THE STATE OF SOUTH CAROLINA
In The Supreme Court



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Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

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The State, Respondent,

v.

Aaron Scott Young, Jr., Petitioner.

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# BRIEF OF PETITIONER

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F. Elliotte Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive
Summerville, SC 29483

Jennifer K. Dunlap
Parker Poe Adams & Bernstein LLP
200 Meeting St., Ste. 301
Charleston, SC 29401

ATTORNEYS FOR PETITIONER

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## ISSUES PRESENTED

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

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

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

## STATEMENT OF THE CASE

After Petitioner Aaron Scott Young, Jr. ("Petitioner") was indicted for murder and attempted murder, his trial was held February 23–25, 2015, before a jury with the Honorable Thomas W. Cooper, Jr. presiding. The jury found Petitioner guilty on both charges, and the trial court sentenced Petitioner to concurrent thirty year sentences. On March 6, 2015, Petitioner served a Notice of Appeal. On August 22, 2018, the Court of Appeals affirmed Petitioner's convictions. *State v. Young*, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018). Petitioner filed a petition for rehearing, and the Court of Appeals denied the petition. Petitioner filed a petition for writ of certiorari to the Court of Appeals, and this Court granted the petition on May 9, 2019.

## STATEMENT OF FACTS

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

### A. Wild Horse Road Incident

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

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

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

**B. Bryant Road**

Petitioner and Young, Sr. then traveled to Robinson's home on Bryant Road where they found Robinson. (State's Ex. 38, Video 7; R. 635.) The gun was jammed at that time, and Petitioner did not try to shoot at or even point the gun at Robinson. (State's Ex. 38, Video 7; R. 635.) Robinson fled, and Young, Sr. drove Petitioner and Campbell back to Wild Horse Road where they debated whether to continue looking for Robinson and ultimately decided to do so. (R. 485–86, 635; State's Ex. 38, Video 7.)

**C. First Allen Road Incident**

Petitioner and Young, Sr. drove to Allen Road where they found Robinson's car, but did not see Robinson. (R. 485, 635; State's Ex. 38, Videos 1 & 2.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the Allen Road area. (R. 300–01). The gunshots were Petitioner firing into Robinson's unoccupied car. (R. 635; State's Ex. 38, Videos 2, 3, & 6.) The windows of Robinson's vehicle were not tinted, and a person could see through the windows that no one was in the car. (R. 488–529.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants' pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the

video, and he described the events of the day. (R. 396, 635; State's Ex. 38.) Young, Sr. was also interviewed and directed the police to a home off of Wild Horse Road and a handgun inside a black bag in the home. (R. 402.)

**F. Trial, Conviction, and Sentencing**

Petitioner was indicted and tried for murder and attempted murder—the murder of Khalil and the attempted murder of Robinson. Prior to the jury being sworn, Petitioner moved to quash the indictment on the grounds it did not allege he shot the victim, it was undisputed Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (R. 211–37.) Petitioner further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a basis for a murder conviction. (R. 211–37.) The trial judge denied Petitioner's motion, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (R. 265–69.)

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

kill Robinson. (R. 508–11.) The judge denied the motion, and Petitioner presented no additional evidence. (R. 514–21, 524.)

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

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

## ARGUMENT

### I. THE COURT OF APPEALS ERRED IN HOLDING THAT MUTUAL COMBAT ALONE IS RECOGNIZED BY SOUTH CAROLINA LAW AS A SUFFICIENT BASIS FOR A MURDER CONVICTION AND THAT THE EVIDENCE SUPPORTED FINDING MUTUAL COMBAT.

The Court of Appeals erred in affirming the denial of Petitioner's motions for a directed verdict, to quash the indictment, and for a new trial on the murder charge.[2] The Court of

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

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

Petitioner's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State in this case. It is undisputed that Robinson, not Petitioner, shot and killed Khalil, and the State presented no evidence or argument to suggest that Petitioner engaged in any conspiracy with or otherwise aided Robinson. (R. 234–35, 242.) Rather, as acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent, and the State explicitly disavowed any other legal basis for the murder charge. (R. 219, 235–36, 518.)

On the appellate review of a denial of a directed verdict motion, the Court views the evidence in the light favorable to the State. *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625–26 (1996). Where there is no direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court erred in denying the motion for a directed verdict and the defendant's conviction must be reversed. *See State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); *Copeland*, 321 S.C. at 326, 468 S.E.2d at 625–26.

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submits the Court of Appeals and trial court erred in denying the motion to quash and motion for a new trial for the same reasons and incorporates those motions as alternative bases for relief. *See State v. Smith*, 316 S.C. 53, 56, 447 S.E.2d 175, 176 (1993) (affirming trial court's grant of a new trial based on a lack of evidence to support the jury's verdict where the defendant failed to appeal the denial of his motion for a directed verdict).

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

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

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). South Carolina courts have never recognized mutual combat as a basis for murder. Rather, the doctrine of mutual combat is a limitation on self-defense, and every South Carolina appellate decision discussing mutual combat considered it only in relation to self-defense.[3] As recognized in all of the South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State also present the required proof to establish the elements of murder. Accordingly, even if Petitioner was engaged in mutual combat with Robinson at the time of Khalil's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example: conspiracy, aiding and abetting, or the felony murder rule—

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

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

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

Therefore, because the Court of Appeals and trial court created and applied a mutual combat theory of murder not recognized by South Carolina law and relied on it as the sole basis for denying Petitioner's directed verdict motion, the Court of Appeals and trial court erred, and the denial of the directed verdict motion and Petitioner's murder conviction should be reversed.

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

Even if mutual combat alone could support a murder conviction under South Carolina law, no evidence was presented at trial to support a finding that Petitioner and Robinson engaged

in mutual combat at any time on the day in question. Therefore, the trial court erred in denying Petitioner's directed verdict motion, and the Court of Appeals erred in affirming that denial.

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

Here, no evidence was presented from which a jury could conclude Petitioner and Robinson *mutually agreed or intended* to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Petitioner. Petitioner's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson. While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Petitioner or

Young, Sr. were armed or that Petitioner or Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4. There also was no evidence from which a jury could conclude Robinson expected Petitioner and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle was between Robinson and Young, Sr., and there was no evidence that Petitioner was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Petitioner's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Petitioner found Robinson there. The State did not introduce any evidence that Robinson, Petitioner, or Young, Sr. engaged or attempted to engage in combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Petitioner and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Petitioner and Young, Sr. arrived on Allen Road where they found Robinson's car. The uncontroverted evidence at trial showed Robinson was not present during this incident. Rather, this incident consisted solely of Petitioner firing a weapon at Robinson's unoccupied car. While Petitioner's actions in firing at Robinson's car were destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Petitioner began firing at his vehicle and did not come to the scene to fight once Petitioner began firing. Petitioner did not know

where Robinson was, Petitioner fired exclusively at Robinson's car, and Robinson did not come to the scene.

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

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Petitioner only when he believed Petitioner could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Petitioner and Young, Sr. at they left Allen Road. Neither of these acts are indicative of an agreement or intent to engage in combat by Robinson. Moreover, Petitioner never engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Petitioner ever pointed or fired a weapon at Robinson. (R. 487.) Petitioner fired at Robinson's unoccupied vehicle which, while reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the Court of Appeals erred in affirming the denial of Petitioner's directed verdict motion.

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

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Petitioner engaged in mutual combat, there must be a beginning and end to mutual combat. Contrary to the Court of Appeal's holding, the evidence in this case established any mutual combat ended prior to Robinson firing the fatal shot, and therefore, the trial court should have granted Petitioner's directed verdict motion on the murder charge.

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

In Petitioner's case, the uncontroverted evidence presented at trial established that Petitioner had withdrawn from any combat at the time Robinson fired the fatal shot and his withdrawal was known to Robinson. At the time the fatal shot was fired, Petitioner was fleeing the area, Robinson was in a hidden position, Petitioner had no knowledge of Robinson hiding nearby, a significant amount of time had elapsed since Petitioner ceased firing at Robinson's vehicle, and Robinson fired the fatal shot at a different location from where Petitioner had been firing at Robinson's vehicle. Specifically, the State's witness, Sergeant Laurel Albertin, testified that there was no evidence to suggest Petitioner saw Robinson on Allen Road, (R. 485), and in ruling on Petitioner's directed verdict motion, the trial judge stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots," (R. 520).

Additionally, there was no evidence presented to show Petitioner or Young, Sr. were engaged in any combative or threatening act at the time Robinson fired the fatal shot. To the contrary, the evidence indicated Petitioner and Young, Sr. were fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road," (R. 302), and the trial judge acknowledged this, stating: "they shot [Robinson's car] and they left in a hurry," (R. 520). A significant period of time elapsed between when Petitioner fired at Robinson's car and when Robinson fired the fatal shot as established by witness testimony that Robinson fired his weapon approximately *ten minutes after* Petitioner ceased firing at Robinson's vehicle. (R. 302–303, 322–325). Therefore, the uncontroverted evidence at trial established that any mutual combat had ended prior to when Robinson fired the fatal shot because Petitioner was withdrawing from the scene and Robinson knew Petitioner was withdrawing and had no reason to believe Petitioner was engaged in mutual combat with him.

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

expected any harm was imminent. To the contrary, Robinson was in a hidden position, safe from harm, and able to call the police. If an adversary is able to call the police and involve law enforcement, the law cannot reasonably expect anything more occur for a conflict to have ended. Were the law otherwise, mutual combat would never end and a mutual combatant could be held responsible for the acts of his opponent when his opponent unilaterally reinitiates violence days, weeks, or months after the combatant previously withdrew from the scene of combat.

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

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Petitioner requested a jury charge on the end of mutual combat, and the trial court denied the request. (R. 520–21.) Not only did the Court of Appeals err in affirming the trial court's refusal to give the requested charge, the Court of Appeals erred by applying the wrong standard of review.

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

The *Mattison* decision cited by the Court of Appeals for the standard of review does apply an abuse of discretion standard in relation to requested jury charges, but the *Mattison*

decision applies when an appellant argues the content of a charge on a particular issue should have been different, not when the trial judge refuses to give any charge on a particular legal element as occurred here. Specifically, *Mattison* provides the standard where a party requests specific jury charge language, and the trial court declines the request but uses other language addressing the issue of law the requested charge was to address. *See Mattison*, 388 S.C. at 479, 697 S.E.2d at 583–84 ("However, if the trial judge refuses to give a *specific* charge, there is no error *if the charge actually given covers the substance of the request*. . . . Failure to give requested jury instructions is not prejudicial error *where the instructions given afford the proper test for determining the issues.*" (emphasis added and internal quotations and citations omitted)). That scenario is not the issue in this case.

The issue here is the trial court's refusal to give *any* charge on when mutual combat ends; an issue governed by the "any evidence" standard set forth in *Burriss*. The *Burriss* decision is clear that: "It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *Burriss*, 334 S.C. at 262, 513 S.E.2d at 108.

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

that he was not firing at or engaged in any other violence at the time Robinson fired the fatal shot is some evidence from which a jury could conclude that any mutual combat had ended and which supports giving a charge on the end of mutual combat.

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

Petitioner moved for a direct verdict on the attempted murder charge on the ground that there was no evidence that he ever fired or even pointed a weapon at Robinson. This Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The Court of Appeals here erroneously held three items of evidence constitute substantial circumstantial evidence sufficient to submit the attempted murder charge to the jury:

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

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

(3) Petitioner's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence that Petitioner shot at or attempted to shoot Robinson.

As set forth in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001), a trial court must grant a directed verdict when there is no evidence to support an element of a charge or only evidence which "merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50. South Carolina's appellate courts have found *insufficient* to overcome a directed verdict motion evidence significantly more substantial than the evidence presented here as to attempted murder.

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

At trial, the State failed to produce a single witness who saw Petitioner fire, or even point, a gun at Robinson. To the contrary, the evidence showed that the one time that Robinson and Petitioner were present at the same location when Petitioner was armed, Petitioner's gun was jammed and he did not try to shoot at Robinson or even point the gun at him. (State's Ex. 38, Video 7; R. 635.) Moreover, Sergeant Albertin testified she had no evidence that Petitioner ever pointed a gun at or shot at Robinson. (R. 486–87.)

Finally, the Court of Appeals misapprehended the evidence regarding Robinson's statements to Mitchell and Delaney. First, the Court of Appeals' decision states that "Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him." *Young*, 818 S.E.2d at 493. This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that *Petitioner* was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.)

The Court of Appeals' decision also misconstrues the evidence in stating that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Petitioner specifically. Instead, Delaney testified that Robinson asked if Delaney had seen a grey truck, and when Delaney responded that he had seen a grey truck, Robison responded: "yeah they was

shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Petitioner by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Petitioner and his father were driving around in a grey truck, he did not identify the grey truck as the Youngs' truck, much less identify who was in the grey truck at the time he was referring to.

Additionally, Robinson's statements to Mitchell and Delaney do not provide the context necessary for a jury to make anything more than an unsupported inference from those statements. Robinson's statements do not identify when or where the purported shooting took place. The evidence at trial established there had been previous confrontations between Robinson and Petitioner as acknowledged by the Court's decision stating: "[Petitioner] specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." *Young*, 818 S.E.2d at 492. Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Petitioner fired at Robinson's car or to some other instance of gun fire.

In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no evidence to conclude that the appellant rather than the other person caused the victim's death, there was not substantial circumstantial evidence to overcome a directed verdict motion. *Hepburn*, 406 S.C. at 440, 753 S.E.2d at 415. Similarly here, even were the necessary context available for a jury to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence is that there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Petitioner rather than one of the other occupants fired any shots at Robinson.

## CONCLUSION

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

Respectfully submitted,

F. Elliotte Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive
Summerville, SC 29483
(843) 871-6522

Jennifer K. Dunlap
Parker Poe Adams & Bernstein, LLP
200 Meeting St., Ste. 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Certiorari to Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

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The State, Respondent,

v.

Aaron Scott Young, Jr., Petitioner.

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CERTIFICATE OF SERVICE

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The undersigned certifies on June 6, 2019, he caused a copy of the foregoing 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:

Hon. Alan McCrory Wilson
Donald J. Zelenka
Melody Jane Brown
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Robert Michael Dudek
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

Solicitor Isaac McDuffie Stone III
P.O. Box 1880
Bluffton, SC 29910

F. Elliotte Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive, Ste. A
Summerville, SC 29484
(843) 871-6522