STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

Appeal from Beaufort County

Honorable Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 2019-UP-233 (S.C. Ct. App. Filed June 26, 2019)

2012-GS-07-2173; 2014-GS-07-1941

THE STATE,

RESPONDENT,

V.

AARON YOUNG, SR.,

PETITIONER

APPELLATE CASE NO 2016-000873

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 22, 2019.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in failing to find that the trial judge erred in refusing to direct a verdict of acquittal when the State's evidence of murder was dependent upon a combination of mutual combat, accomplice liability and transferred intent to an innocent third party not engaged in mutual combat?

2. Did the Court of Appeals err in failing to find that the trial judge erred in refusing to direct a verdict of acquittal for murder when the State failed to establish mutual combat at the time of the fatal shooting?

STATEMENT OF THE CASE

On October 30, 2014, the Beaufort County Grand Jury indicted Petitioner, Aaron Young Sr., for murder and attempted murder, indictments #2012-GS-07-2173, 2014-GS-07-1941. On August 10, 2015, Petitioner proceeded to jury trial before the Honorable Thomas W. Cooper. Robert Ferguson represented Petitioner at trial. Isaac McDuffie Stone, III, and Sean Thorton prosecuted the case. The jury returned verdicts of guilty on both counts. Judge Cooper sentenced Petitioner to thirty (30) years for murder and a concurrent twenty (20) years for attempted murder. On April 18, 2016, Judge Cooper denied the timely filed motion for reconsideration of sentence. A timely notice of intent to appeal was served on April 21, 2106, and the direct appeal perfected. In an unpublished opinion filed June 26, 2019, the South Carolina Court of Appeals affirmed the sentence and conviction. A timely petition for rehearing was filed and then denied on August 22, 2019. This petition for writ of certiorari follows.

REASON WHY CERTIORARI SHOULD BE GRANTED

This Court should grant the petition for writ of certiorari to clarify or limit the law on mutual combat.

STATEMENT OF FACTS

Khalil Singleton was fatally shot by Tyrone Robinson. Tyrone Robinson was charged and convicted of the murder of Khalil Singleton. Khalil Singleton was not Robinson's intended victim. When Robinson fired the shot that killed Khalil Singleton, he was shooting at Petitioner and his son, Aaron Young Jr. as they were leaving the neighborhood in their truck. The Youngs and Robinson had been involved in an altercation earlier. Petitioner and his son Aaron Young, Jr. were also charged and convicted, in separate trials, of the murder of Khalil Singleton and the attempted murder of Tyrone Robinson. The State alleged that the Youngs were involved in mutual combat with Tyrone Robinson at the time that Robinson fatally shot Khalil Singleton. Khalil Singleton was an innocent third party and not involved in the earlier dispute between the Youngs and Robinson.

Jontu Singleton, Sr. testified that on September 1, 2012, he and Tyrone Robinson went to Aaron Young Sr.'s house where Robinson pointed a .38 caliber revolver at Aaron Young, Jr. (R. p. 569, line 9 – p. 570, lines 1-13). Jontu Singleton testified that as Petitioner and Robinson were struggling over the gun, Robinson shot in the air two times and then shot at Petitioner's feet. (R. p. 571, lines 1-5). Robinson left in his car, leaving Jontu Singleton behind at the Young residence. (R. p. 571, lines 6-17). According to Junto Singleton, Petitioner retrieved a duffle bag from inside the house and then Petitioner, Young Jr. and Junto Singleton got into Petitioner's gray pickup truck. (R. p. 571, line 20 – p. 572, lines 1-15). Junto Singleton testified that as Petitioner was driving, Young Jr. took a gun out of the bag and was trying to put the gun together. (R. p. 572, line 16 – p. 573, 574, lines 1-4). He described the gun as looking like a "TEC-9." (R. p. 573, lines 6-9). Junto Singleton believed that the Youngs were looking for

Tyrone Robinson. (R. p. 574, lines 20-23). The three were unable to find Robinson and returned to the Young residence where Junto Singleton got out of the truck but Petitioner and Young Jr. left again. (R. p. 576, line 2 – p. 577, lines 1-8).

Charlese Mitchell, Petitioner's cousin, testified that on September 1, 2012, about 4:00 PM she heard a round of quick shots and then saw Petitioner pass by her house in his gray truck. (R. p. 511, line 3 – p. 512, 513, lines 1-5). Shortly after hearing the shots and seeing Petitioner, Tyrone Robinson came to Mitchell's house and told her that the "MFs were out there shooting at him." (R. p. 519, lines 10-19). Mitchell noticed a black handle sticking out of Robinson's red shorts. (R. p. 520, lines 1-2). Robinson was outside using Mitchell's phone when Mitchell's boyfriend, Tyrone Delaney, came home. (R. p. 520, line 5 – p. 521, lines 1-13). Delaney and Robinson spoke and Robinson then left. Ten to fifteen minutes later Mitchell heard a second set of rapid shots. (R. p. 533, lines 16-24). Within five minutes of the second set of shots, Mitchell saw Petitioner again drive past her house. (R. p. 525, line 11 – p. 526, lines 1-17; p. 537, lines 1-4). As Petitioner's truck passed her house, Mitchell heard three last shots that sounded different from the rapid shots. (R. p. 524, lines 18-25; p. 537, lines 16-18). Mitchell then saw Robinson fly past in his car with a shattered back window. (R. p. 527, lines 2-5). After hearing the last three shots, Mitchell went outside and saw that Khalil Singleton had been shot. (R. p. 528, lines 7-18).

Tyrone Delaney testified when he arrived home from work, Robinson was in the front yard using the phone. (R. p. 543, lines 3-16). Robinson asked Delaney if he had seen a gray truck and he told Delaney, "That mother was shooting at me, so I shot back." (R. p. 543, lines 23-24). Delaney testified that Robinson was armed with a .38 revolver. (R. p. 544, lines 12-19). Delaney testified that after Robinson left Delaney heard rapid fire and asked Mitchell to call the

children, his son, Xavier Delaney, Jontu Singleton Jr. and Khalil Singleton, inside. (R. p. 546, line 8 – p. 547, lines 1-8). Xavier Delaney came inside but Jontu Singleton Jr. and Khalil Singleton went the other way. (R. p. 547, lines 7-11). Delaney then heard another set of three shots that sounded different from the first set. (R. p. 545, line 24 – p. 546, lines 1-4; p. 547, line 12-14).

Dominique Griffin was inside of his house when he heard shots. (R. p. 553, line 6 – p. 554, lines 1-7). When the shots stopped, he went outside to check on his stepson, Jontu Singleton, Jr. (R. p. 554 lines 8-12). Griffin testified that Jontu was crying and pointing at Mr. Robinson saying, [H]e shot Khalil, he shot Khalil." (R. p. 554, lines 17-18). The bullet removed from Khalil Singleton was "consistent with round nose plain lead bullets loaded into a .38 special caliber cartridge. . ." (R. p. 644, lines 1-12). Griffin testified that he saw Robinson's car parked and there were bullet holes in the back window. (R. p. 555, lines 14-22). Robinson walked toward his car and looked like he was in a rush to leave. (R. p. 555, lines 20-25).

Officers initiated a traffic stop of Petitioner's vehicle and found 9 mm shell casings in the back of the truck. (R. pp. 582-586). The SLED firearm expert testified that the casings found in the back of the truck matched the bullets that had been shot into Robinson's car. (R. p. 636, lines 7-14). Petitioner provided statements to Investigators Seifert and Bromage with the Beaufort County Sheriff's Department. Petitioner told the officers that his son shot at Robinson because Robinson was shooting at them. (R. p. 602, lines 2-5).

ARGUMENTS

1. The Court of Appeals erred in failing to find that the trial judge erred in refusing to direct a verdict of acquittal when the State's evidence of murder was dependent upon a combination of mutual combat, accomplice liability and transferred intent to an innocent third party not engaged in mutual combat.

The murder indictment in the present case alleges, "That in Beaufort County on or about September 1, 2012, Aaron Scott Young Sr. did willfully, unlawfully and with malice aforethought engage in mutual combat with Tyrone Robinson and did thereby cause the victim Khalil Singleton to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC and that Khalil Singleton did die in Beaufort County as a proximate result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended." (R. p. 874). Prior to trial Petitioner moved to quash the murder indictment. (R. p. 480, line 23 – p. 481, 482, lines 1-3). The trial judge denied the motion to quash stating:

> And we know that the law is, or at least I think that the law is, that in the context of mutual combat the cases indicate that whoever is shot on either side, all who are involved can be guilty of the crime of murder if the person who is shot dies.
>
> And we dealt last time with the case of Aaron Young, Jr. with whether or not that transferred intent that would go from one combatant to another combatant in mutual combat also transfers to an innocent victim. That matter is yet to be decided by an appellate court. It's on appeal now. But it is that particular factual distinction, I think, or that factual anomaly in this case does not render the indictment invalid, because the facts in this case indicate that there was mutual combat. Suggested there was mutual combat, and that an innocent person was killed in the course of that.

(R. p. 484, lines 3-19).

At the close of the State's case Petitioner moved for a directed verdict of acquittal. (R. p. 654, line 13 – p. 655, lines 1-15). Defense counsel noted that there was no indication that Petitioner ever fired a weapon. (R. p. 654, lines 24-25). Counsel noted that Petitioner was not

aiding, abetting, assisting or conspiring with Tyrone Robinson. (R. p. 654, lines 18-23). Counsel argued that the elements of murder had not been satisfied through a theory of mutual combat. (R. p. 655, lines 9-15). The judge denied the motion stating:

> The law that we've already talked about, the law of mutual combat, the law of transferred intent are the sort of things that come together in a legal scenario, and they create responsibility. And, of course, laws can do that and do that quite often.
>
> And so for the reason I feel the elements of murder as they apply in this particular case of mutual combat, along with the transferred intent aspect of that as well, that the State has satisfied its burden in that regard sufficient to sustain the motion for directed verdict at this juncture.

(R. p. 656, line 21 – p. 657, lines 1-6). The trial judge erred. The State's hybrid theory of liability based on mutual combat, accomplice liability and transferred intent is not supported by the law.

Mutual combat is inapplicable under the facts of this case. In State v. Graham, 260 S.C. 449, 450–51, 196 S.E.2d 495, 495–96 (1973), the South Carolina Supreme court wrote:

> The basic principles governing the doctrine of mutual combat are thus stated in 40 C.J.S. Homicide s 122, p. 996:
>
> '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, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, 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, ...'

In State v. Taylor, 356 S.C. 227, 231–32, 589 S.E.2d 1, 3 (2003), the South Carolina Supreme Court wrote:

> The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years. The case law does establish that there must be "mutual intent and willingness to fight" to constitute mutual combat. State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is "manifested by the acts and conduct of the parties and the circumstances

> attending and leading up to the combat." Id. Whether or not mutual combat exists is significant because "the plea of self-defense is not available to one who kills another in mutual combat." Id. (citing State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919)). In order to claim self-defense, the defendant "must be without fault in bringing on the difficulty." State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the "no fault" element of self-defense cannot be established.

In the present case the State did not argue that Petitioner was not entitled to a self-defense instruction because he was engaged in mutual combat. Instead, the State argued that mutual combat formed the basis for the murder charge. Respondent admits that, "The law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant." (Final brief of Respondent p. 27). Based on the declining use of mutual combat generally, this Court should not expand the application to innocent bystander noncombatants.

The judge instructed the jury[1] on the law of mutual combat stating:

> Now, as you know, the indictment in this case charges Mr. Young with murder in connection with mutual combat. The State, of course, has not alleged, no one alleges, that Mr. Young actually fired the fatal shot that killed Khalil Singleton. It alleges, the State does, that it is a law of mutual combat that makes him guilty of that murder. So we look at the law of mutual combat.
>
> Mutual combat exists when there is mutual intent and willingness to fight. Mutual intent is shown by the acts and conduct of the parties and circumstances which attend and lead up to the combat itself. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting ill will or dispute between the two parties, and whether the combatants agree to be armed. Because a history of ill will and an agreement to be armed are necessary before a defendant is deemed to have engaged in mutual combat. In other words, to constitute mutual combat, it is not necessary that there is a positive agreement between the parties to enter into combat. It is enough if they willfully enter into the conflict upon the impulse of the moment.

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[1] There was no objection to the instruction on the law of mutual combat. This issue may need to be raised in post-conviction relief.

> And in that regard, I tell you that everyone is presumed to know the consequences of his act. And if one voluntarily enters a mutual combat, where deadly weapons are used, knowing that they're being used, and death results to one of the participating parties, everyone engaged in such combat is equally guilty regardless of whether or not he used a deadly weapon or not. And regardless of whether he was on one side or the other, it makes no difference. And where all are participating in the mutual combat, all are equally responsible for the natural consequences. In other words, where people agree to have a mutual combat, they're engaged in an unlawful act. They're all presumed to intend the consequences which naturally flow from an unlawful act. And if one of the participants be on one side himself and the other be slain by participating in the mutual combat, all are equally guilty of the killing. Therefore, it is not the identity of the victim but the intent of the perpetrator, the state of mind of the perpetrator, the existence of malice, that is determinative in that regard.

(R. p. 833, line 21 – p. 834, 835, lines 1-14).

A similar instruction was upheld in State v. Brown, 108 S.C. 490, 95 S.E. 61 (1918). The facts in the Brown case are factually distinct from the facts in the present case. In Brown a fight broke out between striking and non-striking mill workers. One of the strikers was fatally stabbed. Two strikers who participated in the fight and three non-strikers who participated in the fight were charged with murder and convicted of manslaughter although only one of them inflicted the fatal stab wound. The Brown case is the classic example of the uncommon and outdated theory of mutual combat involving participating combatants. If both of the Youngs had participated in mutual combat with Robinson[2] and Young Jr. had been fatally shot by Robinson, under the Brown theory of mutual combat both Robinson and Young Sr. could be charged with murder. In the present case, however, a non-participating innocent by-stander was fatally shot, not a mutual combatant. Mutual combat does not establish liability for Petitioner under the facts of this case.

The State stretches to hold Petitioner accountable for the actions of Robinson with a combination of theories of mutual combat, transferred intent and accomplice liability. This

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[2] As argued in issue two, Petitioner was not engaged in mutual combat with Robinson.

hybrid theory of liability is not recognized by the law. The individual theories, standing alone, fail to establish liability for Petitioner under the facts of this case.

Transferred intent does not establish liability for Petitioner under the facts of this case. In State v. Fennell, 340 S.C. 266, 272–73, 531 S.E.2d 512, 515–16 (2000), the South Carolina Supreme Court wrote:

> This Court in several cases has held that a defendant may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent. In the classic case, the defendant intends to kill or seriously injure one person, but misses that person and mistakenly kills another. Although the defendant did not act with malice toward the unintended victim, the defendant's criminal intent to kill the intended victim (i.e., his mental state of malice) is transferred to the unintended victim. "If there was malice in [defendant'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) (affirming murder conviction where defendant testified he mistakenly shot and killed police officer who allegedly broke open his front door, believing the officer to be an assassin sent by an angry former employer). See also State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984) (affirming murder conviction where defendant intending to kill one man shot through a closed door, killing unintended victim *273 instead), overruled on other grounds by State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993); State v. Horne, 282 S.C. 444, 447, 319 S.E.2d 703, 704 (1984) (holding that State in future may prosecute defendant for murder of viable fetus when defendant attacks a pregnant woman with malice and in the process kills the fetus, an unintended victim); State v. Williams, 189 S.C. 19, 24, 199 S.E. 906, 908 (1938) (affirming murder conviction where defendant shot at intended victim who was driving a wagon of cotton, but missed him and mistakenly killed the man sitting beside him); LaFave & Scott, *Substantive Criminal Law,* § 3.12(d) (1986) (discussing transferred intent); McAninch & Fairey, at 17–19 (same).

Robinson was properly found guilty of the murder of Khalil Singleton under the doctrine of transferred intent. Robinson intended to kill either Petitioner or his son or both but missed and killed Khalil Singleton instead. At the time Robinson fired the fatal shot, he did it with malice toward Petitioner and Young Jr. Robinson's malice and intent to kill Petitioner was transferred to the unintended victim. The State, however, failed to prove malice as it relates to Petitioner.

Robinson was the shooter, not Petitioner. Transferred intent is not applicable under the facts of this case.

Accomplice liability is not applicable to establish murder under the facts of this case. Petitioner was not aiding, abetting, assisting or conspiring with Tyrone Robinson. At the time Robinson shot and killed Khalil Singleton, neither Young Jr. nor Petitioner were shooting. Instead, at the time of the fatal shooting Petitioner and Young Jr. were leaving the neighborhood in their truck. If Young Jr. shot Robinson, Young Sr. could be charged under the accomplice liability theory.[3] In this case, however, Robinson shot Khalil Singleton. Neither Young Sr. or Young Jr. aided or abetted Robinson.

In State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), the South Carolina Supreme Court wrote:

> On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) (citing State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001).

S.C. Code §16–3–10 defines murder as "the killing of any person with malice aforethought, either express or implied." Viewing the evidence in the light most favorable to the State, the State failed to prove that Petitioner killed Khalil Singleton with malice aforethought. Mutual combat is inapplicable under the facts of this case involving the death of an innocent noncombatant. Neither the doctrine of transferred intent nor the doctrine of accomplice liability establishes the elements necessary to submit the murder charge to the jury. The trial judge erred in refusing to direct a verdict of acquittal when the State's evidence of murder was dependent

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[3] The jury may have found Petitioner guilty of the attempted murder of Robinson based on an accomplice liability theory.

upon a combination of mutual combat, accomplice liability and transferred intent to an innocent third party not engaged in mutual combat. The State's hybrid theory of liability based on mutual combat, accomplice liability and transferred intent is not supported by the law.

In finding no error in the trial judge's refusal to direct a verdict of acquittal because the State's evidence of murder was dependent upon a combination of mutual combat, accomplice liability and transferred intent to an innocent third party not engaged in mutual combat the Court of Appeals wrote:

> In State v. Young, Jr., 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018), *cert. granted* (May 9, 2019), this court determined that under such a factual scenario, even though a non-participating innocent bystander was the victim, mutual combat is an appropriate basis for a murder charge. *See id.* at 434, 818 S.E.2d at 490-91 (finding, under this scenario, the trial court did not err in finding mutual combat a viable theory of prosecution for the murder charge); id. at 434-35, 818 S.E.2d at 491 (determining the trial court did not err in applying the doctrine of transferred intent to Young, Jr., noting there was evidence Robinson fired at the Youngs with intent to kill such that his intent was transferred to Victim, and 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).

State v. Young Sr., Op. No. 2019-UP-233 (S.C. Ct.App. filed June 26, 2019). The Court of Appeals misapprehended the law of mutual combat by improperly expanding the law to apply to an innocent noncombatant.

Addressing accomplice liability, the Court of Appeals wrote:

> The theory of criminal responsibility here was not based upon any assertion that the Youngs and Robinson were working in concert; rather, it was that *Young, Sr. and Young, Jr. aided and abetted each other* in mutual combat with Robinson in their attempt to kill Robinson, ultimately culminating in the death of Victim. See State v. Harry, 420 S.C. 290, 299, 803 S.E.2d 272, 276-77 (2017) ("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." (alteration in original) (quoting State v. Thompson, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704 05) (Ct. App. 2007))).

State v. Young Sr., Op. No. 2019-UP-233 (S.C. Ct.App. filed June 26, 2019).

Again, the Court of Appeals misapprehended the law of mutual combat by combining it with accomplice liability. Any accomplice liability between the Youngs did not culminate in the death of the innocent bystander. As discussed in issue two below, the State failed to establish that Petitioner was engaged in mutual combat with Robinson at the time Robinson fatally shot the innocent third party. The three sets of shots heard by Mitchell and other witnesses reflect 1.) shooting before Robinson appeared at Mitchell's home and announced that the "MFs were out there shooting at him." (R. p. 519, lines 10-19); 2.) Young Jr. shooting into Robinson's unoccupied car; and then 3.) Robinson shooting at the Youngs as they were leaving in their truck but fatally striking the innocent bystander.

Neither mutual combat, nor transferred intent nor accomplice liability individually establish liability for Petitioner. The State's hybrid theory of liability combining mutual combat, accomplice liability and transferred intent to an innocent third party not engaged in mutual combat is not recognized under the law. The trial judge should have directed a verdict of acquittal for the murder charge.

2. The trial judge erred in refusing to direct a verdict of acquittal for murder when the State failed to establish mutual combat at the time of the fatal shooting.

As argued above in issue one, the State's theory of liability based on mutual combat, accomplice liability and transferred intent is not recognized by South Carolina law and should not be. If this Court, however, decides to extend the theory of mutual combat to innocent bystander noncombatants, the theory would not apply in the present case because at the time Robinson shot Khalil Singleton, Petitioner was not engaged in mutual combat. The testimony reflects that Petitioner and his son were leaving the neighborhood on Allen Road in their truck when Robinson shot at them, killing Khalil Singleton.

Five minutes after hearing the second set of rapid shots, presumably the shots being fired into Robinson's unoccupied car, Charlese Mitchell saw Petitioner in his truck coming from Allen Road toward Spanish Wells. (R. p. 537, lines 1-15). Then Mitchell heard the last three shots which the evidence at trial established were shots fired by Tyrone Robinson, one of which killed Khalil Singleton. Mitchell confirmed that no one was firing weapons from the truck when it drove past her house. (R. p. 531, lines 4-6). If this Court extends the doctrine of mutual combat to apply to a noncombatant killed by a combatant, the State must still prove that two combatants were firing at each other in order to establish mutual combat. See State v. Graham, 260 S.C. 449, 196 S.E.2d 495 (1973). At the time Khalil was shot and killed only one person was shooting a gun, Tyrone Robinson. The State failed to prove that Petitioner was engaged in mutual combat at the time of the fatal shooting.

As discussed above, on appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) (citing State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). The defendant is entitled to a directed verdict when the State fails to produce evidence of the

offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). Viewing the evidence in the light most favorable to the State, the State failed to prove mutual combat, the only theory upon which the State sought to impose liability upon Petitioner. Tyrone Robinson, not Petitioner or his son, was the shooter. Petitioner was not aiding or abetting or conspiring with Robinson. The trial judge erred in refusing to direct a verdict of acquittal for the murder of Khalil Singleton because the State failed to establish mutual combat at the time of the fatal shooting.

In finding no error in the trial judge's refusal to direct a verdict of acquittal because the State failed to establish mutual combat at the time of the fatal shooting the Court of Appeals first questioned whether the issue was preserved writing:

> The specific arguments Young, Sr. made in support of his directed verdict motion were (1) that he did not aid, abet, assist or conspire with Robinson; (2) there was no indication he ever fired a weapon; (3) there was no evidence Victim's death was the natural consequence of the actions of shooting up a car; (4) the elements of murder had not been satisfied; and (5) "mutual combat has not been proven." Thus, he only *generally* asserted to the trial court in his directed verdict motion that mutual combat had not been proven, but provided no explanation for why it had not been proven. Even assuming his arguments—that there was no evidence he ever fired a weapon or that Victim's death was the natural consequence of his actions—supported his claim that the evidence was insufficient to show mutual combat, he does not argue these bases on appeal. Further, he never argued to the trial court, as he does on appeal, that the State failed to establish mutual combat because it failed to prove Young, Sr. was engaged in mutual combat *at the time of the fatal shooting*. Young, Sr. never argued to the trial court that the State was required to show he was engaged in the exchange of gunfire with Robinson at the exact moment Victim was shot by Robinson, or that the evidence showed he had withdrawn from the mutual combat at the time of the fatal shot. Accordingly, we question whether these arguments are preserved for our review.

State v. Young Sr., Op. No. 2019-UP-233 (S.C. Ct.App. filed June 26, 2019).

In response to the directed verdict motion the State argued, although a mischaracterization, that this was a "shoot out." (R. p. 655, lines 23-24). The trial judge ruled that "[I]t is, in fact, in my view a factor of the law rather than the narrow facts themselves, which

impose liability – a potential liability on Mr. Aaron Young, Senior." Both the State's argument and the judge's ruling reflect that Petitioner's general challenge that the State failed to prove mutual combat included the argument that the State failed to prove that Petitioner was engaged in mutual combat with Robinson at the time Robinson fired the fatal shot. The issue is preserved for appellate review.

The Court of Appeals then addressed the issue and wrote:

> Nonetheless, even assuming the matter is preserved, we find the State presented sufficient evidence of mutual combat such that the trial court properly presented the matter to the jury. There is evidence from witness Mitchell and witness Tyrone Delaney that Robinson indicated to them the combatants had been shooting at each other. Thereafter these witnesses heard a set of rapid gunshots and then three different sounding gun shots, ultimately resulting in Victim's death. Although Mitchell testified she thought approximately ten minutes passed between the second set of rapid shots and the three different sounding shots, Delaney testified the rapid fire shots and the set of three shots were not far apart from each other and were closer together than five to ten minutes. Additionally, there is evidence from Young, Sr.'s statement to the authorities that Robinson was walking and shooting at their truck when Young, Jr. returned gunfire at Robinson. There also is evidence in the record of Robinson being out of his truck and walking during the exchange of gunfire between the parties when he was in the Allen Road area right before Victim was shot. Accordingly, evidence was presented from which the jury could conclude the Youngs and Robinson were engaged in mutual combat around the time Victim was fatally shot.

State v. Young Sr., Op. No. 2019-UP-233 (S.C. Ct.App. filed June 26, 2019).

In finding that the State presented evidence from which a jury could conclude that the Youngs and Robinson engaged in mutual combat, the Court of Appeals overlooked the fact that this was not a "shoot-out" as argued by the State. There were breaks between the three separate sets of gunshots heard by witnesses. As discussed above, the three sets of shots heard by Mitchell and other witnesses reflect 1.) shooting before Robinson appeared at Mitchell's home and announced that the "MFs were out there shooting at him." (R. p. 519, lines 10-19); 2.) Young Jr. shooting into Robinson's unoccupied car; and then 3.) Robinson shooting at the

Youngs as they were leaving in their truck but fatally striking the innocent bystander. The innocent bystander was not caught in the cross-fire between the Youngs and Robinson. Instead, the innocent bystander was shot and killed when Robinson alone fired shots at the Youngs as they were leaving. The State presented no evidence that the Youngs and Robinson were engaged in mutual combat at the time of the fatal shooting. The judge erred in refusing to direct a verdict of acquittal.

The Court of Appeals additionally wrote:

> Finally, no evidence suggests Young, Sr. withdrew from the conflict in good faith or that by word or act he made such known to Robinson. See State v. Graham, 260 S.C. 449, 451, 196 S.E.2d 495, 495-96 (1973) ("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. . . ." (quoting 40C.J.S. *Homicide* § 122, p. 996)).

State v. Young Sr., Op. No. 2019-UP-233 (S.C. Ct.App. filed June 26, 2019).

The Court of Appeals erred. First, Petitioner did not need to claim self-defense as neither he nor Young Jr. were shooting at Robinson when Robinson shot at them, further illustrating that the Youngs were not engaged in mutual combat with Robinson at the time of the fatal shooting. Second, while there was evidence of exchanged gunfire before Robinson fired the fatal shot and evidence that the Young Jr. shot into Robinson's unoccupied car before Robinson fired the fatal shot, at the time of the fatal shooting, the Youngs were leaving, not engaged in mutual combat.

CONCLUSION

Based on the above arguments above, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of September, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County
Honorable Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 2019-UP-233 (S.C. Ct. App. filed June 26, 2019)
2012-GS-07-2173;2014-GS-07-1941

THE STATE,

RESPONDENT,

V.

AARON YOUNG, SR.,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Aaron Young, Sr., ##288580, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of September, 2019.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 20th day of September, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019