

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals S.C. SUPREME COURT
Appeal from Beaufort County.
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-001776

THE STATE,

Petitioner,

vs.

JOSEPH BOWERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals reversibly err by finding Bowers's appellate challenges to the trial judge's mutual combat and voluntary manslaughter jury instructions were properly preserved for appellate review when defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law?

II.

Even if Bowers's appellate challenge to the mutual combat jury instruction was somehow properly preserved for appellate review and the trial judge erred by instructing the jury on mutual combat, did the Court of Appeals nonetheless err by reversing Bowers's assault and battery of a high and aggravated nature conviction when the mutual combat instruction could not have resulted in any actual prejudice to Bowers in regard to that specific conviction since the trial judge directly instructed the jury the doctrine of mutual combat did not apply to the charge stemming from the shooting of Green and neither mutual combat nor self-defense was factually applicable to that particular charge based on the evidence presented, which only supported a conclusion Bowers shot Green in the back as that unarmed individual merely attempted to flee?

STATEMENT OF THE CASE

Procedural History

In June of 2012, Respondent Joseph Bowers was arrested following an investigation into a deadly shooting at a club located in Saint Helena Island, South Carolina. In August of 2012, the Beaufort County Grand Jury indicted Bowers for one count of murder and one count of possession of a weapon during the commission of a violent crime. In May of 2013, the Beaufort County Grand Jury indicted Bowers for an additional count of murder along with two counts of attempted murder. On September 29, 2014, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. During the course of trial, the solicitor withdrew one of the murder indictments. At the conclusion of trial, the jury convicted Bowers of the lesser-included offense of voluntary manslaughter, one count of the lesser-included offense of assault and battery of a high and aggravated nature (“ABHAN”), and possession of a weapon during the commission of a violent crime while acquitting Bowers of all other charges. Following the verdict, the trial judge sentenced Bowers to concurrent terms of imprisonment of fifteen years for voluntary manslaughter, fifteen years for ABHAN, and five years for possession of a weapon during the commission of a violent crime. Bowers then timely filed and perfected an appeal.

On appeal, the Court of Appeals issued a published opinion reversing Bowers’s convictions. State v. Bowers, 428 S.C. 21, 832 S.E.2d 623 (Ct. App. 2019). Following the issuance of that decision, the State timely filed a petition for rehearing. Thereafter, on September 20, 2019, the Court of Appeals denied the State’s petition. However, the Court of Appeals issued a revised opinion that still reversed Bowers’s convictions but contained a slight revision to one of the opinion’s footnotes.

Factual History

Around 1:21 a.m. on June 21, 2012, the Beaufort County Sheriff's Office's 911 call center began receiving calls about a shooting that had occurred at a Saint Helena Island club called Midnight Soul Patrol. (App'x pp. 39-41; pp. 44-45; pp. 47-49; p. 51). In response, law enforcement officers and emergency responders quickly headed to the scene. (App'x p. 44; pp. 48-50; p. 73; p. 142; p. 175). On the way, they located a vehicle containing the body of Dante Bailey, who had been fatally shot in the chest, a short distance away from the club. (App'x pp. 64-65; p. 74; p. 143; p. 175; pp. 238-239). The officers and other emergency responders then continued on, and, upon arriving at the club, they encountered a "chaotic" scene with numerous people yelling, running around, and calling for help. (App'x p. 49; p. 66; p. 69; p. 74). Beyond that, they found Michael Morgan near the back steps of a residence located in front of the club suffering from gunshot wounds to his buttocks and pelvis along with Richard Green on the ground "just outside" the club's side door suffering from a gunshot wound to his back. (App'x p. 58; p. 60; pp. 67-68; pp. 70-71; p. 226; p. 240). Based on their injuries, both men were then rapidly rushed to Beaufort Memorial Hospital. (App'x pp. 68-69; p. 75; pp. 225-227).

After the victims were transported to the hospital, the officers and other emergency responders began attempting to ascertain what had occurred and spoke to various members of a large crowd of approximately eighty people still present at the scene. (App'x p. 76). Through speaking with people in the crowd, the officers obtained information suggesting several individuals, including one called "Opie," fired shots during the incident. (App'x p. 45; p. 47; p. 77). Furthermore, while processing the scene, officers located numerous pieces of evidence, including a nine-millimeter pistol that was registered to Bailey, numerous fired projectiles and

shell casings, a flare gun, a casing from a fired flare, and broken glass from a vehicle. (App'x pp. 51-52; pp. 54-57; pp. 60-61; pp. 147-149; pp. 151-155; p. 159; p. 177; p. 182).

As the investigation into the shooting continued, Investigator Jeremiah Fraser of the Beaufort County Sheriff's Office responded to the hospital to speak with the victims of the shooting at the club. (App'x pp. 187-188; p. 225). Once there, Investigator Fraser made contact with Morgan, but he was unable to speak with Green due to the fact Green was unconscious as a result of his injuries.¹ (App'x pp. 82-83; p. 103; pp. 105-106; pp. 188-190; p. 226). During the investigator's conversation with Morgan, Morgan positively identified Bowers, who was also known as "Opie," as the person who shot him.² (App'x p. 12; p. 80). However, shortly after that, Morgan's condition began to deteriorate, and he was flown to the Medical University of South Carolina for further treatment. (App'x pp. 226-227; p. 233). Ultimately, by the time Morgan made it to an operating room, he was in cardiac arrest, and he died a short time later as a result of the injuries he had sustained. (App'x pp. 233-234; pp. 240-241).

Several hours after that, Bowers was apprehended near his home and arrested, and Investigator Fraser made contact with Bowers following the arrest. (App'x p. 192). During their ensuing conversation, Bowers claimed he did not have a gun, shoot a gun, or touch Bailey's gun during the incident. (App'x pp. 192-193; p. 202; p. 205). Instead, while refusing to identify any of the people with him at the time, Bowers asserted he went to the club with Bailey on that date, Bailey got into an argument with someone at the club, he pulled Bailey back to their van, someone started shooting at them, Bailey pulled out a gun, Bailey stepped out from behind the

¹ While at the hospital, Investigator Fraser also spoke with Robert Goodwine, who had been shot in the calf during the incident. (App'x pp. 102-106; p. 190; p. 227).

² During trial, the trial judge ultimately ruled Morgan's statement identifying Bowers as his shooter could not be admitted into evidence after concluding the statement was not a dying declaration under the circumstances involved. (App'x pp. 12-18).

van despite his efforts to stop him, and Bailey was shot and killed.³ (App'x pp. 194-195). Following the interview, Bowers went through the booking process, Investigator Fraser took possession of the clothing Bowers was wearing at the time of his arrest, and, after the booking process was completed, Bowers requested to speak with Investigator Fraser one more time. (App'x p. 195; p. 197). Investigator Fraser then once again met with Bowers, and, during that interview, Bowers finally identified the people he went to the club with while further claiming an individual called "T Dog" was the actual shooter. (App'x pp. 196-197).

At the conclusion of the investigation into the shooting, Bowers was indicted for multiple offenses, including murder for killing Morgan and attempted murder for shooting Green, and he ultimately elected to proceed forward to trial. (App'x pp. 6-7; pp. 361-374). During the course of trial, Investigator Fraser recounted Bowers's statements regarding the shooting to the jury while several other witnesses offered varying accounts of what had occurred. (App'x pp. 78-141; p. 194). Through those accounts, a few witnesses indicated they either did not see Bowers with a gun on the night of the shooting or were not aware of him having a gun that night. (App'x pp. 74-85; pp. 87-99). Conversely, one witness—Magnum Smalls—testified he personally observed several individuals, including Bowers, firing shots during the course of a chaotic gunfight that broke out after Bailey arrived at the club with a group of people and Morgan fired a flare gun into the air. (App'x pp. 125-130; pp. 137-139). Smalls further stated he observed Bowers near Bailey after Bailey was shot and Bowers was in possession of a gun that looked like Bailey's weapon at that time. (App'x pp. 130-131; p. 140). However, as his testimony continued, Smalls offered a contradictory account of what transpired and stated he never

³ During trial, testimony was presented establishing Bowers and Bailey were from the same area, and Bailey was described to the jury by defense counsel as "a daddy and a best friend and a big brother" to Bowers. (App'x p. 34; p. 169).

personally saw Bowers shoot a gun during the incident.⁴ (App'x pp. 134-136). Beyond that, Green offered his account of what occurred on the night of the incident, testified he was at the nearby home of the owner of the club that night, went outside at some point, heard a gunshot, tried to walk away, and was shot in the back and paralyzed by an unknown assailant as he did so.⁵ (App'x pp. 109-111).

In addition to those accounts of the shooting, a recording of a phone call Bowers made while incarcerated subsequent to the incident was admitted into evidence and played for the jury. (App'x pp. 207-210). During that call, Bowers appeared to state: "Even though I ain't kill the boy, I only shoot the boy." (State's Ex. # 39 (Jail Call Recording)). Additionally, the officers and other individuals involved in the investigation into the incident testified about what they discovered in the aftermath of the shooting, and Investigator Andrew Rice of the Beaufort County Sheriff's Office specifically noted he verified the rear window of Stanley Humphries's vehicle was missing after he had learned Humphries had his vehicle's window shot out at some point during a visit to the club.⁶ (App'x pp. 39-62; pp. 64-71; pp. 73-77; pp. 142-185; pp. 193-205; pp. 213-223; pp. 225-227; pp. 232-235; pp. 237-241). Furthermore, testimony was presented establishing one of the components of gunshot residue was found on the shirt and shorts Bowers was wearing at the time of his arrest, the shell casings collected in the parking lot at the club were fired from Bailey's nine-millimeter pistol, the fired projectiles collected from

⁴ Oddly, on appeal, the Court of Appeals solely relied upon Smalls's later testimony when analyzing the appellate issues raised after concluding the later testimony had "corrected" Smalls's earlier testimony. (App'x p. 458; p. 466).

⁵ Notably, supporting Green's testimony, none of the witnesses who offered accounts of what transpired at the club suggested Green was in any way involved in the incident aside from being shot in the back. (App'x pp. 78-108; pp. 113-141).

⁶ During trial, Humphries testified he was the individual who drove Bailey and Bowers to the club on the night of the shooting. (App'x pp. 74-76).

inside the club were fired by Bailey's weapon, and a total of approximately six or seven different guns were fired during the incident based on the variety of shell casings that were found at the scene. (App'x p. 159; pp. 248-249; pp. 254-255; pp. 263-267; p. 272).

Subsequently, at the conclusion of the evidentiary phase, the trial judge conducted an off-the-record charge conference with the parties. (App'x p. 275; p. 292; p. 294; p. 295). Following that discussion, the trial judge indicated on the record he intended to instruct the jury on mutual combat at the solicitor's request and over defense counsel's objection.⁷ (App'x p. 295). In support of that instruction, the trial judge noted the testimony presented during trial was somewhat contradictory but could support a mutual combat charge. (App'x p. 295). Furthermore, the trial judge indicated he intended to instruct the jury on the lesser-included offense of voluntary manslaughter and self-defense. (App'x p. 296). At that point, defense counsel objected to an instruction on voluntary manslaughter, but she provided no grounds in support of her objection. (App'x p. 296). The trial judge then indicated the fact a heated altercation occurred immediately before the shooting supported such a charge. (App'x pp. 296-297). Following that explanation, the trial judge asked the parties if they had anything they wished to put on the record, and defense counsel responded she did not. (App'x p. 297).

Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (App'x pp. 299-344). In instructing the jury on the law, the trial judge specifically charged the jury in regard to murder, voluntary manslaughter, attempted murder, ABHAN, possession of a weapon during the commission of a violent crime, mutual combat, and self-defense. (App'x pp. 328-337). Following the presentation of the jury

⁷ Earlier during the trial, defense counsel—while arguing Bowers could not be tried for the indicted offenses based on the fact a co-defendant had been acquitted in a separate proceeding— informed the trial judge “the parties agreed to enter into this violent gun battle.” (App'x p. 10).

instructions, the trial judge asked the parties if there were any exceptions or requested additions to the charge as presented. (App’x p. 344). Defense counsel responded: “None, Your Honor.” (App’x p. 344). The jurors then began their deliberations. (App’x p. 344).

During the course of the jury’s deliberations, the jurors submitted several questions, including one inquiring whether a determination of mutual combat required a finding of culpability as to each of the charges. (App’x pp. 344-351). In responding to that instruction, the trial judge again instructed the jury on mutual combat. (App’x pp. 351-353). Beyond that, the trial judge expressly explained to the jury the doctrine of mutual combat could only be applicable to the charge related to Morgan’s murder and *not* to the charges related to any of the other victims due to the fact no evidence was presented to establish the other victims were armed at any point during the incident.⁸ (App’x p. 353). Furthermore, the trial judge advised the jurors they must still consider whether the State disproved self-defense in connection to the victims other than Morgan because the doctrine of mutual combat could not negate self-defense in connection to the charges related to those victims since it was not applicable. (App’x pp. 349-350). After presenting those remarks, the trial judge once inquired of defense counsel whether she had any exceptions or requested additions, and defense counsel responded, “No, sir.” (App’x p. 350).

Subsequently, at the conclusion of trial, the jury convicted Bowers of voluntary manslaughter in connection to Morgan’s death, ABHAN in connection to the shooting of Green, and possession of a weapon during the commission of a violent crime while acquitting him of all

⁸ Before offering that particular explanation, the trial judge conversed with the parties during an off-the-record discussion and then stated on the record he would tell the jury—“based on [their] discussion”—mutual combat could not apply to the attempted murder indictments as a matter of law in Bowers’s case. (App’x pp. 345-346).

other charges. (App'x pp. 356-357). The trial judge then sentenced Bowers to an aggregate fifteen-year term of imprisonment. (App'x p. 360).

Following his convictions, Bowers appealed while arguing the trial judge reversibly erred by instructing the jury on mutual combat and voluntary manslaughter. (App'x pp. 376-400; pp. 456-457). Upon considering those contentions, the Court of Appeals reversed. (App'x pp. 456-469). In reversing, the Court of Appeals rejected the State's argument Bowers's appellate issues with the trial judge's jury instructions were not properly preserved for appellate review and waived. (App'x pp. 460-463). After rejecting the State's procedural argument, the Court of Appeals then concluded there was no evidence supporting a jury instruction on mutual combat while further holding the giving of such an instruction constituted reversible error because it negated Bowers's plea of self-defense. (App'x pp. 465-469). Moreover, despite recognizing the trial judge expressly advised the jury mutual combat only related to Morgan's murder and despite finding the evidence related to Green merely established he got shot in the back while innocently attempting to flee, the Court of Appeals found the error in the presentation of the mutual combat instruction also required a reversal of Bowers's ABHAN conviction that stemmed from the shooting of Green based on the "intertwined" nature of the charges and the fact the mutual combat instruction purportedly negated self-defense. (App'x pp. 458-459; p. 469).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant’s due process rights have been violated.”). When reviewing a jury charge, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”). Moreover, an appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constitutes an abuse of discretion *resulting in actual prejudice*. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (“An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.”); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) (“[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial.”).

ARGUMENT

I.

Did the Court of Appeals reversibly err by finding Bowers's appellate challenges to the trial judge's mutual combat and voluntary manslaughter jury instructions were properly preserved for appellate review when defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law?

In reversing Bowers's convictions on appeal, the Court of Appeals concluded Bowers's appellate challenges to the trial judge's jury instructions on mutual combat and voluntary manslaughter were properly preserved for appellate review. To the contrary, Bowers's appellate issues with the trial judge's jury instructions could not properly be raised or addressed on appeal because they were not properly preserved in the trial court. Critically, in Bowers's case, defense counsel never presented any specific grounds to the trial judge as to why instructions on mutual combat and voluntary manslaughter were allegedly improper and did not raise any objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge. Instead, defense counsel waived any issues she may have had with the mutual combat and voluntary manslaughter charges by specifically indicating to the trial judge she had no objections to those instructions after they were presented to the jury. As a result, Bowers's issues with the trial judge's jury instructions were not properly preserved for appellate review, and the Court of Appeals erred by addressing the merits of those issues on appeal. The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be vacated, and Bowers's convictions should be affirmed.⁹

⁹ Notably, the proper application of South Carolina's issue preservation requirements in Bowers's case will *not* prevent Bowers from attempting to obtain redress by filing an application

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity “to rule properly after it considered all relevant facts, law, and *arguments*.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Importantly, “[i]f a party fails to properly object, the party is procedurally barred from raising the issue on appeal.” State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Regarding the necessity of sufficient specificity to preserve an issue, an issue must be raised in a sufficiently specific manner “to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge.” State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001); see Johnson, 363 S.C. at 58, 609 S.E.2d at 523 (“The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.”). Although an objecting party need not use the exact name of a legal doctrine in order to preserve an objection, it must be clear that the argument has been presented on the ground alleged. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Critically, a general objection not specifying any grounds upon which the objection is based is *not* sufficient to

for post-conviction relief. See Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001) (recognizing a criminal defendant can obtain post-conviction relief by establishing defense counsel was deficient and prejudice resulted from the deficiency); see also State v. Passmore, 363 S.C. 568, 585-586, 611 S.E.2d 273, 283 (Ct. App. 2005) (holding Passmore “will be forced to seek redress through the avenue of post-conviction relief” due to the fact her appellate issue was not properly preserved for review).

preserve an issue for appeal, including an issue with a trial judge's jury instructions. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997); see Rule 20(a), SCRCrimP ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct."); Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to *and the grounds for objection.*" (emphasis added)). Thus, if there are no grounds stated for an objection, there is nothing for the appellate court to review. State v. Bennett, 328 S.C. 251, 260, 493 S.E.2d 845, 849 (1997); see State v. Hughes, 160 S.C. 474, 476, 158 S.E. 833, 833 (1931) ("The objection made at trial was general, not showing the specific grounds on which it was based, and an exception based on it cannot, therefore, be considered by this court."); see also State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) ("Where an objection *and the ground therefor* is not stated in the record, there is no basis for appellate review." (emphasis added)).

Moreover, even if a party properly raises an objection during trial, a party may still waive his right to argue error in regard to that objection on appeal under certain circumstances. See State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Significantly, one of the ways a party can waive an objection is by indicating to the trial judge the party does not have an objection to an issue to which the party previously raised one. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege

error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (“Dicapua’s sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua’s counsel specifically stated he had ‘no objection.’ We find this amounted to a waiver of any issue Dicapua had with the videotape.”); cf. Commonwealth v. Moury, 992 A.2d 162, 178 (Pa. Super. Ct. 2010) (“Generally, a defendant waives subsequent challenges to the propriety of the jury charge on appeal if he responds in the negative when the court asks whether additions or corrections to a jury charge are necessary.”).

In the case sub judice, Bowers’s defense counsel failed to preserve any issues with the trial judge’s jury instructions on mutual combat and voluntary manslaughter because she did not provide the trial judge with *any* grounds as to why those charges should not have been presented to the jury during trial. See Rule 20(b), SCRCrimP (mandating “[a]ny objection [to a jury instruction] shall state distinctly the matter objected to *and the grounds for the objection*” (emphasis added)); see also Patterson, 324 S.C. at 19, 482 S.E.2d at 767 (“Appellant is limited to the grounds raised at trial.”). Instead, following an off-the-record discussion with the trial judge, defense counsel *generally* objected to the presentation of jury instructions on mutual combat and voluntary manslaughter during an on-the-record charge conference but, critically, did not provide any grounds in support of those objections despite the fact the trial judge specifically afforded her an opportunity to do so both at the conclusion of the charge conference and after the jury was instructed on the applicable law. See State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) (“Kennerly did not raise this issue to the trial court in her directed verdict

motion. Instead, she simply moved for a directed verdict without stating any specific grounds. In reviewing a denial of a directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below.”); see also York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) (“An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review.”). In light of the fact defense counsel only, at best, raised general objections to the mutual combat and voluntary manslaughter charges without stating any grounds in support of those objections during a charge conference and did not raise any objections to the jury instructions as presented when afforded an opportunity to do so, no issues in regard to the mutual combat and voluntary manslaughter charges were preserved for appellate review in Bowers’s case. See State v. Hall, 253 S.C. 294, 295, 170 S.E.2d 379, 380 (1969) (“The defendant did not raise the objections to the instructions at the trial although full opportunity was afforded to do so The failure of the defendant to object or request additional instructions, when opportunity was afforded, constituted a waiver of any right to complain on appeal of errors in the charge.”); cf. State v. Thomas, 159 S.C. 76, 83, 156 S.E. 169, 171 (1930) (“Counsel for the defendant interposed with what may be liberally construed as a general objection to the admission of this testimony on the ground of irrelevancy. The objection did not set forth the specific grounds contained in the exception, and these grounds, therefore, cannot be considered.”); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) (“This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the ‘level of a reasonable doubt as to counts 1, 2, and 3.’ . . . Adams’s argument, therefore, is not preserved for our review.”).

Moreover though, even assuming the issues had somehow been properly preserved for appellate review by defense counsel's general groundless objections during the charge conference, any issues with the mutual combat and voluntary manslaughter jury charges *still* could not appropriately be raised or addressed on appeal because defense counsel subsequently expressly waived the issues at a later point during trial. See O'Neal, 210 S.C. at 312, 42 S.E.2d at 526 (recognizing a previously-raised objection can be waived). That is true because, after the trial judge presented instructions to the jury on mutual combat and voluntary manslaughter, the trial judge inquired of defense counsel if there were any objections to the jury charge as presented, and defense counsel expressly affirmed she had *no objections* to that charge.¹⁰ See Brown, 402 S.C. at 125, 740 S.E.2d at 496 (“[Brown]’s trial counsel stated explicitly that he had no objection to the trial court’s instruction. Thus, [Brown]’s argument that the trial court erred in failing to apply section 16-13-30 as amended is unpreserved.”); Rios, 388 S.C. at 342, 696 S.E.2d at 612 (“Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, ‘None.’ By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal.”). Accordingly, even if defense counsel had earlier properly objected to the trial judge’s jury instructions on mutual combat and voluntary manslaughter such that she was not required to renew her objections after those instructions were presented to the jury, any issues Bowers may have had in regard to the trial

¹⁰ Significantly, the trial judge directly asked defense counsel if she had any “exceptions or additions” to his jury instructions—which had included instructions on mutual combat and voluntary manslaughter—after they were presented to the jury and defense counsel responded to that simple and direct inquiry by stating: “None, Your Honor.” (App’x p. 344). Through that exchange, the trial judge did not ask defense counsel if she had any objections to his jury instructions *other than those previously raised*, and defense counsel did not indicate she did not have any *additional* objections. (App’x p. 344). To the contrary, defense counsel responded to the trial judge’s clear, unambiguous question by affirming she had no objections whatsoever to the jury instructions as presented. (App’x p. 344).

judge's jury instructions were nonetheless expressly waived when defense counsel directly informed the trial judge she had no objections to the jury instructions as presented, and no issues regarding the mutual combat and voluntary manslaughter instructions could properly be raised or addressed on appeal. Compare State v. Johnson, 333 S.C. 62, 64, n. 1, 508 S.E.2d 29, 30 (1998) (“[W]here a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, *to renew* the request at conclusion of the court’s instructions.” (emphasis added)); with Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, *even though the party previously made a motion to exclude the evidence*, the issue raised in the previous motion is not preserved for appellate review.” (emphasis added)); and Dicapua, 373 S.C. at 455, 646 S.E.2d at 152 (finding any issue Dicapua may have had with evidence *to which he had previously raised an objection* was waived when defense counsel specifically stated to the trial judge he had no objections to the evidence’s admission). As a result, the Court of Appeals reversibly erred by addressing the merits of Bowers’s unpreserved issues on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court “cannot address unpreserved errors”); see also State v. Berry, 418 S.C. 500, 503-504, 795 S.E.2d 26, 28 (2016) (vacating the analysis of the Court of Appeals because the issue that had been addressed on appeal was not properly preserved for appellate review). The State’s petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be vacated, and Bowers’s convictions should be affirmed.

II.

Even if Bowers’s appellate challenge to the mutual combat jury instruction was somehow properly preserved for appellate review and the trial judge erred by instructing the jury on mutual combat, did the Court of Appeals nonetheless err by reversing Bowers’s assault and battery of a high and aggravated nature conviction when the mutual combat instruction could not have resulted in any actual prejudice to Bowers in regard to that specific conviction since the trial judge directly instructed the jury the doctrine of mutual combat did not apply to the charge stemming from the shooting of Green and neither mutual combat nor self-defense was factually applicable to that particular charge based on the evidence presented, which only supported a conclusion Bowers shot Green in the back as that unarmed individual merely attempted to flee?

After rejecting the State’s contention Bowers’s appellate issues were not properly preserved for appellate review and had been waived, the Court of Appeals went on to reverse all of Bowers’s convictions, including his conviction for ABHAN. In doing so, the Court of Appeals determined the mutual combat charge was prejudicial to Bowers because it negated his claim to self-defense and found even the ABHAN conviction must be reversed due to the “intertwined” nature of the charges. Contrary to the conclusion of the Court of Appeals, the trial judge’s presentation of a mutual combat instruction—even assuming that decision was erroneous—did not result in any prejudice to Bowers in connection to the ABHAN conviction because the trial judge expressly explained to the jury the mutual combat charge was only applicable to the charge stemming from the fatal shooting of Morgan and not to the charge related to the shooting of Green. Furthermore, the mutual combat instruction similarly could not have resulted in any prejudice to Bowers in connection to his ABHAN conviction from a factual standpoint because neither mutual combat nor self-defense was applicable to that particular conviction in light of the fact the evidence only supported a conclusion Green, who was unarmed, was shot in the back as he simply attempted to flee from the gunfire. Accordingly, the Court of Appeals plainly erred by finding the trial judge’s presentation of a mutual combat instruction warranted the reversal of Bowers’s ABHAN conviction since the instruction could

not possibly have contributed to that particular conviction under the specific circumstances of Bowers's case. The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be vacated, and, at a minimum, Bowers's conviction for ABHAN should be affirmed.

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002); see Brandt, 393 S.C. at 549, 713 S.E.2d at 603 ("The substance of the law is what must be charged to the jury, not any particular verbiage."). Importantly, so long as the trial judge's jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

However, even if a trial judge commits an error when instructing the jury on the law, such an error does not automatically constitute reversible error and, instead, only warrants the grant of a new trial when it results in *actual prejudice* to the defendant. See State v. Burdette,

427 S.C. 490, 496, 832 S.E.2d 575, 578 (2019) (“An erroneous instruction alone is insufficient to warrant this Court’s reversal.”); State v. Kerr, 330 S.C. 132, 144, 498 S.E.2d 212, 218 (Ct. App. 1998) (“[A] confusing charge alone is insufficient to warrant reversal.”). Importantly, appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) (“Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.”). The question of whether an error is harmless is necessarily dependent on the particular circumstances of each individual case. State v. Salley, 398 S.C. 160, 172, 727 S.E.2d 740, 746 (2012). Importantly, “[n]o definite rule of law governs this finding; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Reeves, 301 S.C. 191, 193-194, 391 S.E.2d 241, 243 (1990); see State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (recognizing an error is harmless “if its impact is minimal in the context of the entire record”). Ultimately, if an error with the jury instructions did not contribute to the verdict, that error is harmless beyond a reasonable doubt, and an appellate court will not reverse on appeal. State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014); see United States v. Hastings, 461 U.S. 499, 509 (1983) (“[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]”).

In the case at bar, any possible error in the presentation of the jury instruction on mutual combat could not have had any impact on Bowers’s conviction for ABHAN that stemmed from the shooting of Green. Critically, that is true because—just as the Court of Appeals recognized—the trial judge directly instructed the jury the doctrine of mutual combat was *not*

applicable to any of the charges other than the charge related to the fatal shooting of Morgan. In light of that direct and unambiguous instruction, the jury would not have—and could not have without completely disregarding the trial judge’s plain directives—considered the doctrine of mutual combat when determining whether Bowers was criminally responsible for shooting Green. See Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267, n. 1 (1999) (“The jury was instructed to determine petitioner’s guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice.” (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (“[J]urors are presumed to follow the law as instructed to them.”); cf. State v. Hicks, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998) (concluding no reasonable juror would have understood the trial judge’s jury instructions to place the burden of proof of Hicks where “[t]he instructions specified the State had the overall burden of proof”). Moreover, the trial judge expressly instructed the jurors they must consider whether the prosecution had established Bowers was not acting in self-defense at the time Green was shot while emphasizing mutual combat could *not* negate self-defense in connection to that particular offense since it was simply not applicable based on the evidence presented. Cf. Taylor, 356 S.C. at 235, 589 S.E.2d at 5 (recognizing an erroneous jury instruction only requires reversal when it results in prejudice but concluding the improper mutual combat instruction presented in Taylor’s case warranted the grant of a new trial due to the fact it negated self-defense under the specific circumstances involved). As a result, the mutual combat jury instruction presented in Bowers’s case could have neither contributed to Bowers’s conviction for ABHAN under the circumstances nor negated Bowers’s claim of self-defense in connection to the shooting of Green, and, thus, Bowers suffered no actual prejudice from the challenged

instruction in regard to his ABHAN conviction. See Middleton, 407 S.C. at 317, 755 S.E.2d at 435 (recognizing an error related to jury instructions will be found to be harmless if the error did not contribute to the jury's verdict).

Beyond that, the trial judge's mutual combat jury instruction could *not* have contributed to the jury's verdict on ABHAN from a factual standpoint. Critically, looking to the evidence supporting the ABHAN charge, the only evidence presented—as recognized by the Court of Appeals—established Green merely exited a house at the scene before quickly being shot in the back as he attempted to flee from the gunfire that suddenly erupted, and no testimony was presented to suggest Green was armed, was involved in the altercation or shooting, or acted in a threatening matter towards Bowers prior to being shot. In light of that evidence, neither the mutual combat nor self-defense jury instructions could have had anything to do with the shooting of Green from a factual standpoint, and any confusion the mutual combat charge could have generated in regard to the self-defense charge could not have impacted or contributed to the ABHAN conviction since Green was not and could not have been shot in self-defense based on the evidence presented.¹¹ See State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) (recognizing it is axiomatic all four elements of self-defense must be established in order for that defense to apply); see also Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 131 (2014) (“The transferability of intent in a self-defense claim has not been recognized in South Carolina[.]”); State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (declining to

¹¹ Tellingly, when the trial judge indicated the mutual combat charge would only negate self-defense as it related to Morgan in the event the jury found mutual combat had been established, defense counsel responded: “Correct.” (App’x p. 350). Based on that trial concession, Bowers could not properly claim on appeal the improper presentation of a mutual combat charge could have prejudicially impacted the ABHAN conviction by negating self-defense in regard to that specific charge. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal).

recognize the theory of transferred self-defense as a viable theory in South Carolina); cf. State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013) (finding a request for immunity from prosecution was properly denied where evidence was presented establishing the unarmed victim was shot in the back); Jackson v. State, 355 S.C. 568, 573, 586 S.E.2d 562, 565 (2003) (holding the absence of a self-defense instruction that was warranted under the circumstances of Jackson’s case could not have affected the outcome of trial in light of the overwhelming evidence of guilt presented, which included evidence establishing the victim was shot in the back); State v. Oates, 421 S.C. 1, 23, 803 S.E.2d 911, 923 (Ct. App. 2017) (holding the trial judge properly declined to grant a directed verdict based on a claim of self-defense where the evidence—in part—established the victim was shot in the back). As a result, the prejudice the Court of Appeals believed resulted from the improper presentation of a mutual combat charge could not have been applicable to Bowers’s conviction for ABHAN since no evidence whatsoever suggested Bowers shot Green in self-defense, and, thus, there was no proper basis upon which to reverse that particular conviction even if the mutual combat charge was improperly given and had negated self-defense as it related to the fatal shooting of Morgan. See State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) (“The burden is upon the appellant to satisfy [the appellate] court that there has been *prejudicial* error.” (emphasis added)).

Because the trial judge directly instructed the jury the doctrine of mutual combat was *not* applicable to the charge stemming from the shooting of Green and because mutual combat could not have had any impact on that particular charge based on the specific evidence presented, Bowers did not suffer any prejudice in regard to the ABHAN conviction as a result of the jury being instructed on mutual combat. See King, 367 S.C. at 136, 623 S.E.2d at 867 (Ct. App. 2005) (“Error without prejudice does not warrant reversal.”); see also State v. Pagan, 369 S.C.

201, 212, 631 S.E.2d 262, 267 (2006) (“Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.”). Accordingly, the Court of Appeals plainly erred by reversing Bowers’s ABHAN conviction due solely to the presentation of a jury instruction that could not have in any way contributed to that particular conviction. See Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) (“It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.”); see also State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) (“While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.”). The State’s petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be vacated, and, at a minimum, Bowers’s conviction for ABHAN should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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November 12, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-001776

RECEIVED

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S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

JOSEPH BOWERS,

Respondent.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Petition for Writ of Certiorari and accompanying Appendix on Respondent by delivering two copies of the same to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 12th day of November, 2019.



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