THE STATE OF SOUTH CAROLINA
In The Supreme Court

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., Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was made and was finally ruled on by the Court of Appeals on September 20, 2018.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in holding that mutual combat is alone recognized by South Carolina law as a sufficient basis for a murder conviction, holding that the evidence supported finding mutual combat, and affirming Petitioner's murder conviction on these grounds?

II. Did the Court of Appeals err in holding the trial court properly refused to give a jury charge on the end of mutual combat?

III. Did the Court of Appeals err in affirming the denial of Petitioner's motion for a directed verdict on the attempted murder charge?

STATEMENT OF THE CASE

Petitioner Aaron Scott Young, Jr. ("Petitioner") was indicted for murder and attempted murder. On February 23–25, 2015, the case was tried by the Honorable Thomas W. Cooper, Jr. before a jury which found Petitioner guilty on both charges. The trial court sentenced Petitioner to concurrent thirty year sentences on the murder and attempted murder charges. On March 6, 2015, Petitioner served a Notice of Appeal. On August 22, 2018, the Court of Appeals affirmed Petitioner's convictions. *State v. Young*, — S.C. —, 818 S.E.2d 486 (Ct. App. 2018). Petitioner filed a petition for rehearing, and the Court of Appeals denied the petition. This petition follows.

STATEMENT OF FACTS

This case arises from four different incidents at four different locations on Hilton Head Island over the course of one afternoon.

A. Wild Horse Road Incident

Around 3:30 to 4:00 p.m., Tyrone Robinson ("Robinson") drove his vehicle, with Jontu Singleton ("Jontu")[1] as a passenger, to Petitioner's home off of Wild Horse Road. (R. 359, 375.) Petitioner, his father, Aaron Young, Sr. ("Young, Sr."), and Young, Sr.'s girlfriend Ebony Campbell ("Campbell") were talking in the yard as Robinson's vehicle pulled in. (R. 360.) Jontu exited the vehicle and spoke to Young, Sr., and Robinson also exited with a pistol in his hand, and began screaming and moving towards Petitioner,. (R. 362, 377–78.) Young, Sr. wrestled with Robinson for the gun, and the gun fired. (R. 362–63.) Young, Sr. backed away, and Robinson fired the pistol at Young, Sr.'s feet. (R. 364.) Robinson then got into his vehicle and drove away. (R. 364.)

Young, Sr. and Petitioner went inside the home and returned with a black bag. (R. 364.) Petitioner, Young, Sr., and Jontu got into Young, Sr.'s pickup truck, with Young, Sr. driving, and drove around Hilton Head Island looking for Robinson's vehicle. (R. 367–68.) While riding around, Petitioner removed a gun from the black bag and began assembling it. (R. 368.) The three eventually returned to Wild Horse Road where Jontu exited the truck and Campbell got in. (R. 372–74.)

B. Bryant Road

Petitioner and Young, Sr. then traveled to Robinson's home on Bryant Road where they found Robinson. (State's Ex. 38, Video 7; R. 635.) The gun was jammed at that time, and Petitioner did not try to shoot at or even point the gun at Robinson. (State's Ex. 38, Video 7; R. 635.) Robinson fled, and Young, Sr. drove Petitioner and Campbell back to Wild Horse Road

[1] Because the victim in this case was Khalil Singleton, Petitioner's materials refer to Jontu and Khalil by their first names.

where they debated whether to continue looking for Robinson and ultimately decided to do so. (R. 485–86, 635; State's Ex. 38, Video 7.)

C. First Allen Road Incident

Petitioner and Young, Sr. drove to Allen Road where they found Robinson's car, but did not see Robinson. (R. 485, 635; State's Ex. 38, Videos 1 & 2.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the Allen Road area. (R. 300–01). The gunshots were Petitioner firing into Robinson's unoccupied car. (R. 635; State's Ex. 38, Videos 2, 3, & 6.) The windows of Robinson's vehicle were not tinted, and a person could see through the windows to see if anyone was in the car. (R. 488–529.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants' pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the corner of Marshland Road and Allen Road. (R. 309–21, 334.) Robinson told Mitchell that "those M F was shooting at him." (R. 309–10, 321.)

Around the same time, Tyrone Delaney was driving home from work and passed a grey F-150 truck headed the opposite direction, away from Allen Road. (R. 330–32.) As Delaney arrived at his home, Robinson met him in the yard. (R. 304, 310, 333.) The two spoke for approximately ten minutes, and during their conversation, Robinson asked Delaney if he saw a grey truck on his way home from work. (R. 311, 333.) When Delaney responded that he saw a grey truck, Robinson stated: "yeah they was shootin' at me so I shoot back at them." (R. 333). Robinson left, and ten to fifteen minutes after he left, Mitchell and Delaney heard a second round of rapid gunshots. (R. 301, 320, 334.) Several children playing in the area scattered at the sound of the gunfire. (R. 311.)

D. Second Allen Road Incident

Approximately ten minutes after the second round of rapid gunshots, Young, Sr.'s grey truck sped down Allen Road and began turning onto Marshland Road. (R. 302–03, 322–25.) As the truck reached the end of Allen Road and began to turn, Robinson fired three times from a hidden location near the intersection of Allen Road and Marshland Road. (R. 322–25, 335; State's Ex. 38, Videos 1 & 3.) A child who had been playing in Mitchell's yard ran toward his home pointing at Robinson and screaming that Robinson shot Khalil. (R. 346.) Robinson got into his car and drove away, and Khalil was found laying in the yard with a fatal gunshot wound. (R. 312-14, 336–37, 505.)

E. Investigation and Interrogation

Young, Sr.'s truck was stopped by the police between 5:00 and 5:30 p.m., and Petitioner, Young, Sr., and Campbell were removed from the vehicle. (R. 391.) Petitioner was interviewed on video, and he described the events of the day. (R. 396, 635; State's Ex. 38.) Young, Sr. was also interviewed and directed the police to a home off of Wild Horse Road and a handgun inside a black bag in the home. (R. 402.)

F. Trial, Conviction, and Sentencing

Petitioner was indicted and tried for murder and attempted murder—the murder of Khalil and the attempted murder of Robinson. Prior to the jury being sworn, Petitioner moved to quash the indictment on the grounds it did not allege he shot the victim, it was undisputed Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (R. 211–37.) Petitioner further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a

basis for a murder conviction. (R. 211–37.) The trial judge denied Petitioner's motion, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (R. 265–69.)

Upon the close of the State's case, Petitioner moved for a directed verdict on both the murder and attempted murder charges. (R. 507.) As to the murder charge, Petitioner asserted three bases for the motion: (1) Petitioner did not shoot the victim, and the State's mutual combat theory is legally insufficient to hold Petitioner criminally responsible for Robinson's acts; (2) even if the State's mutual combat theory was legally valid, there was no evidence of mutual combat between Petitioner and Robinson; and (3) even if there was any mutual combat, the evidence established it had ended at the time Robinson fired the fatal shot. (R. 511–13, 518–19.) As to the attempted murder charge, Petitioner asserted there was no evidence that he attempted to kill Robinson. (R. 508–11.) The trial judge denied the motion, and Petitioner presented no additional evidence. (R. 514–21, 524.)

Petitioner then requested a jury charge on when mutual combat ends, and the trial judge denied the request. (R. 519–21.) The trial judge charged the jury on murder, mutual combat, and attempted murder. The trial judge specifically included in the charges that Petitioner did not fire the shot that killed the victim and could only be convicted through a mutual combat theory, charging: "it is undisputed that [Petitioner] did not fire the fatal bullet that killed Khalil Singleton. And so the State seeks and asks for a conviction at your hands under the theory of mutual combat." (R. 568.) In addition to his existing objection to the State's mutual combat theory, Petitioner objected to the jury charge as erroneously stating mutual combat extends to third-party, non-combatants, and the trial judge denied the objection. (R. 592–94.)

The jury convicted Petitioner on both counts, and Petitioner moved to set aside the convictions under the thirteenth juror doctrine or alternatively, for a new trial, and the trial judge denied both motions. (R. 598–607.) The trial judge sentenced Petitioner to concurrent thirty year sentences on the two charges. (R. 616.)

ARGUMENT

I. The Court of Appeals erred in holding that mutual combat is alone recognized by South Carolina law as a sufficient basis for a murder conviction and that the evidence supported finding mutual combat.

The Court of Appeals erred in affirming the denial of Petitioner's motions for a directed verdict, to quash the indictment, and for a new trial on the murder charge.[2] The Court of Appeals and the trial court concede that the sole basis for the murder charge was the theory of mutual combat. The Court of Appeals and trial court erred and the murder charge should be reversed for three reasons: (1) mutual combat alone is not recognized by South Carolina law as a legal basis for a murder charge; (2) even if mutual combat were a valid basis for a murder charge, the evidence introduced at trial did not support a finding of mutual combat; and (3) even if Petitioner did engage in mutual combat, which Petitioner does not concede, any mutual combat had ended at the time Robinson fired the fatal shot.

Petitioner's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State in this case. It is undisputed that Robinson, not Petitioner, shot and killed Khalil, and the State presented no evidence or argument to suggest that Petitioner engaged in any conspiracy with or otherwise aided Robinson. (R. 234–35, 242.) Rather, as

[2] Petitioner moved for a directed verdict, to quash the indictment, and for a new trial on the same grounds that the State's mutual combat theory was insufficient for a murder conviction and that the evidence did not support the State's mutual combat theory. Petitioner focuses on the denial of his motion for a directed verdict and submits his convictions should be reversed on that basis. Should the Court disagree with his arguments as to the directed verdict motion, Petitioner submits the Court of Appeals and trial court erred in denying the motion to quash and motion for a new trial for the same reasons and incorporates those motions as alternative bases for relief.

acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent, and the State explicitly disavowed any other legal basis for the murder charge. (R. 219, 235–36, 518.)

A. The Court of Appeals and Trial Court Erred in Denying Petitioner's Directed Verdict Motion Based on a Mutual Combat Theory that South Carolina Law Does Not, and Should Not, Recognize.

South Carolina has never recognized, nor should it recognize, the mutual combat theory espoused by the State as a basis for a murder conviction. Because South Carolina law does not recognize "mutual combat" as a basis for a murder conviction and it was the sole basis for the State's murder charge, the Court of Appeals erred in affirming the denial of Petitioner's motion for a directed verdict on the murder charge.

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). Reviewing the common law of murder in South Carolina, our courts have never recognized mutual combat as a basis for murder. Rather, the doctrine of mutual combat is a limitation on self-defense, and every South Carolina appellate decision discussing mutual combat considered it only in relation to self-defense.[3] As recognized in all of the South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State also present the required proof to establish the elements

[3] A search of South Carolina caselaw produced the following cases discussing "mutual combat" or its equivalent, all of which discuss it in relation to *defenses* to criminal charges: *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003); *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003); *State v. Porter*, 269 S.C. 618, 239 S.E.2d 641 (1977); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934); *State v. Jones*, 113 S.C. 134, 101 S.E. 647 (1919); *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906); *State v. Beckham*, 24 S.C. 283 (1886); *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Barksdale*, 311 S.C. 210, 428 S.E.2d 498 (1993).

of murder. Accordingly, even if Petitioner was engaged in mutual combat with Robinson at the time of Khalil's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example: conspiracy, aiding and abetting, or the felony murder rule—which would permit Petitioner to be convicted for murder when another party undertook the fatal act.

Not only does South Carolina law not support the Court of Appeals' and trial court's use of mutual combat as a stand-alone basis for a murder conviction, other jurisdictions around the United States recognize that the fact that two parties engaged in mutual combat is not alone sufficient to establish murder, and rather, treat mutual combat as potentially relevant to a murder charge only to the extent it supports proximate causation or an aider and abettor theory. *See State v. Spates*, 779 N.W.2d 770, 776–78 (Iowa 2010) (discussing decisions). Here, the Court of Appeals and trial court erroneously only determined that there was evidence from which a jury could find Petitioner engaged in mutual combat and failed to address how the elements of murder were established.

Moreover, unlike other jurisdictions that view mutual combat as potentially relevant to proximate causation or aider and abettor status, the Court of Appeals and trial court erroneously further complicated matters by tacking the concept of transferred intent onto mutual combat, despite Petitioner's arguments that transferred intent cannot apply in a mutual combat situation. (R. 194–95.) The doctrine of transferred intent provides that where a person intends to kill one person, but actually kills another, the actor's intent to kill the intended victim is transferred to the actual victim. *See, e.g.*, *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). Thus, the doctrine of transferred intent only serves to expand the concept of malice, is limited to the malice issue, and does not expand

the criminal liability of one actor to include the results of another person's actions. *See, e.g.*, *Gandy*, 283 S.C. at 573–74, 324 S.E.2d at 67; *Horne*, 282 S.C. at 446, 319 S.E.2d at 704.

The facts of Petitioner's case are a textbook example of why South Carolina law should not recognize a mutual-combat-combined-with-transferred-intent theory of murder. Here, at the time Robinson fired the fatal shots, Petitioner did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children. By accepting the legal theory advanced by the State, the Court of Appeals effectively made South Carolina law provide that any time an individual fights with an opponent, the individual is criminally responsible for any harm caused by his opponent's conduct, even if that harm occurred at a time and place remote from the initial fight and even if the individual would not and did not choose to engage in combat at that time and place.

The Court of Appeals failed to address the distinction between the doctrine of mutual combat serving as a limitation on self-defense which is recognized by South Carolina law versus mutual combat serving as a stand-alone basis for a murder conviction as used in Petitioner's case and which is not recognized by South Carolina law. The Court of Appeals merely reviewed those cases using mutual combat as a limitation on self-defense and held: "Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge." *Young*, 818 S.E.2d at 491.

Therefore, because the Court of Appeals and trial court created and applied a mutual combat theory of murder not recognized by South Carolina law and relied on it as the sole basis for denying Petitioner's directed verdict motion, the Court of Appeals and trial court erred, and the Court should grant certiorari to address and correct this novel issue of South Carolina law.

B. There Was No Evidence from Which a Jury Could Find Petitioner Engaged in Mutual Combat.

Even assuming mutual combat can alone support a murder conviction under South Carolina law, this case is appropriate for a grant of certiorari for this Court to address the limits of this mutual combat murder doctrine and to address the Court of Appeal's error in finding this case fits within any mutual combat version of murder. Here, no evidence was presented at trial to support a finding that Petitioner and Robinson engaged in mutual combat on the day in question, and even assuming mutual combat can support a murder conviction, the Court of Appeals thus erred in affirming the denial of Petitioner's directed verdict motion.

Lacking any South Carolina caselaw on mutual combat as a basis for a murder conviction and therefore turning to South Carolina caselaw on the relationship between mutual combat and self-defense, South Carolina courts define mutual combat as requiring a "mutual agreement to fight" or "mutual intent and willingness to fight" and a "resulting fight." *Taylor*, 356 S.C. at 232–35, 589 S.E.2d at 3–5. A mutual agreement and intent to fight "is manifested by the acts and conduct of the parties attending to and leading up to the combat." *Jackson*, 355 S.C. at 571, 586 S.E.2d at 563. Jurisdictions utilizing the concept of mutual combat as relevant to establishing the elements required for a murder conviction employ the same definition, holding mutual combat requires a "mutual intention, consent or agreement preceding the initiation of hostilities." *People v. Ross*, 66 Cal. Rptr. 3d 438, 447 (Cal. Ct. App. 2007), or requires that "the combatants are armed with deadly weapons and mutually agree to fight," *Sanders v. State*, 659 S.E.2d 376, 380 (Ga. 2008).

Here, no evidence was presented from which a jury could conclude Petitioner and Robinson *mutually agreed or intended* to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without

provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Petitioner. Petitioner's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson. While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Petitioner or Young, Sr. were armed or that Petitioner or Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4. There also was no evidence from which a jury could conclude that Robinson expected Petitioner and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle was between Robinson and Young, Sr., and there was no evidence that Petitioner was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Petitioner's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Petitioner found Robinson there. No evidence introduced showed that Robinson, Petitioner, or Young, Sr. engaged or attempted to engage in any combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Petitioner and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Petitioner and Young, Sr. arrived on Allen Road where they found Robinson's car. The uncontroverted evidence at trial showed that Robinson was not present during this first Allen Road incident. Rather, this incident consisted solely of Petitioner

firing a weapon at Robinson's unoccupied car. While Petitioner's actions in firing at Robinson's car were certainly destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Petitioner began firing at his vehicle and did not come to the scene to fight once Petitioner began firing. Petitioner did not know where Robinson was, Petitioner fired exclusively at Robinson's car, and Robinson did not come to the scene.

Finally, approximately ten minutes after Petitioner ceased firing at Robinson's vehicle, Young, Sr., with Petitioner as his passenger, sped out of Allen Road. As the truck reached the end of Allen Road, Robinson fired three shots, one of which struck and killed the victim. Again, the evidence regarding this incident would not allow a jury to conclude that there was a mutual agreement or intent to fight, nor would it permit a jury to conclude Petitioner engaged in combat with Robinson. The evidence shows that when Robinson fired, Petitioner was leaving the scene and had no knowledge of Robinson's whereabouts. There was no evidence that Petitioner fired at or took any other action towards Robinson during this incident.

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Petitioner only when he believed Petitioner could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Petitioner and Young, Sr. at they left Allen Road. Neither of these acts are indicative of an agreement or intent to engage in combat by Robinson. Moreover, Petitioner never engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Petitioner ever pointed or fired a weapon at Robinson. (R. 487.) Petitioner fired at Robinson's unoccupied vehicle which, while

reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the Court of Appeals erred in affirming the denial of Petitioner's directed verdict motion.

C. Any Mutual Combat Ended Prior to When Robinson Fired the Fatal Shot.

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Petitioner engaged in mutual combat, there must be a beginning and end to mutual combat. This case necessitates a grant of certiorari for the Court to address the limits of any mutual combat murder doctrine and to correct the Court of Appeal's error in holding that any mutual combat did not end prior to when Robinson fired the fatal shot. Contrary to the Court of Appeal's holding, the evidence established any mutual combat ended prior to Robinson firing the fatal shot, and therefore, the trial court should have granted Petitioner's directed verdict motion on the murder charge.

Mutual combat ends and a person's right to engage in self-defense is restored when the person withdraws from the combat and makes his withdrawal known to his adversary. *See Taylor*, 356 S.C. at 232, 589 S.E.2d at 3; *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *Graham*, 260 S.C. at 451, 196 S.E.2d at 496; *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). In *Bryant*, the Court indicated that a person leaving the scene of the combat with his adversary's knowledge of his departure can satisfy both elements of withdrawing from the combat and communicating his withdrawal to his adversary. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 28.

In Petitioner's case, the uncontroverted evidence presented at trial established that Petitioner had withdrawn from any combat at the time Robinson fired the fatal shot and that his withdrawal was known to Robinson. At the time the fatal shot was fired, Petitioner was leaving

the area, Robinson was in a hidden position, and Petitioner had no knowledge of Robinson hiding nearby.

The Court of Appeals acknowledged that Petitioner was "fleeing the neighborhood before Robinson fired the fatal shots" and had "fled the scene." *Young*, 818 S.E.2d at 493. However, the Court of Appeals held Petitioner doing so was not sufficient to constitute a withdrawal because of the "unique nature of the shoot-and-flee conflict." *Id.* The Court of Appeals' holding directly conflicts with prior decisions establishing that to withdraw a combatant only must leave the scene and place his opponent in a safe position. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 27. Here, Petitioner left the scene and left Robinson in a safe, hidden position. Given that he did not know where Robinson was and Robinson was hiding, Petitioner could not have done anything more to withdraw from the conflict than what Petitioner did by leaving the scene. The Court of Appeals did *not* find, nor could the Court of Appeals have found from the evidence, that Robinson reasonably could have expected any harm was imminent. To the contrary, Robinson was able to call the police from his hidden 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.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF PETITIONER'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT.

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Petitioner requested

a jury charge on the end of mutual combat, and the trial court denied the request. (R. 520–21.) Not only did the Court of Appeals err in affirming the trial court's refusal to give the requested charge, the Court of Appeals erred by applying the wrong standard of review.

First, as to the standard of review, the Court of Appeals applied an abuse of discretion standard to the refusal to give the charge, holding that "the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat" and in support citing to *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010). South Carolina law provides that a trial judge must give a requested jury charge if there is any evidence to support the charge. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). A trial judge's refusal to give a requested jury charge supported by some evidence is a reversible error. *Id.* Therefore, the standard for reviewing the refusal to give a requested jury charge is whether any evidence supports the requested charge, not an abuse of discretion standard.

The *Mattison* decision cited by the Court of Appeals for the standard of review does apply an abuse of discretion standard in relation to requested jury charges, but the *Mattison* decision applies when an appellant argues the content of a charge on a particular issue should have been different, not when the trial judge refuses to give any charge on a particular legal element as occurred here. Specifically, *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)). That scenario is not the issue in this case.

The issue here is the trial court's refusal to give *any* charge on when mutual combat ends; an issue governed by the "any evidence" standard set forth in *Burriss*. The *Burriss* decision is clear that: "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. at 262, 513 S.E.2d at 108.

Second, applying the correct legal standard, the Court of Appeals erred in affirming the refusal to give a jury charge on the end of mutual combat. While Petitioner argues the evidence is uncontroverted that any mutual combat had ended at the time Robinson fired the fatal shot, there was at a minimum some evidence that any mutual combat had ended such that it was error for the trial court to refuse to give a charge on the end of mutual combat. The Court of Appeals' opinion states that Petitioner "fled the scene after shooting Robinson's unoccupied vehicle." *Young*, 818 S.E.2d at 493. Petitioner fleeing from the scene combined with the fact that he 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.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF PETITIONER'S DIRECTED VERDICT MOTION ON THE ATTMEPTED MURDER CHARGE.

Petitioner moved for a direct verdict on the attempted murder charge on the ground that there was no evidence that he ever fired or even pointed a weapon at Robinson. This Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed

verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The Court of Appeals here erroneously held that three items of evidence constitute substantial circumstantial evidence sufficient to submit the attempted murder charge to the jury:

(1) Petitioner and Young, Sr. armed themselves and searched for Robinson;

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

(3) Petitioner's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence that Petitioner 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 presented here as to attempted murder.

Petitioner arming himself and searching for Robinson is not an act of attempted murder. Similarly, while Petitioner made statements to the police regarding being armed and his desire to harm Robinson, Petitioner stated that he never shot at or attempted to shoot at Robinson. A desire to harm someone is not evidence of an act constituting attempted murder, and the issue raised by Petitioner is that there was no evidence presented that he took any act that could constitute attempted murder.

Finally, the Court of Appeals misapprehended the evidence regarding Robinson's statements to Mitchell and Delaney. First, the Court of Appeals' decision states that "Mitchell

testified Robinson came to her door and excitedly told her the Youngs were shooting at him." *Young*, 818 S.E.2d at 493. This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that *Petitioner* was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.)

The Court of Appeals' decision also misconstrues the evidence in stating that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Petitioner 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, Robison responded: "yeah they was shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Petitioner by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Petitioner 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 Petitioner as acknowledged by the Court's decision stating: "[Petitioner] specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." *Young*, 818 S.E.2d at 492. Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Petitioner fired at Robinson's car or to some other instance of gun fire.

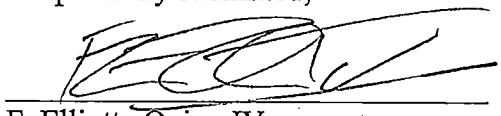
In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no

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. at 440, 753 S.E.2d at 415. Similarly here, even were the necessary context available for a jury to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence is that there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Petitioner rather than one of the other occupants fired any shots at Robinson.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests the Court grant the petition for a writ of certiorari, reverse the Court of Appeals' opinion, and reverse Petitioner's convictions and sentences.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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., Petitioner.

CERTIFICATE OF SERVICE

The undersigned certifies on October 18, 2018, he caused a copy of the foregoing Petition for Writ of Certiorari 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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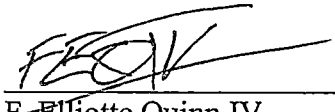

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October 18, 2018

The Hon. Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
South Carolina Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

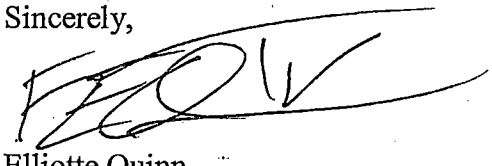
Re: State v. Aaron Young, Jr.
Appellate Case No.: 2015-000508

Dear Mr. Shearouse,

Enclosed for filing please find an original and six copies of Petitioner Aaron Young, Jr.'s Petition for a Writ of Certiorari in connection with the above-referenced matter. Also enclosed are one bound copy and one unbound copy of the Appendix.

Thank you for your assistance, and please do not hesitate to contact me should you have any questions.

Sincerely,



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