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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

Appellate Case No. 2018-001861

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PETITIONER'S 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?

(Cert. Petition, p. 1).

RESPONDENT'S COUNTER STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals err in finding the trial court properly denied the defense's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory with transferred intent?

II. Did the Court of Appeals err in holding there was no abuse of discretion in denying Petitioner's request to charge withdrawal from mutual combat when no evidence existed to support such a charge?

III. Did the Court of Appeals err in holding there was no abuse of discretion in denying Petitioner's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense?

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Petitioner, Aaron Scott Young, Jr., in October 2014 for the murder of Khalil Singleton (Indictment Number 2012-GS-07-1932) and for the attempted murder of Tyrone Robinson (Indictment Number 2014-GS-07-1940).

On February 23, 2015, Young's case was called to trial before the Honorable Thomas W. Cooper. Roberts Vaux, Esquire, represented him during the trial. Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean P. Thornton represented the State. On February 25, 2015, the jury returned verdicts of guilty on both charges. (App. p. 602; Tr. p. 598). Judge Cooper sentenced Young to thirty (30) years imprisonment on the murder conviction and thirty (30) years, concurrent, on the attempted murder conviction. (App. pp. 620-21; Tr. pp. 616-17). Petitioner filed a timely notice of appeal.

On December 7, 2016, Petitioner filed a Final Brief of Appellant in the South Carolina Court of Appeals and raised the following issues:

1. Did the trial court err in recognizing mutual combat as a basis for a murder charge and denying appellant's motion for a directed verdict on the murder charge?

2. Did the trial court err in denying appellant's request for a jury charge on the end of mutual combat?

3. Did the trial court err in denying appellant's directed verdict motion on the attempted murder charge?

(App. p. 645; FBOA, p. 1). Petitioner also filed his final reply brief that same day. (App. pp. 722-741). The State had previously filed its Final Brief of Respondent on November 30, 2016. (App. pp. 671- 72).

After argument on June 6, 2018, the Court of Appeals issued an unpublished opinion on August 22, 2018 and affirmed the convictions and sentence. (App. pp. 742-752). On September 6, 2018, Petitioner sought rehearing, (App. pp. 753-762), which the Court of Appeals denied on September 20, 2018, (App. p. 765). On October 18, 2018, Petitioner filed a petition for certiorari review in this Court. This return follows.

STATEMENT OF FACTS

The Court of Appeals summarized the facts of the crime as follows:

In October 2014, Young, Jr. was indicted for the murder of Khalil Singleton (Victim) and the attempted murder of Tyrone Robinson. The indictment arose out of a September 1, 2012 conflict between Young, Jr. and Robinson, which culminated in the death of Victim, a minor who was playing outside on a trampoline during the incident. The State's theory of prosecution was that Young, Jr. engaged in mutual combat with Robinson and thereby caused Victim's death. [FN 1]

[FN 1] It is undisputed that Robinson fired the shot that killed Victim.

Prior to trial, Young, Jr. moved to quash the murder indictment, arguing mutual combat is not a criminal offense in South Carolina. Young, Jr. further argued the doctrine of transferred intent does not apply in the context of mutual combat. The trial court deferred ruling on the motion until it could "get some sensible legal theory on one side of that issue or another which makes the transferred intent doctrine applicable in mutual combat."

Jontu Singleton testified he met with Robinson on the afternoon of the incident at a house in Hilton Head. The two men decided to drive Robinson's car to the Youngs' residence. When Robinson and Singleton arrived at the house, Young, Sr. and Young, Jr. were both outside. Robinson exited his vehicle carrying a .38 caliber revolver and began yelling at Young, Jr. Young, Sr. saw the gun and immediately began to struggle with Robinson. Robinson fired the gun during the struggle, and Young, Sr. backed away; Robinson proceeded to fire one or two more shots at the ground. Robinson then returned to his vehicle and sped away; Singleton remained with the Youngs. Immediately after Robinson fled the yard, the Youngs went into their house and retrieved a semi-automatic pistol and ammunition. The Youngs and Singleton then entered Young, Sr.'s gray pickup truck and began to search for Robinson. Young, Sr. drove the truck, and Young, Jr. assembled the pistol in the passenger seat. The three men drove around their neighborhood for approximately ten minutes, but they could not find Robinson. Singleton then exited the vehicle and left the area.

Charlese Mitchell, Robinson's neighbor, testified she was home alone on the day of the incident and heard several rounds of gunshots around 4:00 p.m. After the gunfire stopped, Robinson came to her door "hyped up" and carrying a gun.

Robinson entered Mitchell's trailer and stated "those [people were] shooting at me." At that time, Tyrone Delaney, Mitchell's fiance, came home and spoke with Robinson for no more than ten minutes. Delaney told Robinson to leave, and

shortly after Robinson left, Mitchell and Delaney heard another series of rapid gunfire. Mitchell testified that she saw Young, Sr. and a passenger she could not identify speeding down the road in a gray truck when she went outside to tell her son and stepsons to come inside the trailer. After retuning indoors with her children, Mitchell heard three final gunshots followed by screaming. Mitchell went outside to see Victim lying on the ground.

Delaney testified he observed the Youngs' gray truck speeding out of Mitchell's neighborhood at approximately 4:00 p.m. When Delaney arrived at Mitchell's trailer, Robinson explained he and the occupants of the truck had exchanged gunfire. At that point, Delaney asked Robinson to leave. Shortly after Robinson left, Delaney heard a burst of semi-automatic gunfire, and he and Mitchell brought their children inside. A few minutes later, Delaney heard three more gunshots, of a different type than the semi-automatic shots. When the gunfire ceased, Delaney heard Victim screaming for help.

The State also published Young, Jr.'s police interview to the jury. In his interview, Young, Jr. stated, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Later in the interview, when an investigator asked Young, Jr. who he was shooting at, he indicated Robinson was his target.

(App. pp. 742-44).

STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242 (b), SCACR. General reasons for granting a petition include to review a Court of Appeals decision that: (1) reflects a novel question of law; (2) included a dissent; (3) conflicts with this Court's precedent; (4) addressed a substantial constitutional right; or (5) decided a matter of federal law in a way that conflicts with federal precedent. *Id.* The foregoing list is not exclusive, and this Court may exercise its discretion in the absence of these facts.

ARGUMENT

The Court of Appeals correctly applied established law to the facts of this case. Therefore, Petitioner does not show a case reflecting "special or important reasons" to grant certiorari review. In fact, this court, by letter dated November 15, 2017, declined to certify this matter for review pursuant to Rule 204(a), SCACR. Given that the appeal was properly resolved in the Court of Appeals, Respondent submits the petition for certiorari review should be denied.

I.

The Court of Appeals did not err in finding the trial court properly denied the defense's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory along with transferred intent.

The Court of Appeals properly found the established doctrine of mutual combat, along with transferred intent, correctly applied to this ongoing gun battle and the death of an innocent young bystander. The Court properly rejected Petitioner's position that mutual combat is "not recognized by South Carolina law and not supported by the evidence at trial...." (App. p. 651, FBOA, p. 7). The Court of Appeals correctly resolved:

> Although we acknowledge the doctrine of mutual combat has "fallen out of common use in recent years," we find South Carolina law still recognizes mutual combat as a basis for a murder charge. *See Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge. *See Andrews,* 73 S.C. at 260, 53 S.E. at 424 (upholding jury instructions stating "where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter."); *Mathis*, 174 S.C. at 348-49, 177 S.E.2q at 319 (holding a murder charge was proper where evidence showed the defendant and the deceased engaged in mutual combat). Specifically, in *Brown*, our supreme court upheld a trial court's ruling that multiple defendants involved in mutual combat could be charged with murder for the death of a participating party. 108 S.C. at 499, 95 S.E.2d at 63. Based on the foregoing, we find the trial court did not err in finding mutual combat a viable theory of prosecution for the murder charge.

(App. pp. 756-47).

In short, the Court of Appeals acknowledged and applied long standing precedent from this Court to the facts presented in the case before it. There is no error to correct.

Petitioner additionally argues error in also applying transferred intent to the instant facts. (See Petition, pp. 8-9; see also App. pp. 753-56, petition for rehearing to the Court of Appeals). He suggests that use of the doctrine in these facts "expand[s] the criminal liability of one actor to include the results of another person's actions." (Petition, p. 9). In support of his argument, Petitioner submits "other jurisdictions around the United States recognize the fact that two parties engaged in mutual combat is not alone sufficient to establish murder...," (Petition, p. 8), and complains, "...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." (Petition, p. 9). Petitioner fails to acknowledge the malice aforethought in the very act of engaging in continuing gun battle in a residential area. As the Court of Appeals explained:

> We find the trial court did not err in applying the doctrine of transferred intent to Young, Jr.'s case. It is undisputed Robinson fired the final three shots at the Youngs as they fled his neighborhood for the final time; one of those three shots fatally struck Victim. Because Robinson fired at Young, Jr. with the intent to kill, this intent transferred to Victim. Thus, Robinson was criminally responsible for Victim's death under the doctrine of transferred intent. *See e.g., State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984) ("If there was malice in [the actor's] heart . . . it matters not whether he killed his intended victim or a third person through mistake. . . . [T]he actor's intent to kill his intended victim is said to be transferred to his actual victim."). Furthermore, under the theory of mutual combat, all combatants are deemed "equally responsible for the natural consequences" of their actions during combat, and all may be held equally guilty of murder when a combatant dies, regardless of which combatant fired the fatal shot. *See Brown,* 108 S.C. at 499, 95 S.E.2d at 63. Therefore, despite the fact that Victim was a bystander rather than a combatant, we find Young, Jr. could still be found guilty for Victim's death as a "natural consequence" of the combat with Robinson. This is especially true under the instant facts because Young, Jr. admitted to police that he knew children were bystanders during the combat; specifically, Young, Jr. stated, "I saw the [children playing on the] trampoline and all. . . . In order to rid up the road, you [have to] pass by the children." The Youngs chased Robinson into his neighborhood while firing shots, including shots from the semi-automatic weapon Young, Jr. retrieved and assembled for use in the pursuit. Robinson fired his shots at the Youngs as they fled when Young, Jr.'s weapon jammed - after Young. Jr.'s rapid firing of some twenty shots to "swiss cheese" Robinson's car. Accordingly, we find the trial court did not err in allowing the State to proceed under the theory of mutual combat even where Young, Jr. did not fire the shot that killed Victim, a bystander.

(App. pp. 747-48).

Respondent submits that the jury was instructed on the law of murder and they found that the State had met its burden of proof in establishing the elements of murder. The judge explained, "Murder is defined in our law as the killing of any person with malice aforethought either express or implied." (App. p. 571; R. p. 567). The judge then defined the terms "malice" and "aforethought." (App. pp. 571-72; R. pp. 567-68). Furthermore, he instructed the jury, "the state is required to prove malice beyond a reasonable doubt." (App. p. 572; R. p. 568). Thereafter, the judge explained to the jury that the murder charge rested, in part, on evidence of mutual combat.

(App. pp. 572-73; R. pp. 568-69). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder, as well. The trial judge also properly charged the law of transferred intent. (App. pp. 574-75; R. pp. 570-71). This Court has apparently not specifically addressed the law on mutual combat in the factual circumstance presented here (*i.e.*, the death of an innocent bystander in mutual combat scenarios).[1] Nevertheless, it is only logical that transferred intent would apply in such a situation.

Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim: "If there was malice in appellant's heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake." *State v. Heyward,* 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent may allow holding a defendant liable for the harm caused to an innocent bystander. *See, e.g., State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) (a person who, acting with malice, unleashes a deadly force should anticipate that the law will require him to answer fully for injury to intended or unintended victims). The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. *People v. Sanchez*, 29 P.3d 209 (Cal. 2001). In referencing the concurring opinion's analysis of transferred intent via footnote, the majority opinion reflects:

> ..."For purposes of applying the rule of transferred intent, it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant's culpable mental state is determined as if the person harmed were the person defendant meant to harm."

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[1] The Court of Appeals has at least twice been presented this scenario – in the instant case, and also in a Richland County murder conviction affirmed in April 2013. *State v. Boone*, No. 2013-UP-155, 2013 WL 8507863, at *1 (S.C. Ct. App. Apr. 17, 2013). Respondent also notes that Aaron Young Sr.'s appeal is still pending in the Court of Appeals and has a similar issue. Appellate Case no. 2016-000873.

29 P.3d at 220 n. 9 (quoting concurring opinion, 29 P.3d at pp. 223-224). The Court concluded each of the rival gang members could be guilty of murder. 29 P.3d at 220. ("Although it could not be determined who fired the fatal bullet, since sufficient evidence established that defendant and Gonzalez premeditated the murder of one another, and that the unlawful conduct of each was a substantial concurrent, and hence proximate, cause of [... the...] death, both could be convicted of the first degree murder ... by operation of the doctrine of transferred intent."). *See also State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) ("Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant."); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) ("While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); *Reyes v. State,* 783 So. 2d 1129, 1133 (Fla. Dist. Ct. App. 2001) ("... each participant in a mutually-agreed-to-gun battle in a public place may be held accountable for any death or injury to an innocent person which results from that confrontation"); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare.").

Therefore, under the law of South Carolina, consistent with holdings in other states faced with similar circumstances, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury. This Court should reject Petitioner's argument South Carolina should not allow a murder

conviction to rest upon the legal theories of mutual combat and transferred intent because for fear that any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. (See Petition 9). That is the precise reason it can be and should be used for a murder conviction. Much like accomplice liability[2], both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *See Reyes,* 783 So.2d at 1133-1134.

Here, Petitioner and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Petitioner's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire between the two. Therefore, not to hold Petitioner accountable for the death of Khalil would be an injustice.

The Court of Appeals did not err in reviewing the trial judge's application of the law to the facts of this case. The trial judge correctly ruled based upon the controlling legal principles in this State. The petition for writ of certiorari should be denied.

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2 "Under the 'hand of one is the hand of all' theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 766, 769 (Ct. App. 2010) (quoting *State v. Thompson,* 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct. App. 2007) (internal quotations and citations)).

II.

The Court of Appeals did not err in finding no abuse of discretion in denying Petitioner's request to charge withdrawal from mutual combat when no evidence existed to support such a charge.

Petitioner submits, as he did in his petition for rehearing to the Court of Appeals, that the Court of Appeals utilized an incorrect standard in reviewing the denial of a request to charge. (Petition, p. 13; see also App. pp. 758-59 (petition for rehearing to the Court of Appeals)). He also submits the evidence of Petitioner's leaving the scene when Robinson fired is "some evidence" that the combat had ended. (Petition, p. 14). Neither argument prevails on this record.

The Court of Appeals noted the correct passage from this Court's opinion in *State v. Graham* which properly guides the analysis, and emphasized the following passage which appears in bold italics below:

> Where a person voluntarily participates in . . . mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self-defense ... unless, before the homicide is committed, ***he withdraws and endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary***, ...'

State v. Graham, 260 S.C. 449, 451, 196 S.E.2d 495, 495–96 (1973);
(emphasis added in Court of Appeals opinion). (See App. p. 749).

The Court of Appeals then recounted the ongoing gun battle, including the driving through two different neighborhoods. (App. p. 750). While Petitioner argues that leaving a neighborhood and no return fire at that time may be some evidence of withdrawal, (see Petition p. 14), it is hardly so where the battle has spanned locations and there were volleys in different areas. Moreover, as the Court of Appeals also noted, there was no evidence that an intent to withdraw was communicated "either by word or act." (App. p. 450). Rather,

> ...no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs' yard. Moreover, because we find the combat did not end when Young, Jr. fled the scene after shooting Robinson's unoccupied vehicle, we similarly find Young, Jr.'s act of fleeing before Robinson fired the fatal shots did not make known to Robinson any intent to withdraw.

(App. p. 750).

The evidence of chase does not allow Petitioner's offered argument to show some support evidence of intent to withdraw. Even so, assuming for the sake argument that Petitioner intended to withdraw, neither his words nor actions communicated this intent to Robinson. This Court in *Graham* explained that a withdrawal must be "communicated to the victim by word or act." 260 S.C. at 451, 196 S.E.2d at 496. Petitioner did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, the act of driving down the road would not have been reasonably interpreted by Robinson that Petitioner intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations.

Because the law to be charged is driven by the facts adduced at trial, there was no necessity of a charge on withdrawal from the mutual combat. *See, e.g., State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008) ("The law to be charged to the jury is determined by the evidence presented at trial."). This Court has explained that the failure to give a charge supported by the evidence is an error of law; thus, the failure to give a charge warranted by the evidence constitutes an abuse of discretion. *See State v. Commander*, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011) (affirming the Court of Appeals conclusion "the trial court acted within its discretion in refusing to charge the jury on accident" where there was no "basis of an accident charge under the facts."). Though specifically regarding a manslaughter charge, the following passage from this

Court's precedent well-illustrates the logic of the matter and aptly addresses Petitioner's argument on the correctness of the legal conclusion:

> A court may eliminate the offense of manslaughter where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. *State v. Burriss,* 334 S.C. 256, 264, 513 S.E.2d 104, 109 (1999). An appellate court will not reverse the trial judge's decision absent an abuse of discretion. *Clark v. Cantrell,* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). 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. *Id.* The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Id.* at 390, 529 S.E.2d at 539. The law to be charged must be determined from the evidence presented at trial.

State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)

Whether there was a factual basis warranting the charge is was exactly what the Court of Appeals considered in ruling on the issue. Thus, the Court of Appeals correctly followed this Court's precedent, and properly focused on the evidence presented in relationship to the requested charge.

The Court of Appeals did not err in reviewing the trial judge's consideration of the charge in light of the evidence presented at trial. The petition for writ of certiorari should be denied.

III.

The Court of Appeals did not err in finding no abuse of discretion in denying Petitioner's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

Petitioner argues there is "*no* circumstantial evidence, much less substantial circumstantial evidence that Petitioner shot at or attempted to shoot Robinson," as he similarly argued in his petition for rehearing. (Petition, p. 17) (emphasis in original); (see also App. p. 760, petition for rehearing in the Court of Appeals). The Court of Appeals properly and reasonably rejected Petitioner's argument there was no evidence of criminal intent toward Robinson. The Court reasoned:

> Here, Singleton testified after Robinson first fired his revolver at the ground near the Youngs, the Youngs went into their house and retrieved a semi-automatic pistol. Thereafter, Singleton and the Youngs drove around their neighborhood searching for Robinson, and Young, Jr. assembled the pistol during the search. Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him. Delaney also testified Robinson told him about an exchange of gun fire with the Youngs. Moreover, the State published Young, Jr.'s police interview to the jury. In the interview, Young, Jr. explained, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Young, Jr. also clarified Robinson was his intended target. Viewing this evidence in the light most favorable to the State, we find there was substantial circumstantial evidence tending to prove Young, Jr. attempted to murder Robinson.

(App. p. 748-49).

The record supports the Court of Appeals' decision.

Attempted murder is defined as "a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied." S.C. Code Ann. § 16-3-29.

Respondent submits that ample substantial circumstantial and direct evidence was presented at trial showing Petitioner intended to and attempted to kill Robinson with malice aforethought.

Witness Testimony

- Jontu Singleton testified Petitioner retrieved the gun, assembled the gun, and looked for Robinson. (App. pp. 365-69; R.p. 364-68)
- Robinson's statement to Mitchell "those M.F. was shooting at me". (App. p 311 ; R.p. 310
- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck. (App. p. 334; R.p. 333)
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck[3] (State's Ex. 2).

Petitioner's Admissions in Recorded Statements

- "Should've never moved my ass from Ridgeland. Could've killed any n**** I wanted to and nobody'd ever fucking find out." (State's Ex. 38, Intro Video at 4:01).
- Talking about driving away after shooting Robinson's car: "The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that." (State's Ex. 38, Video 1 at 1:10).
- "Boy, I swiss cheese that car...I swear I did." (State's Ex. 38, Video 3 at 00:20).
- After Robinson shot at them in the truck, indicated to Young, Sr., "man turn around" (State's Ex. 38, Video 3 at 00:45).

[3] The caller referred to the car as a "grey Lexus," however, the caller positively identifies the driver of the car (actually a green Acura) as Tyrone Robinson.

- "I mean shit, I shot the car a good, what, twenty damn times." (State's Ex. 38, Video 6 at 00:55).
- "The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot" (State's Ex. 38, Video 7 at 00:25).
- "It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it was a dead road, nobody would've knew nothing...But the gun just wouldn't go off" (State's Ex. 38, Video 7 at 2:11).

Petitioner was the person who tried to kill Robinson; he admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). He admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese." (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates the statements that he was the shooter, in particular, Jontu Singleton's testimony that Petitioner was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (App. pp. 368-69; R. pp. 367-68). Additionally, Charlese Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (App. p. 329; R. p. 328; see also App. pp. 301- 313; R. pp. 300-312).

Respondent submits that the State presented direct and substantial circumstantial evidence of Appellant's guilt at trial. The standard is well-established:

> When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.

State v. Weston, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006)

The State met this requirement in its presentation of the evidence. Therefore, the trial judge did not abuse his discretion in denying Petitioner's motion for a directed verdict on the attempted murder charge.

The Court of Appeals did not err in reviewing the trial judge's consideration of the charge in light of the evidence presented at trial. The petition for writ of certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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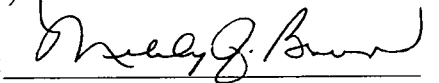
BY: 

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ATTORNEYS FOR RESPONDENT

November 29, 2018
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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S.C. SUPREME COURT

On Petition for Writ of Certiorari to the South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

Appellate Case No. 2018-001861

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Return to Petition for Writ of Certiorari* on Petitioner by depositing two (2) copies in the United States mail, postage prepaid, to each of his attorneys of record, addressed as follows:

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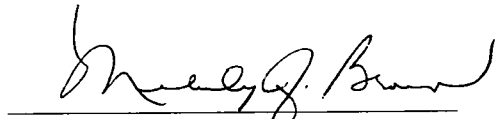
This 29th day of November, 2018.



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