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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM BEAUFORT COUNTY
Thomas W. Cooper, Circuit Court Judge

Op. No. 2019-UP-233 (S.C. Ct. App. refiled June 26, 2019)

THE STATE,

Respondent,

v.

AARON YOUNG, SR.,

Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Appellate Case No. 2019-001595

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PETITIONER'S 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 September 1, 2012, Petitioner, his son, and Tyrone Robinson murdered Khalil Singleton in Beaufort County while the 3 men were engaged in mutual combat with firearms. Petitioner was indicted for Singleton's murder (Ind. # 2012-GS-07-2173) and the attempted murder of Robinson (Ind. # 2014-GS-07-1941). On August 10, 2015, Petitioner proceeded to a jury trial before Judge Thomas W. Cooper. Robert Ferguson represented Petitioner. On August 12, 2015, the jury returned verdicts of guilty of murder and attempted murder.[1] Petitioner was sentenced to 30 years for murder and 20 years for attempted murder concurrent. (R. 354-60, 497-561, 565-608, 613-57, 674-732, 736-49, 758-94, 796-828, 830-38, 843-48, 851-61; State's Ex. 1-27; Indictments). Petitioner appealed the murder conviction only raising 2 directed verdict issues. (IBOA, p. 1). The Court of Appeals affirmed in an unpublished opinion. State v. Aaron Young, Sr., 2019-UP-233 (Ct. App. filed June 26, 2019). A petition for rehearing was denied. Petitioner filed a petition for writ of certiorari in this Court. This is Respondent's Return to the same.

RESPONDENT'S STATEMENT OF FACTS

On the afternoon of September 1, 2012, 8 year-old Khalil Singleton, an innocent bystander, was shot to death in the midst of an ongoing running gun battle between 3 men: Petitioner, Aaron Young, Sr.; his son Aaron Young, Jr., and Tyrone Robinson, which erupted on and traversed several different locations on Hilton Head Island, eventually ending in front of a group of children jumping on a trampoline. It was there Khalil was murdered trying to flee home on foot to safety from the running gun battle. (R. 354-60, 497-561, 565-608, 613-57, 674-732, 736-49, 758-94, 796-828, 830-38, 843-48, 851-61; State's Ex. 1-27; Indictments).

[1] Petitioner's co-defendants, Tyrone Robinson and Petitioner's son Aaron Young, Jr., were tried in separate trials before juries of their peers. Robinson was convicted of murder and sentenced to life in prison by Judge Cooper. Young, Jr. was convicted of murder and attempted murder and sentenced to 30 years for murder and 30 years concurrent for attempted murder by Judge Cooper.

How the Conflict Erupted

Earlier that afternoon, about 4:00 p.m., Tyrone Robinson ("Robinson") and Jontu Singleton, Sr. ("Jontu") were headed to the store in Robinson's car. The 2 men stopped by the home of Petitioner and his son Aaron Young, Jr. ("son" or "Young, Jr.") on Wild Horse Rd. because Jontu wanted to ask Petitioner for money to buy cigarettes. Petitioner and his son were in the yard when Robinson and Jontu drove up. Jontu exited the car and spoke with Petitioner about borrowing the money. Robinson then exited his car approaching Young, Jr. with a .38 revolver in his hand. Robinson and the 2 Young(s) had animosity towards each other due to prior altercations. After seeing Robinson with the gun, Petitioner tried to take the gun away from Robinson but it accidently fired. Petitioner backed away as Robinson fired several shots in the ground near Petitioner's feet. Robinson then got in his car and drove away leaving Jontu. (R. 565-81; State's Ex. 17, Interview of Petitioner; State's Ex. 3, 911 calls).

The Running Gun Battle or Shootout resulting in the Death of an 8 year old child

Instead of calling police and reporting the shooting, Petitioner and his son decided to go after Robinson and shoot or kill him. Petitioner and his son went in a nearby home, and Petitioner emerged with a black bag containing a "Tech Nine" 9MM semi-automatic pistol, which resembles a small submachine gun, a 30 round magazine, and a box of ammo. Petitioner, his son, and Jontu got in Petitioner's grey Ford F-150 pick-up truck, drove out of the yard, and began searching for Robinson on the public roads of Hilton Head Island. Petitioner drove while Jontu sat in the center seat and Young, Jr. was in the passenger seat. Petitioner handed the bag containing the "Tech Nine" to his son. The 3 men drove down Spanish Wells Rd. and veered off on Oakview Rd. after Petitioner thought he saw Robinson driving on that road. Young, Jr. pulled the contents out of the black bag, and with Petitioner giving his son instructions on how to

assemble the gun, Young, Jr. assembled the 9mm. Petitioner stopped and inquired of someone who resided in the Oakview community if he had seen Robinson and received a negative response. Unable to catch up with the car Petitioner saw earlier and unable to find Robinson, the 3 men continued their search and headed towards Robinson's home on Allen Rd. located off of Marshland Rd. When they arrived there, Robinson was nowhere to be found. Jontu got out of the truck to talk to his son, who lived nearby, but no one was home. Because the men could not locate Robinson, they returned to Petitioner's home and Jontu got out of the truck. Petitioner and his son drove off again in the truck, with the loaded "Tech Nine," in search of Robinson. (R. 565-81, 727-28; State's Ex. 17, Int. of Petitioner).

Minutes later, Petitioner and his son finally tracked down Robinson on Oakview Rd. Young, Jr., holding the gun, leaned out the passenger window of the truck, and tried to shoot Robinson who was in his car, but the gun jammed. Robinson brandished his .38 out his car window and fired his gun at them.[2] Robinson left the area, and Petitioner and his son decided to continue the pursuit and drive back to Robinson's home on Allen Rd. (R. 565-81, 696, 700-01, 718; State's Ex. 17, Int. of Petitioner/ Interview 1 and 7; State's Ex. 3, 911 calls).

While Petitioner and his son were driving down Marshland Rd. and eventually onto Allen Rd., a group of children was playing on a trampoline a short distance away from where Petitioner and his son spotted Robinson's car parked at his residence on Allen Rd. Upon arriving at Robinson's home, Petitioner drove into Robinson's yard and Young, Jr. drew the Tech 9 again. Robinson came out of somewhere on foot and began firing bullets with his .38 at Petitioner and his son in the truck, and Young, Jr. began firing bullets at Robinson with the 9mm. Petitioner

[2] As the gun battle was occurring, 1 witness called 911 to report the crime and told the dispatcher 2 cars were shooting at each other near Spanish Wells Rd. She identified the 2 cars involved as a grey truck and a grey Lexus. The woman told the dispatcher the man driving the car was Tyrone Robinson. (State's Ex. 3, 911 calls).

and his son drove away and back up Allen Rd. and then onto Marshland Rd. (R. 565-81, 727-28, 507-49; State's Ex. 17, Int. of Petitioner; State's Ex. 3, 911 calls).

Charlese Mitchell, who lived just off the beginning of Allen Rd. on Marshland Rd., heard 3 different sets of gunshots around 4:00 p.m. that afternoon. After the 1st round of shots, she saw a grey truck driven by her cousin, Petitioner, speeding down the road away from Allen Rd. with a passenger. This 1st set of shots were rapid gunshots that sounded like 10 shots.[3] (R. 507-37). Co-defendant Robinson, also a relative of Charlese's, then appeared at her door. She observed a gun sticking out of his pocket. Robinson, who appeared scared, told Charlese, "those M.F. was shooting at me." Charlese asked Robinson to leave. (R. 507-37).

While this was occurring, Tyrone Delaney, Charlese's boyfriend, was driving home on Spanish Wells Rd. between 4:00 and 5:00 p.m. when Petitioner's truck sped towards him and forced Delaney off the road to avoid a collision. Petitioner was coming from the direction of Robinson's home on Allen Rd. and Charlese's and Delaney's home on Marshland Rd. (R. 507-49). Moments later, when Delaney arrived home, Robinson was still there in the yard [after talking to Charlese], and Robinson asked Delaney if he had seen a grey truck.[4] Delaney told him about being run off the road. Robinson, brandishing a .38 revolver replied, "yeah they was shootin at me so I shoot back at them." Robinson then left the yard. Charlese confirmed when Delaney arrived home, he and Robinson spoke in the yard briefly and Robinson left. Delaney then came inside. (R. 507-49).

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[3] At about this same time, Kathleen Fayfich called 911 from 23 Peregrine Point off of Marshland Rd. Allen Rd. bordered her neighborhood. She informed 911: "we just heard 8 gunshots in rapid succession coming from Allen Rd." right behind her neighborhood. She called because of her concern for children in her neighborhood. She informed 911 the gunfire sounded like pistol gunfire from a 9mm or .40 caliber. (State's Ex. 3, 911 calls).

[4] Delaney did not hear the 1st round of rapid shots Charlese heard as he was headed home.

Petitioner and his son did not stop their pursuit of Robinson after running Delany off the road. They turned around and drove back down Marshland Rd. toward Allen Rd. for the 3rd time that day. On this occasion, with Petitioner still driving, Young, Jr. again fired out the window of the truck with the "Tech Nine" firing multiple shots into Robinson's car, which was parked in a yard at the end of Marshland Rd., shooting holes in the car's exterior and passenger compartment. Petitioner and his son then drove down and back up Allen Rd. looking for Robinson. (R. 565-81, 700-04, 715-20, 507-49, 550-60; State's Ex. 17; State's Ex. 3, 911 calls).[5]

At this point, because of the gunfire, Charlese told the children playing on the trampoline to come inside. Charlese's child came in her home. But, the other 2 children, including 8 year old Khalil, headed toward their own homes on foot. (R. 507-49).

Within minutes after Petitioner and his son shot up Robinson's car, Robinson fired 3 shots at Petitioner and Young, Jr., with the .38 from a yard on Marshland Rd. as Petitioner and his son turned onto Marshland Rd. off of Allen Rd.[6] Then, Charlese and Delaney heard someone

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[5] Charlese confirmed that minutes after Robinson left their yard, she heard another set [a 2nd set] of rapid gunshots [Young Jr. shooting Robinson's car] that sounded like they were coming from the left of Charlese' home on Marshland Rd. Delaney also confirmed a few minutes after Robinson left his yard and Delaney entered his home, he heard rapid gunshots [Young Jr. shooting Robinson's car] coming from near his home.

[6] Charlese was standing in her doorway and saw Petitioner in his grey truck turn onto Marshland Rd. off of Allen Rd. with his tires squealing and as this was occurring she heard 3 distinct gunshots that sounded like they were fired from a different gun than the gun firing the earlier rapid shots. Delaney also testified that minutes after the 2nd round of rapid shots, he heard 3 separate gunshots that seemed to have come from a different type of weapon [Robinson shooting]. (R. 507-49). Dominque Griffin, who lived at the end of Marshland Rd., was at home with his 3 week old baby. His step-son, Jontu Singleton, Jr. was outside playing with Khalil and Charlese's child. Griffin heard what sounded like "machine gun fire" from the direction of Indigo Plantation [Marshland Rd.] Griffin testified it sounded like a machine gun because it was continuous: "It was pow, pow, pow." Griffin got on top of his baby to protect him. When the shots ended, Griffin ran out his back door to check on his step-son. When he did, Little Jontu, age 9, was already at the back porch and was crying and pointing at Robinson, who was in Griffin's yard, saying: "he shot Khalil, he shot Khalil." Robinson was walking near Griffin's utility shed, i.e. Robinson had fired the 3 shots at Petitioner and his son from Griffin's yard as

screaming and discovered Khalil had been shot trying to make his way home to safety on foot from the running gun battle. [7] The bullets Robinson fired from Griffin's yard did not hit their intended targets, but instead 1 found its way to 8 year old Khalil striking him in the chest killing him. (R. 550-61, 715-17; 647-53; State's Ex. 3; State's Ex. 17).[8]

Robinson fled the area in his bullet-riddled car, and Petitioner and his son absconded from the area in Petitioner's truck.[9] (R. 550-61, 715-17; 647-53; State's Ex. 3; State's Ex. 17). Between 5:00 and 5:30 p.m., Petitioner and his son were pulled over by police. Officers located 3 spent 9mm shell casings in the truck's bed. At the scene of his arrest, after Miranda warnings, when asked why his son was leaning out the truck window shooting, Petitioner stated his son was shooting at Robinson because Robinson was shooting at them. Petitioner was then taken to the police station where he was Mirandized and interviewed. Petitioner eventually told officers where they could retrieve the Tech Nine. (R. 581-608, 684).

Petitioner's truck turned onto Marshland Rd., after Petitioner and his son shot up Robinson's car *and* after they drove down and back up Allen Rd. looking for Robinson.

[7] At about this time, another individual called 911 reporting gunshots on Allen Rd. The caller stated there were "multiple gun fires." They heard 6 or 8 gunshots that sounded like automatic weapons. "[T]hen it was at one end of the Road and then it sounded like they drove to the other end and...it just fired again." "It was bad." (State's Ex. 3, 911 calls).

[8] At about this time, Ms. Washington [first name unknown] called 911 extremely upset because she had found a young child lying on the ground with a gunshot wound and not breathing. Washington told the 911 operator: "We heard gunshots. We heard about 10 gunshots." Washington became more hysterical after realizing the child was Khalil. Washington, a nurse, was eventually able to calm herself enough to perform C.P.R. but Khalil was already dead. She identified "T" [Tyrone Robinson] as being involved in the shooting. (State's Ex. 3, 911 calls).

[9] After the shots were fired that caused Mr. Griffin to cover his infant son, Griffin saw Robinson walking quickly toward his car parked in Griffin's yard, which had bullet holes in the back window. Robinson got in hurriedly and backed into some lumber whereupon glass fell out of Robinson's back window into the car. Robinson then left out of Griffin's driveway and drove off toward Spanish Wells Rd. Charlese also confirmed that minutes after she heard the 3 distinct gunshots from the left of her home, she saw Robinson drive by headed up Marshland Rd. fast toward Spanish Wells Rd. and Robinson's back car window was shot out. (R. 550-59; 526-28).

After officer's located and arrested Robinson, they processed his car for evidence locating numerous fired bullets and a bullet fragment [5 in all] lodged in Robinson's car. These bullets and the fragment along with the shell casings from Petitioner's truck originated from the same weapon, a 9 MM semi-automatic weapon, not a .38 caliber weapon. The bullets fired into Robinson's car entered the car from different angles, which was consistent with Robinson's car being shot on more than 1 occasion on September 1st, not just in Griffin's yard. (R. 606-46).

Petitioner also admitted after Miranda warnings that he and his son were armed with the "Tech Nine" and went looking for Robinson to shoot and kill him. He was angry because Robinson had fired in the ground at his feet at his home and Robinson was attempting to kill his son. He wanted to kill Robinson. He did not call police after this initial incident at his residence. There was bad blood between he and Robinson from a prior occasion. He and his son first looked for Robinson in the Oakview Community because it was 1 of Robinson's known hangouts. Young, Jr., attempted to shoot or kill Robinson on Oakview Rd., but the "Tech Nine" jammed when he attempted to fire the gun into Robinson's car as Robinson drove past headed in the opposite direction. Robinson fired several times at them at this time with his gun. They located Robinson again on Allen Rd., and Young, Jr. fired several shots at Robinson that missed. They fired at Robinson at Robinson's residence was because Robinson had been shooting at them at that location when they pulled in Robinson's yard in Petitioner's truck. He and his son then fled from Robinson's yard and as they attempted to flee the area, Robinson then fired at them several times as they turned onto Marshland Rd. at the end of Allen Rd. (State's Ex. 17).

Petitioner called 2 witnesses in the defense case. Dr. Amanda Salas testified to her opinion Petitioner's statements were coerced; however, she gave detailed testimony about what Petitioner told her about the incident that further incriminated Petitioner. Dr. Salas admitted

Petitioner told her the following: Petitioner, his son, and Robinson did not get along because of a prior disagreement. Robinson came to Petitioner's house earlier in the day; they got into a fight; they struggled; Robinson fired a gun at Petitioner's feet, and Robinson left. Petitioner retrieved a gun from his mother's home; it was in a bag, unloaded with bullets nearby, and 1 magazine for the gun stayed loaded with 30 rounds, and there was an extra box of bullets. The gun was not kept in Petitioner's home, but in another location, his mother's home. Petitioner got in the truck with his son and they ran into Robinson at the Oakview neighborhood and Young, Jr. pointed the gun at Robinson. Robinson's car was going 1 way and Petitioner's truck was going the other. Young, Jr. was not able to shoot Robinson because the gun jammed or was not put together properly so it would not fire. Petitioner and his son then returned home. Petitioner and his son went back out driving to send a message to Robinson. According to this statement, they were only going to shoot up Robinson's car. They drove to Allen Rd. Petitioner was driving and his son was doing the shooting. When they got to Allen Rd., Petitioner's son fired the weapon they were using while Petitioner was driving. Dr. Salas admitted Petitioner told police, when asked why his son was hanging out the window of the truck shooting at Robinson, his son was shooting because Robinson was "shooting at us." Dr. Salas admitted this statement was made before any alleged element of coercion was introduced into any interrogation. (R. 694-708).

Petitioner also testified in his own defense and further incriminated himself. (R. 674-710, 711-31). He testified Robinson came to his home on the afternoon of September 1st and stated he wanted to talk to Petitioner's son. Robinson then pulled a gun and threatened to kill Petitioner. Petitioner claimed Robinson had been coming to his house for years terrorizing his family. Petitioner alleged Robinson had been burning down houses, hitting people with cars, and just being a menace to the community, and no one did anything about it. Petitioner claimed

Robinson shot at him, at his son, and at his family at his home on September 1st. After Robinson shot at him in his yard, he [Petitioner] "just lost it," was like a "battered spouse," and was not in his right mind psychologically. Petitioner went to another residence, obtained the "Tech Nine," and brought it out and gave it to his son to use. He chased after Robinson in his truck. Petitioner and his son went to Oakview and while he was driving the truck his son brandished the "Tech Nine" out the window, but Petitioner claimed at trial there was no exchange of gunfire there. No gunshots were fired on Oakview Rd. by his son because his son was having trouble assembling the 9mm. Petitioner returned to his home and thought about what he was doing and whether it was wrong. His son tried to talk him out of pursuing Robinson any further, but Petitioner did not listen. (R. 711-31). During the pursuit of Robinson, Petitioner came across a relative of Robinson and asked him if he had seen Robinson, and the relative said no. Petitioner does not like Robinson and wished Robinson was dead. (R. 727-28). Petitioner and his son then pursued Robinson in the Allen Rd. area but claimed they never saw him on there. Petitioner claimed they pulled in a yard; he lined up his truck with Robinson's car, his son shot the car up, and they left. Petitioner admitted he knew there were kids in the area at the time they shot up the car, but claimed they were careful to only shoot the car and not endanger the children who were playing nearby. Petitioner claimed what happened after that he did not know. He admitted as he was leaving the area of Allen Rd., he did hear gunshots. He claimed they only went down Allen Rd. 1 time, and then as they were leaving after shooting the car, Robinson fired at them. (R. 711-31).

APPELLATE ISSUE I.

A. As an additional sustaining ground, certiorari should be denied because this directed verdict issue was not preserved for appellate review.

In his Petition for Writ of Certiorari, in Appellate Issue I., Petitioner now argues on appeal he was entitled to a directed verdict because he alleges mutual combat is not a criminal

offense, but rather a bar to self-defense; transferred intent should not be applied to a mutual combat situation; and accomplice liability should not apply in a mutual combat situation. As an additional sustaining ground, this issue was not preserved for appellate review because it was not raised to the trial court at the directed verdict motion. (R. 654-57). State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214, 221 (Ct. App. 1998), *aff'd.* 524 S.E.2d 837 (1999); State v. Jordan, 255 S.C. 86, 177 S.E.2d 464 (1970); *See* State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)("A party cannot argue one ground for a directed verdict and then an alternative ground on appeal."). Petitioner's argument on appeal is completely different from what he raised at the directed verdict motion. Petitioner now raises a legal argument not the factual argument he raised below. Petitioner now argues he could not be convicted of murder under South Carolina law under legal principles of mutual combat, transferred intent, and accomplice liability.

B. Judge Cooper did not abuse his discretion and properly denied the motion for a directed verdict because under South Carolina law mutual combat, transferred intent, and accomplice liability can form the basis for a murder conviction.

Regardless, even if Petitioner preserved the issue he now argues to this Court, there is no merit to his argument. Judge Cooper did not abuse his discretion in holding mutual combat, transferred intent, and accomplice liability were valid legal principles on which to base a murder charge and conviction. (R. 656-57).[10] Accordingly, the Court of Appeals properly affirmed the denial of the motion for directed verdict. Therefore, certiorari should be denied.

Mutual combat, transferred intent, and accomplice liability are valid legal principles under South Carolina law which can form the basis of a murder conviction.

Petitioner now argues on appeal he was entitled to a directed verdict because he alleges mutual combat is not a criminal offense, but rather a bar to self-defense; transferred intent should

[10]Petitioner's son raised the same issue on appeal to the Court of Appeals and that Court affirmed. State v. Young, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018). This Court granted certiorari May 9, 2019 to review that opinion.

not be applied to a mutual combat situation; and accomplice liability should not apply in a mutual combat situation. However, contrary to Petitioner's assertions, under South Carolina law, mutual combat is a valid recognized legal principle under which one can be charged and convicted of murder, despite the fact it has fallen out of common use. State v. Brown, 108 S.C. 490, 95 S.E. 61 (1918); State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003); State v. Graham, 260 S.C. 449, 196 S.E.2d 495 (1973); State v. Andrews, 73 S.C. 257, 53 S.E. 423 (1906). While mutual combat is a bar to a self-defense claim, the theory is not limited to that 1 purpose. Brown, *supra.* In Brown, the State used mutual combat to convict multiple defendants for the death of 1 of the combatants[11] And, transferred intent, a valid legal principle under South Carolina law, would be applicable to Petitioner's case since an innocent bystander, a child, was killed, during the mutual combat, instead of a combatant. Finally, accomplice liability, a valid legal principle under South Carolina law, would be appropriate where Petitioner provided his son with the "Tech Nine" firearm to use during the running gun battle, told his son how to assemble the weapon, and drove his truck at all times while his son was firing the Tech Nine out of his truck during the ongoing running gun battle with Robinson that led to the innocent child's death.

The doctrine of mutual combat has existed in South Carolina law since 1843. Taylor, 356 S.C. at 231. The Court in Taylor acknowledged the doctrine had "fallen out of common use in recent years" but still found it to be binding law. Id. The escalating urban warfare in present-day society has resurrected the need for the doctrine of mutual combat. Here, the State took the long-standing and viable law of mutual combat and applied it to modern day facts.[12] Petitioner argues

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[11] Brown, 108 S.C. 490, 95 S.E. 61.

[12] The present case is not the only recent case in which the State has successfully prosecuted for murder both participants in armed mutual combat who were on opposite sides, where a 3rd person who was present, but not a participant in the armed mutual combat, was killed. *See e.g.* Final Brief of Respondent in State v. Eugene D. Patterson, *Unpublished Opinion* No. 2013-UP-154

the doctrine of mutual combat can only be used for the sole purpose of barring a plea of self-defense. This is an incorrect limitation of the law on mutual combat. Although mutual combat is commonly analyzed when a claim of self-defense is raised,[13] that is not its only application.

Numerous South Carolina cases have used the legal principle of mutual combat to hold a defendant guilty of murder. "Where two persons mutually engage in combat, and one kills the other, and at the time of the killing it be maliciously done, it is murder. If, on the other hand, it be done in sudden heat and passion on sufficient provocation without premeditation, or malice, it would be manslaughter." Andrews, 53 S.E. at 424;[14] *see also* State v. Hammond, 36 S.C.L. 91, 102 (S.C. App. L. 1850) ("Even in cases of mutual combat, if one begin the fight with a mortal weapon, it is murder..."); State v. Turner, 63 S.C. 548, 41 S.E. 778 (1902) ("Where there is evidence from which a jury may infer that there was mutual combat, on a trial for murder an instruction as to such combat is not error."); State v. Mathis, 174 S.C. 344, 177 S.E. 318, 319 (1934) ("There was evidence of threats which, if true, justified a verdict of premeditated murder. There was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other. There was no error in charging and arguing the law of mutual combat.").

The 1918 case of State v. Brown utilized the doctrine of mutual combat to hold multiple defendants accountable for the death of 1 of the combatants. 108 S.C. 490, 95 S.E. 61. Much

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(Ct. App. Filed April 17, 2013) and Final Brief of Respondent in State v. Andre Tayson Boone *Unpublished Opinion* No. 2013-UP-155 (Ct. App. Filed April 17, 2013). Respondent is not citing either of these Unpublished Opinions as precedential authority. Rule 268 (d)(2), SCACR.

[13] *See* Taylor, 356 S.C. at 232; Graham, 260 S.C. at 450, 196 S.E.2d at 495 ("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.").

[14] Judge Cooper instructed the jury on both murder and voluntary manslaughter. The jury returned a verdict of guilty of murder.

like the facts of Petitioner's case, all of the defendants were held responsible for the death of the victim even though only 1 of them had inflicted the fatal injury. In Brown, many employees at a local mill began to strike and picket after the mill organized a labor union. Id., 95 S.E. at 62. One morning, a fight erupted between current employees and strikers. Id. One of the men involved in the melee pulled out a knife and killed David Freize, another participant in the fight. Id. Two of the strikers and 3 of the employees were indicted for the murder of Freize. Id. On appeal, the defendant's alleged that it was improper to charge the law of mutual combat. Id. at 61. This Court affirmed the convictions and held, "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 are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences." Id. at 63.

In order for the doctrine of mutual combat to apply, multiple factors must be shown. In determining whether mutual combat exists, there must be evidence of a "mutual intent and willingness to fight." Jackson v. State, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003), *quoting* Graham, 260 S.C. at 450, 196 S.E.2d at 495. One looks to the "acts and conduct of the parties and circumstances attending and leading up to the combat" to determine mutual intent. Id. Also, there must be an antecedent agreement to fight. Taylor, 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of "ill-will between the parties," threats, and an "apparent willingness of each to engage in an armed encounter with the other" Id. The parties must also be armed and know the other to be armed. Id.

As discussed under Appellate Issue II., the State presented overwhelming evidence of all the factors for mutual combat and thus the legal principle was appropriately applied to this case. Petitioner contends it was error for the State to use the theory of mutual combat to prove murder. Specifically, he claims the State failed to prove the elements of murder in general. However, the State did prove the elements of murder, and the jury was instructed on the law of murder and they found the State had met its burden of proof in establishing the elements of murder beyond a reasonable doubt. The State proved Petitioner did act with malice by attempting to murder Robinson and in doing so engaged in a running gun battle with Robinson in residential neighborhoods in broad daylight with children playing nearby constituting a depraved and wicked heart and one acting with gross recklessness. *See* State v. Wilds, 355 S.C. 269, 276-77, 584 S.E.2d 138, 141-42 (Ct. App. 2003)(defining malice). The State proved Khalil was killed as a direct and proximate result of the running gun battle between Petitioner, his son, and Robinson. *See* State v. Dantonio, 376 S.C. 594, 605, 658 S.E.2d 337, 343 (Ct. App. 2008)("A defendant's act may be regarded as the proximate cause if it is a contributing cause of the death of the deceased."); Id. ("The Defendant's act need not be the sole cause of the death, provided it is a proximate cause actually contributing to the death of the deceased."); State v. Fennell, 340 S.C. 266, 272, 531 S.E.2 512, 515 (2000)("[A] defendant may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent."); State v. Heyward, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941)("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."). Judge Cooper instructed the jury, "Murder is defined in the law as the killing of any person with malice aforethought, either express or implied." (R. 806, 832). He defined the terms "malice" and "aforethought". (R. 806-07, 832-33). Further, he instructed

the jury, "the state is required to prove malice beyond a reasonable doubt." (R. 806, 808, 833). And, he instructed the jury Petitioner did not have to prove the absence of malice, but the State had to prove the presence of malice beyond a reasonable doubt. (R. 808, ll. 7-9, 833, ll. 18-20). And, he instructed the jury the State must prove beyond a reasonable doubt that the defendant killed a person. (R. 806, 832). Judge Cooper explained to the jury that the murder charge against Petitioner rested on the theory of mutual combat. (R. 808-10, 833-34). He instructed the jury twice on the elements of mutual combat. (R. 808-10, 833-35). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder as well, and they found Petitioner guilty of murder and attempted murder beyond a reasonable doubt.[15]

Next, Petitioner asserts it was error for Judge Cooper to consider the legal principle of transferred intent. Respondent submits Judge Cooper properly considered the law of transferred intent. The law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant. Nevertheless, it is only logical transferred intent would apply in such a situation. Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim. South Carolina recognizes "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." Heyward, 197 S.C. 371, 377, 15 S.E.2d at 672. Thus, transferred intent holds the defendant liable for the harm caused to an innocent bystander. *See, e.g.,* Fennell, 340 S.C. at 272, 531 S.E.2d at 515 (A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or

[15] There was no objection to the jury charge on murder by Petitioner and he does not raise a jury instruction issue on appeal. Further, as Petitioner admits in his brief, there was no objection to the jury instruction on the law of mutual combat and he does not raise that issue on appeal. (IBOA, p. 8, fn. 1; See also Petition for Writ of Certiorari).

injures an unintended victim.). It would make no sense for "mutual combat" to hold participants liable for the death of another participant but not for that of an innocent bystander caused by the participants' mutual combat.

The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. People v. Sanchez, 26 Cal. 4th 834, 29 P.3d 209 (2001). In referencing the concurring opinion's analysis of transferred intent, the majority opinion stated in a footnote:

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

26 Cal. 4th at 850, 29 P.3d at 220. In concluding that each defendant was equally liable for the innocent bystander's death, the Court stated:

> Because defendant and co-defendant, rival gang members, had equally culpable mental states and engaged in precisely the same conduct at the same time and place in exchanging shots in a gun battle, it was not unfair to hold them equally responsible for an innocent bystander's death, without regard to which of them actually fired the bullet

26 Cal. 4th at 854, 29 P.3d at 144.

Accordingly, the doctrine of transferred intent was properly applied to Petitioner's case. If Young, Jr. had been killed, then there would be no question that both Petitioner and Robinson would be responsible for his death under mutual combat. Since an innocent bystander was killed rather than 1 of the combatants, the doctrine of transferred intent was properly utilized to transfer Petitioner's, Young, Jr.'s, and Robinson's criminal intent to the unintended victim. Hence, there was no error in charging the jury on the law of transferred intent.

Additionally, Petitioner argues that the State must present evidence of some doctrine that would allow for 1 defendant to be responsible for another defendant's actions. Petitioner's

examples of such doctrines are conspiracy, accomplice liability, and felony murder. However, much like the above theories, mutual combat is a recognized doctrine in which a defendant can be held accountable for the actions of another defendant. *See* Brown, 95 S.E. at 63 ("[E]very one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not."); *see also*, Taylor, 356 S.C. at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered *when both parties contribute* to the resulting fight."). Mutual combat with firearms is an unlawful act and one inherently dangerous to others including bystanders. Further, attempting to murder someone with a firearm is also an unlawful act inherently dangerous to others.

To further counter Petitioner's argument, Respondent submits a review of other states' case law on mutual combat with relation to other theories of culpability is beneficial. *See* State v. Spates, 779 N.W.2d 770, 779 (Iowa 2010) ("Our cases support a conclusion that the acts of a defendant engaged in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant."); Roy v. United States, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) ("While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); Alston v. State, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare."). *See also* Reyes v. State, 783 So.2d 1129, 1133 -1134 (Fla. App. 3 Dist. 2001) (noting Alston and adopting logic citing other jurisdictions with similar holdings). The logic of these cases is instructive.

In State v. Spates, 779 NW.2d at 772, the Supreme Court of Iowa reviewed a murder conviction where the victim had been a bystander killed "during a gun battle between rival groups...." The Court considered both theories of aiding and abetting and mutual combat. In light of the applicability of those theories, the court concluded:

> We agree with those courts that have concluded participants in mutual combat encourage each other to engage in the potentially lethal conduct that leads to the injury of innocent bystanders, thereby supporting liability as an aider and abettor.

779 N.W.2d at 780. Iowa had previously reached a similar conclusion in State v. Brown, 589 N.W.2d 69 (Iowa App. 1998), *reversed on other grounds,* State v. Reeves, 636 N.W. 2d 22 (Iowa 2001). In that case, the victim was killed when she unwittingly drove between rival gangs in the midst of a shootout. However, a rival gang member, not Brown, actually fired the fatal bullet. Brown contested his second degree murder conviction as there was no evidence connecting him personally to the fatal bullet.[16] The court, considering proximate cause, rejected Brown's assertion finding:

> Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See* State v. Marti, 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the shot that killed the innocent bystander. *See* id. ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death").

589 N.W.2d 69, 74 -75.

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[16] Though "second degree murder," the malice requirement is substantially the same as South Carolina's malice requirement for murder. In Iowa, "[m]alice is required for both degrees of murder. *See* Iowa Code § 707.1 (1997) ('A person who kills another person with malice aforethought either express or implied commits murder.'). However, first-degree murder requires proof of deliberation and premeditation in addition to malice aforethought. *See* Iowa Code §§ 707.1, 707.2(1). Second-degree murder, on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare* Iowa Code § 707.2(1) *with* § 707.3." Reeves, 636 N.W.2d at 25. Thus, the charge would be in definition comparable to murder in this State.

The Maryland Court of Appeals considered similar circumstances in regard to a conviction for a "depraved murder"[17] conviction, and reasoned as follows:

> The "bottom line" is that when a group, or two groups, of hoodlums deliberately engage in a gang-war style of shoot-out in a crowded urban area, they collectively trigger an escalating chain reaction creating a high risk to human life. When instead of taking their gunslinging vendetta to an uninhabited island or some remote spot in the desert, they arrogantly indulge in their homicidal insanity in the middle of a crowded block of residences, each participant in such collective madness displays a wanton and depraved indifference to any human life that might randomly fall within their overlapping and deadly enfilades. Should death to one of the innocent bystanders or homeowners ensue, each participant in the lethal encounter has exhibited the *mens rea* that qualifies him for depraved-heart murder.

Alston v. State, 643 A.2d 468, 469 (Md. App. 1994). The affirmance was upheld on appeal, with the higher court noting: "Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare." Alston v. State, 662 A.2d 247, 254 (Md. 1995). *See also* Reyes, 783 So.2d at 1133 -1134 (noting Alston and adopting logic citing other jurisdictions with similar holdings).

Similarly, in a 2005 case, the Court in the District of Columbia, in reviewing a causation charge, reasoned that "while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a 'gun battle' on city

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[17] Again, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See* Owens v. State, 906 A.2d 989, 1026 (Md. App. 2006)(describing one way of proving second degree murder as "what has become known as depraved heart murder--a killing resulting from 'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. Robinson v. State, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, places the charge on similar footing with our requirement of malice. State v. Wilds, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct. App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life'").

streets, as in this case, is relatively new." Roy v. United States, 871 A.2d 498, 507 (D.C. 2005). The Court easily acknowledged "the application of proximate cause liability to those participants who willfully choose to engage in these battles." Id. In upholding the application in that specific case as reflected in the contested charge on causation, the Court reasoned: "While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered." 871 A.2d at 509.

Therefore, under the law of South Carolina and many other states, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury.

Furthermore, the law of parties to a criminal offense would be applicable to Petitioner who retrieved the "Tech Nine" weapon from a residence, was angry at Robinson and wanted to kill him, handed the gun to his son to use, told him how to assemble the weapon, and drove his truck throughout the running gun battle with Robinson as his son fired out the passenger window. "Under the 'hand of one is the hand of all' theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." State v. Gibson, 390 S.C. 347, 701 S.E.2d 766, 769 (Ct. App. 2010). It is clear there is evidence in the record from which the jury could find beyond a reasonable doubt that Petitioner and his son, acting together, aiding and abetting each other, participated in a running gun battle [mutual combat] with Tyrone Robinson, attempting to murder Robinson, that proximately resulted in the death of an innocent child bystander, 8 year old Khalil Singleton.

Finally, Petitioner argues that South Carolina should not allow for a murder conviction to rest upon the legal principles of mutual combat and transferred intent because, if the legal theory was accepted, any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. This is simply not true. If a person was truly acting lawfully in self-defense, the legal principles of mutual combat and transferred intent would not apply. Mutual combat is different. The parties agree to fight and to fight with firearms. They are by definition not acting in self-defense. *See* Taylor, 356 S.C. at 232; Graham, 260 S.C. at 450, 196 S.E.2d at 495. Respondent submits that is the precise reason mutual combat with firearms can be and should be used for a murder conviction. Much like accomplice liability, both parties should be held equally accountable for the consequences resulting from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in a dangerous urban or residential conflict. Reyes, 783 So.2d at 1133-1134. Here, Petitioner, his son, and Robinson encouraged each other to engage in a lethal running gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that 1 of Petitioner's and Young, Jr.'s bullets could have injured or killed an innocent bystander who was merely caught in the crossfire of the havoc the men created. Further, if not for the running gun battle instigated and continued by Petitioner and his son, 8 year old Khalil would not have been killed. Therefore, not to hold Petitioner accountable for the death of Khalil would be an injustice, for this case and future cases.

In conclusion, the deep-rooted doctrine of mutual combat is a valid legal principle on which to base a murder charge or conviction. Here, Petitioner, Young, Jr., and Robinson mutually engaged each other in an armed conflict with deadly weapons in which it was

reasonably foreseeable someone could be killed. The fact that an 8 year old child was killed, instead of 1 of the 3 men engaged in mutual combat, does not excuse the combatants of their culpability. In fact, it makes it more egregious. The State properly prosecuted Petitioner for murder under the theory of mutual combat, transferred intent, and accomplice liability; and, Judge Cooper correctly denied the motion for a directed verdict. Judge Cooper did not abuse his discretion in holding mutual combat, transferred intent, and accomplice liability were valid legal principles on which to base Petitioner's murder charge and conviction. The motion for directed verdict was appropriately denied, and thus, certiorari should be denied.

APPELLATE ISSUE II.

Overwhelming direct and circumstantial evidence of mutual combat was presented at trial to withstand the directed verdict motion.

Petitioner did argue below that no evidence was produced he and Robinson were engaged in mutual combat at the time of the murder. However, as the record shows, Judge Cooper properly denied this directed verdict motion because the State presented *overwhelming* direct and substantial circumstantial evidence Petitioner, his son, and Robinson were engaged in mutual combat when 8 year old Khalil was killed. (R. 654-75, 749).

For there to be mutual combat, there must be **a mutual intent and willingness to fight**. Taylor, 589 S.E.2d at 3. The required mutual intent can be inferred from the parties' acts and conduct, and the circumstances of the combat. Id. Also, there must be an antecedent **agreement to fight**. Taylor, 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of "ill-will between the parties," threats, and an "apparent willingness of each to engage in an armed encounter with the other" Id. The parties must also **be armed and know the other to be armed**. Id. *see also* State v Mathis, 174 S.C. 344, 177 S.E. 318 (1934) (finding mutual combat charge proper based on testimony appellant and deceased were on the lookout for each other,

each was armed in anticipation of meeting the other, and each drew and fired his pistol at the other); Brown, 95 S.E. at 63 ("...if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used..."); *See also* 40 C.J.S. Homicide Section 197 ("Mutual combat usually arises when the parties are armed with deadly weapons and mutually agree or intend to fight with them."). In finding evidence of mutual combat existed to submit the issue to the jury, the Court in Graham held:

> There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.

260 S.C at 452, 196 S.E.2d at 496.

Here, the State presented *overwhelming* direct and substantial circumstantial evidence Petitioner, his son, and Robinson (1) **mutually intended to fight; (2) agreed to fight; (3) and were armed and knew the other was armed**. As set forth in Respondent's Statement of Facts: Petitioner's incriminating statements to police, the testimony of the eyewitnesses to the running gun battle, the physical evidence, and the 911 calls admitted in evidence show each of the 3 men agreed to and did mutually participate in a running gun battle [mutual combat] on the streets, roads, and yards of Hilton Head Island including on Oakview Rd., Allen Rd., and Marshland Rd. (R. 507-61, 565-81; 626-63; 696-706; 716-18; State's Ex. 3, 4 & 17). Petitioner's, his son's, and Robinson's actions and conduct indisputably prove the required mutual intent and willingness to fight for mutual combat and is further demonstrated by Petitioner's own admission to participating in a running gun battle with Robinson. (State's Ex. 17).

Additionally, as to foreseeability, Petitioner admitted Khalil and the other children were playing outside (R. 720), and admitted multiple times to engaging in a gun fight in the area

where children were present. (State's Ex. 17; R. 720, ll. 1-11). This clearly demonstrates Petitioner was aware innocent bystanders were in the vicinity. But this fact did not stop Petitioner from continuing the conflict with Robinson, shooting up his car, and driving down Allen Rd. and back up Allen Rd. in pursuit of Robinson. Additionally, the running gun battle occurred in broad daylight in residential neighborhoods. Further, the actions of Charlese Mitchell in calling the children in during the running gun battle, and Kathleen Fayfich in calling 911 proves any reasonable person would have anticipated the danger to children in the area. Accordingly, Petitioner knew the natural consequences of his actions could lead to a bystander's death.

Petitioner's argues that driving away when being shot at the last time should be viewed as a withdrawal from the conflict entitling him to a directed verdict.[18] He is wrong. In order to bring mutual combat to an end, 1 of the combatants must withdraw from the conflict in good faith and make that fact known to his adversary. Graham, 260 S.C. at 451, 196 S.E.2d at 495–96. Here, there was no evidence presented by the State that Petitioner withdrew from the conflict. The chain of events of the entire conflict included numerous instances of Petitioner and Robinson driving to and away from locations shooting at or attempting to shoot at each other. These were not withdrawals; they were simply in furtherance of his pursuit of each other. This last instance is not any different. Petitioner's recorded statements show he did not intend to withdraw. Petitioner's claim, is not supported by the record. Evidence was produced Petitioner

[18] This issue is not preserved for review since Petitioner did not request a directed verdict on the basis of a withdrawal from mutual combat and only discussed the end or withdrawal from mutual combat **when requesting a jury instruction on the law**. Issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. Kennerly, *supra*; Jordan, *supra*; Bailey, *supra*. Therefore, Petitioner is barred from asserting this point as a basis for a directed verdict in his appeal. Id. However, Petitioner would not be entitled to relief even if he properly raised this issue below.

did not withdraw from the combat in good faith or communicate the same to Robinson. Petitioner's explanations or protestations at trial are irrelevant to the directed verdict analysis. State v. Larmand, 415 S.C. 23, **31**, 780 S.E.2d 892, **896** (2015). Petitioner's act of driving away minutes after firing multiple bullets into Robinson's car at Griffin's residence, and after driving down Allen Rd. and back up Allen Rd. in search of Robinson personally, was not a desire to end the fighting or a withdrawal, but a continuation of the hunt for Robinson or at most a retreat when Petitioner saw Robinson about to shoot at him from Griffin's yard.[19] This act must be viewed in relation to the whole incident and all of the direct and substantial circumstantial evidence. Id. at 31-33; 780 S.E.2d at 895-896.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari must be denied.

Respectfully submitted,

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October 21, 2019

[19] Petitioner's turning onto Marshland Rd. from Allen Rd. and driving away should not be viewed as any different than when Petitioner drove down Allen Rd. and later turned onto Marshland Rd. after shooting at Robinson the 1st time on Allen Rd. **at Robinson's residence**.

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OCT 21 2019
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals.
APPEAL FROM BEAUFORT COUNTY
Thomas W. Cooper, Circuit Court Judge

Appellate Case No. 2019-001595

Op. No. 2019-UP-233 (S.C. Ct. App. refiled June 26, 2019)

THE STATE,

Respondent,

v.

AARON YOUNG, SR.,

Petitioner.

PROOF OF SERVICE

I, Anthony Mabry, counsel for the Respondent, certify that I have served the Return to Petition for Writ of Certiorari on Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Katherine Hudgins, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 21st day of October, 2019.

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