and which supports giving a charge on the end of mutual combat.

VI. THE DECISION OVERLOOKS SOUTH CARTOLINA LAW ON THE LEVEL OF CIRCUMSTANTIAL EVIDENCE REQUIRED TO OVERCOME A MOTION FOR A DIRECTED VERDICT AND MISAPPREHENDS THE LACK OF SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE IN RELATION TO THE ATTEMPTED MURDER CHARGE.

The decision holds that substantial circumstantial evidence existed to support the charge that Appellant attempted to murder Robinson based solely on:

(1) the Youngs armed themselves and searched for Robinson,

(2) Robinson's statements to Mitchell and Delaney, and

(3) Appellant's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence, that Appellant shot at or attempted to shoot Robinson.

As set forth in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001); a trial court must grant a directed verdict when there is no evidence to support an element of a charge or only evidence which "merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50. South Carolina's appellate courts have found insufficient to overcome a directed verdict motion evidence significantly more substantial than the evidence relevant to the attempted murder charge here. *See Hepburn*, 406 S.C. 416, 753 S.E.2d 402; *Odems*, 395 S.C. 582, 720 S.E.2d 48; *Bostick*, 392 S.C. 134, 708 S.E.2d 774.

Appellant arming himself and searching for Robinson is not an act of attempted murder. Similarly, while Appellant made statements to the police regarding being armed and his desire to harm Robinson, Appellant stated that he never shot at or attempted to shoot at Robinson.

Finally, the decision misapprehends the evidence regarding Robinson's statements to Mitchell and Delaney. First, the decision states that "Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him." This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that Appellant was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.) The decision also states that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Again, this statement misapprehends the evidence. Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Appellant specifically. Instead, Delaney testified that Robinson asked if Delaney had seen a grey

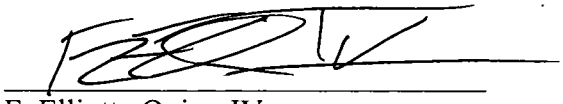
truck, and when Delaney responded that he had seen a grey truck, Robinson responded: "yeah they was shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Appellant by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Appellant and his father were driving around in a grey truck, he did not identify the grey truck as the Youngs' truck, much less identify who was in the grey truck at the time he was referring to.

Additionally, Robinson's statements to Mitchell and Delaney do not provide the context necessary for a jury to make anything more than an unsupported inference from those statements. Robinson's statements do not identify when or where the purported shooting took place. The evidence at trial established that there had been previous confrontations between Robinson and Appellant as acknowledged by the Court's decision stating: "Young, Jr. specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Appellant fired at Robinson's car or to some other instance of gun fire that day.

In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no evidence to conclude that the appellant rather than the other person caused the victim's death, there was not substantial circumstantial evidence to overcome a directed verdict motion. *Hepburn*, 406 S.C. 416, 440, 753 S.E.2d 402, 415. Similarly, even were the necessary context available to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence makes clear there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Appellant rather than one of the other occupants fired any shots at Robinson.

For the reasons set forth herein, Appellant respectfully requests rehearing in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies on September 6, 2018, he caused a copy of the foregoing Petition for Rehearing to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

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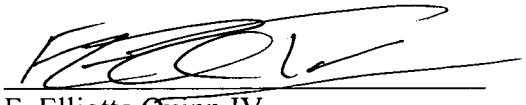

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September 5, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
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Re: State v. Aaron Young, Jr.
Appellate Case No.: 2015-000508

Dear Ms. Kitchings,

Enclosed for filing please find an original and one copy of the Petition for Rehearing of Appellant in connection with the above-referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

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Enclosures (as stated)

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