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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON YOUNG, SR.,

APPELLANT

APPELLATE CASE NO 2016-000873

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err 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 trial judge err 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 appellant Young for murder and attempted murder, indictments #2012-GS-07-2173, 2014-GS-07-1941. On August 10, 2015, Appellant proceeded to jury trial before the Honorable Thomas W. Cooper. Robert Ferguson represented Appellant at trial. Isaac McDuffie Stone, III, and Sean Thorton prosecuted the case. The jury returned verdicts of guilty on both counts. Judge Cooper sentenced Appellant 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. This appeal follows.

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 Appellant and his son, Aaron Young Jr. as they were leaving the neighborhood in their truck. Appellant 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 the 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.

ARGUMENTS

1. 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 Appellant 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).

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 Appellant and Robinson

were struggling over the gun, Robinson shot in the air two times and then shot at Appellant'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, Appellant retrieved a duffle bag from inside the house and then Appellant, Young Jr. and Junto Singleton got into Appellant's gray pickup truck. (R. p. 571, line 20 – p. 572, lines 1-15). Junto Singleton testified that as Appellant 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 Appellant and Young Jr. left again. (R. p. 576, line 2 – p. 577, lines 1-8).

Charlese Mitchell, Appellant's cousin, testified that on September 1, 2012, about 4:00 PM she heard a round of quick shots and then saw Appellant 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 Appellant, 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 Appellant again drive past her house. (R. p. 525, line 11 – p. 526, lines 1-17; p. 537, lines 1-4). As Appellant'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 Appellant'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). Appellant provided statements to Investigators Seifert and Bromage with the Beaufort County Sheriff's Department. Appellant told the officers that his son shot at Robinson because Robinson was shooting at them. (R. p. 602, lines 2-5).

At the close of the State's case Appellant 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 Appellant ever fired a weapon. (R. p. 654, lines 24-25). Counsel noted that Appellant 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.

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 classical example of the uncommon and outdated theory of mutual combat. 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 Appellant under the facts of this case.

Transferred intent does not establish liability for Appellant 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:

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

> 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 Appellant 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 Appellant and Young Jr. Robinson's malice and intent to kill Appellant was transferred to the unintended victim. The State, however, failed to prove malice as it relates to Appellant. Robinson was the shooter, not Appellant. 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. Appellant was not aiding, abetting, assisting or conspiring with Tyrone Robinson. At the time Robinson shot and killed Khalil Singleton, neither Young Jr. nor Appellant were shooting.

Instead, at the time of the fatal shooting Appellant and Young Jr. were leaving the neighborhood in their truck.

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 Appellant 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 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.

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 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, Appellant was not engaged in mutual combat. The testimony reflects that Appellant and his son were leaving the neighborhood on Allen Road in their truck when Robinson shot at them, killing Khalil Singleton.

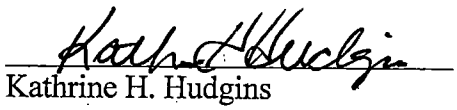
Five minutes after hearing the second set of rapid shots, Charlese Mitchell saw Appellant in his truck coming from Allen Road toward Spanish Wells. (R. p. 537, lines 1-15). Then Mitchell heard the last three shots which the evidence at trial established were shots fired by Tyrone Robinson, one of which 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 Appellant 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 Appellant. Tyrone Robinson, not Appellant or his son, was the shooter. Appellant 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.

CONCLUSION

Based on the above arguments, this Court should reverse the murder conviction and sentence.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 18th, 2017

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AARON YOUNG, SR.,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 18th day of September, 2017.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.