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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to 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.

REPLY BRIEF OF PETITIONER

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ARGUMENT

Petitioner submits his Brief sets forth grounds upon which the Court of Appeals opinion should be reversed and his convictions and sentences vacated, and the State's Brief does nothing to change that result. However, there are five points on which Petitioner believes the Court may appreciate further briefing given the arguments made in the State's Brief.

I. SOUTH CAROLINA LAW DOES NOT AND SHOULD NOT RECOGNIZE THE STATE'S MUTUAL COMBAT THEORY AS A BASIS FOR A MURDER CONVICTION, AND EVEN WERE SOUTH CAROLINA, TO RECOGNIZE SUCH A THEORY IT WOULD NOT APPLY HERE.

The State now incredibly asserts Petitioner's convictions and the underlying distortion of South Carolina law through the mutual combat theory are necessary given the "escalating urban warfare in present-day society." (Resp't's Br. 19.) However, the State has not shown any "escalating urban warfare" necessitating a change in South Carolina law, and South Carolina law adequately addressed, and will continue to adequately address, the public use of firearms and the death of bystanders through the felony murder, accomplice liability, and transferred intent theories of criminal liability.

Moreover, not only is there no need to recognize a mutual combat theory of murder in South Carolina, recognizing mutual combat as a stand-alone basis for a murder conviction for the death of a bystander creates legal problems as highlighted by the use of the theory in this case. The harms resulting from recognizing such a theory include that:

- the theory conflicts with the requirement that a defendant proximately cause a death to be held criminally responsible for that death, and
- the theory conflicts with the settled law of transferred intent which serves only to expand the malice element of a murder charge and does not serve to expand the criminal liability of one actor to include the results of another person's actions.

Not only is the State's attempt to expand South Carolina law unnecessary and ill-advised, the facts of this case fall outside the State's proposed theory of mutual combat. Thus, even were the State's mutual combat theory legally valid, this is not the case to recognize such a theory. Petitioner and Robinson never engaged in mutual combat on the day in question, much less engaged in mutual combat at the time Robinson fired the fatal shot. Therefore, even were South Carolina to recognize the State's mutual combat theory, Petitioner could not be convicted of murder under such a theory.

To stretch the State's mutual combat theory to affirm Petitioner's murder conviction would create absurd results. Were the facts of this case sufficient for a murder conviction under a mutual combat theory, a person could be convicted of murder regardless of the facts that the person's "combatant" hides to avoid actual combat, the combatant ambushes the person at the time and place of the combatant's choosing, and the passage of days, weeks, or months since the last interaction between the "combatants." In short, if ill-will and any violence or threat of violence were to occur between a person and another, the State's theory would permit the person to be held criminally responsible for the other's violent acts at any future time or place.

The State appears to base its argument for such a mutual combat theory on the contention that a person should be held responsible for any criminal act that occurs as a result of his engaging in mutual combat, but the criminal law exists to punish offenders for prohibited conduct and harms that were the foreseeable result of such conduct. *See, e.g.*, 1 *Wharton's Criminal Law* § 26 (15th ed.). Here, Petitioner could not reasonably foresee that Robinson would fire a weapon at him at that location with children in the line of fire. Petitioner did not know Robinson was present at the location where the fatal shot was fired, had no control over Robinson's actions, and had no control over where and when Robinson chose to fire his weapon.

Petitioner thus could not reasonably foresee that the death would result, and he should not be criminally responsible, even through a mutual combat theory, for the victim's death.

Petitioner may have acted foolishly and even criminally on the day that Khalil, the victim, died, but during the one instance when Petitioner fired his weapon that day—when he shot Robinson's car—he knew that there were no children around the vehicle or in the direction he fired. (State's Ex. 38, Videos 1, 2, & 7; R. 635.) Robinson, however, chose to ambush Petitioner resulting in Khalil's death. Robinson chose not only to fire at Petitioner, but he chose the time and place at which to do so.

II. ANY MUTUAL COMBAT ENDED BEFORE ROBINSON FIRED THE FATAL SHOT.

The State conflates the legal doctrine of withdrawal *from a conflict* with the idea that any animosity between the parties or any intent to cause future harm to an adversary must have dissipated for a conflict to end. The Court of Appeals similarly conflates the law on withdrawal with the notion of the cessation of animosity, concluding there was no withdrawal from combat by relying on Petitioner's statements regarding his continued animosity towards and his desire to engage in combat with Robinson and on the fact that "no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs' yard." (App. 750.)

South Carolina caselaw instructs that mutual combat ends when "the defendant withdraws from the conflict," *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); "after a withdrawal from the initial difficulty . . . if that withdrawal is communicated . . . by word or act," *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); and when the defendant "withdraws from the conflict and communicates that decision to his adversary," *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). Thus, while two persons may

still have a personal conflict—for example, animosity towards one another or a desire to cause harm to one another— their physical conflict and combat may have come to an end for purposes of mutual combat.

For any mutual combat to have ended the law only requires that Petitioner have withdrawn from the conflict and that Robinson knew of the withdrawal. While the Court of Appeals intimates that Petitioner needed to verbally communicate the withdrawal to Robinson, the law does not require a statement of an intent to withdraw, and a person leaving the scene with the adversary's knowledge is sufficient for withdrawal. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322. Petitioner and his father drove away from the location of Robinson's vehicle and did not see Robinson. Thus, there was no ongoing conflict or combat at that time. Robinson was not being attacked, was safe in his hiding place, and saw Appellant and his father driving away as evidenced by him shooting at them. Yet Robinson decided to initiate violence by firing upon Petitioner from his hidden position.

The Court of Appeals' and the State's conception of withdrawal is not only not supported by South Carolina law, it also would render it impossible for a person to withdraw from combat in any situation similar to the one present here. If Petitioner decided that shooting Robinson's car was enough and quit looking for Robinson after his father drove them away from Allen Road, under the Court of Appeals' decision and the State's theory this still would not constitute withdrawal, and the purported mutual combat would still be ongoing if Robinson and Petitioner saw each other a week later and Robinson began firing.

There has to be some point at which mutual combat ends, and South Carolina law defines that point as when a combatant withdraws from the scene of combat with his adversary's knowledge of the withdrawal. The Court of Appeals holding directly conflicts with that law.

III. THE STATE'S ARGUMENTS RELY ON UNSUPPORTED FACTUAL STATEMENTS.

The State argues the Court should affirm based on several misreadings of the record. Those factual points are central to the issues before this Court.

First, on multiple occasions the State asserts that Petitioner "tried to shoot Robinson but the gun jammed" and in support relies entirely on Petitioner's statement to the police. (Resp't's Br. 6, 40, 42, & 44.) To the contrary, Petitioner unequivocally stated to the police that the gun was jammed when he and his father were on Bryant Road and because he knew the gun was jammed *he did not point the gun at or try to shoot Robinson on Bryant Road.* Petitioner stated to the police:

Petitioner: What you mean the first we caught his ass? But the shit wouldn't shoot. It wouldn't shoot. It wouldn't shoot.

Investigator: So you saw him on Bryant Road?

Petitioner: That's how we knew where he was at. 'Cause, alright.

Investigator: Alright, let's try to figure this out.

. . .

Investigator: Did you come across him over there?

Petitioner: Yeah we did, but that shit wouldn't shoot. It wouldn't, the gun wouldn't shoot.

Investigator: So what were you shooting at then?

Petitioner: Him, but I didn't shoot. It didn't go off. The gun didn't go off.

Investigator: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?

Petitioner: *I didn't even point the gun at him.* The gun just wouldn't go off. I knew it wasn't, 'cause when you cocked it back it wouldn't . . . It jammed up on me. So that shit was a no go. . . .

Petitioner: The first time we went down there ain't nothing happened 'cause we saw him but it didn't go down like wanted it to. If it would have went down like that we wouldn't even be here and nobody would know nothing cause it was a dead road and nobody would've knew nothing but the gun just didn't go off.

(State's Ex. 38, Video 7 (emphasis added).)

Second, Respondent asserts that there was "crossfire" between Petitioner and Robinson, that the victim and other children were caught in that "crossfire," and that "it is just as probable that one of Petitioner's bullets could have injured or killed an innocent bystander" as Robinson's bullet. (Resp't's Br. 17, 27, 31.) To the contrary, the record makes clear that Petitioner fired only into Robinson's unoccupied vehicle, that those shots were fired at one end of Allen Road, and that the location where Robinson fired the fatal shot and where the children were playing was at the other end of Allen Road. (R. 303,–03, 322–25, & 488–529; State's Ex. 38, Videos 1 & 3.) Petitioner never fired a round in the area where the children were playing, much less fired a round where the children were in the "crossfire." Petitioner fired into an unoccupied vehicle, and his shots therefore could not have injured or killed an innocent bystander.

IV. PETITIONER PRESERVED FOR APPELLATE REVIEW HIS ARGUMENT FOR A DIRECTED VERDICT ON THE BASIS OF A WITHDRAWAL FROM COMBAT.

Petitioner preserved as a basis for reversal the argument that any mutual combat had ended at the time Robinson fired the fatal shot, and thus, the trial court erred in not granting Petitioner a directed verdict on the murder charge.

To preserve an error at trial, a party must raise the issue to and obtain a ruling from the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However, the issue preservation rule does not require a party to use a specific phrase or exact legal terminology to raise an issue to the trial court. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 902, 907 (2007) (finding argument preserved despite not being phrased "in the exact terms" used on appeal because the objection was stated at trial with "sufficient specificity to allow the trial court to rule on the issue"); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding an argument preserved despite the failure to use exact words in objecting because it was clear from the record that the argument was made on that ground). A party preserves an issue for appeal whenever the trial judge would have been reasonably able to understand the nature of the error alleged. *See, e.g., Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.").

In support of this motion for a directed verdict on the murder charge, Petitioner raised the argument that to the extent there was any mutual combat, it ended before Robinson fired the fatal shot, as shown by the following:

- Petitioner argued there was "no evidence of mutual combat" (R. 512) and "no evidence of back and forth or a running gun battle or any kind of mutual combat" (R. 512), thus arguing there was no mutual combat at the time Robinson fired the fatal shot.
- Petitioner also more specifically argued that at the time Robinson fired the fatal shot, Petitioner did not even know Robinson was there—that "he never saw Mr. Robinson"—

and that therefore there was no mutual combat at that time—"You don't see somebody you can't be running a gun battle." (R. 513.)

- Upon the trial court rejecting Petitioner's argument that there generally was no mutual combat, Petitioner then continued his directed verdict argument as to mutual combat arguing "the problem in the next step of [the] mutual combat" analysis "is that obviously when you begin to retreat it ends the mutual combat." (R. 518.) Petitioner more specifically argued: "And in this instance clearly the evidence is that [Petitioner's father and Petitioner] drove the truck down Allen Road, took a left on Marshland Road and were some considerable distance away at the time the three shots were fired. . . . And therefore the mutual combat had ended." (R. 518.)
- After arguing that any mutual combat ended before Robinson fired the fatal shot, the colloquy between the trial court and Petitioner's counsel blurred into a discussion of both the directed verdict motion and the jury charges to be given. However, despite the blurred discussion, the trial court found there was no evidence to support Petitioner's argument that any mutual combat had ended and therefore rejected both the directed verdict argument and the argument for a jury charge on the end of mutual combat. (R. 519–21.)

Accordingly, Petitioner raised to the trial court the argument that any mutual combat ended before Robinson fired the fatal shot, the trial court refused to grant a direct verdict on that ground, and the issue is preserved.

V. PETITIONER MADE NO ATTEMPT TO MURDER ROBINSON AND THERE IS NO EVIDENCE SUFFICIENT TO CONSTITUTE SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF AN ATTEMPT.

As set forth in Petitioner's Brief, neither the Court of Appeals nor the State identify any act by Petitioner that constitutes an attempt to kill Robinson. While the insufficiency of the evidence relied upon the by the Court of Appeals is addressed in Petitioner's Brief, the State now attempts to bolster the Court of Appeal's opinion by pointing to evidence not relied on by the Court of Appeals—a 911 call and additional statements by Petitioner to the police—as supporting the denial of Petitioner's directed verdict motion. (Resp't's Br. 40).

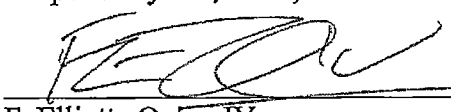
First, the 911 call does not provide substantial circumstantial evidence of any attempt by Petitioner to kill Robinson. The 911 caller stated that a grey Lexus driven by Robinson and a grey truck were shooting at each other. (State's Ex. 2.) The caller did not give any indication that shots were actually being exchanged between the vehicles. The caller's statement was equally consistent with indicating that Petitioner had been firing at Robinson's parked, unoccupied vehicle, and Robinson then firing at Petitioner's vehicle as it drove away. The caller also did not make any statement as to who was firing any weapon. A simple statement that gunfire had been exchanged by people who were now in a grey Lexus and a grey truck cannot constitute substantial circumstantial evidence that Petitioner fired a weapon at Robinson.

Second, the State points to numerous statements made by Petitioner while being interviewed by the police. (Resp't's Br. 40.) While those statements admittedly indicate Petitioner fired his weapon at Robinson's unoccupied vehicle, that Petitioner wanted to harm Robinson, and wanted the opportunity to engage in combat with Robinson, the statements contain no admission that Petitioner ever undertook any act that could constitute an attempt to murder Robinson.

CONCLUSION

For the reasons set forth herein and in Petitioner's Brief, the Court should reverse and vacate Petitioner's convictions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies on August 19, 2019, he caused a copy of the foregoing Reply Brief of Petitioner 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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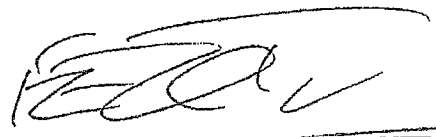

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