

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. 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

THE STATE,

Petitioner,

vs.

JOSEPH BOWERS,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON CERTIORARI

Even assuming Bowers's appellate challenge to the mutual combat jury instruction was 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

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. The State the filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted in part on May 22, 2020.

STATEMENT OF FACTS

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 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 of trial, 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 again 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

Even assuming Bowers’s appellate challenge to the mutual combat jury instruction was properly preserved for appellate review and the trial judge erred by instructing the jury on mutual combat, the Court of Appeals nonetheless erred by reversing Bowers’s assault and battery of a high and aggravated nature conviction because 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 reversed all Bowers’s convictions, including his conviction for ABHAN, upon concluding the trial judge erred by instructing the jury on mutual combat. In doing so, the Court of Appeals determined the mutual combat charge was prejudicial to Bowers because it negated his claim of 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.⁹ 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

⁹ Significantly, as recognized by the Court of Appeals, “the circuit court instructed the jury on mutual combat and *told the jury the doctrine applied only to Michael Morgan’s murder.*” State v. Bowers, 428 S.C. 21, 27-28, 832 S.E.2d 623, 627 (Ct. App. 2019) (emphasis added).

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 decision of the Court of Appeals should be vacated, and 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. Burkhardt, 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 sub judice, 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.¹⁰ 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

¹⁰ Through his initial jury charge, the trial judge instructed the jury in a manner that could have potentially allowed for the jurors to consider the law of mutual combat in connection to all the indicted offenses. (App’x p. 341). However, in response to a jury question asking whether a determination of mutual combat required a finding of culpability as to each of the charges, the trial judge—with the assent of defense counsel—dispelled any potential confusion in that regard by directly instructing the jurors the law of mutual combat could *only* be applicable to the charge related to the shooting of Morgan while there was “not mutual combat” in connection to the “other victims” as “a matter of law.” (App’x pp. 350-354). Based on that unambiguous—and unobjected-to—supplemental instruction from the trial judge, the jurors simply could *not* have found the doctrine of mutual combat was applicable to the shooting of Green under the circumstances involved. See State v. Lightsey, 43 S.C. 114, ___, 20 S.E. 975, 975 (1895) (holding any error with the giving of an erroneous jury instruction was cured by the trial judge recalling the jury and correcting the erroneous instruction); see also State v. Holmes, 171 S.C. 8, ___, 171 S.E. 440, 443 (1933) (“If the correction, in the mind of [defense] counsel, was not sufficiently clear, he should have asked for further instructions.”).

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—or anyone else—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 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

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).

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 State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 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 decision of the Court of Appeals should be vacated, and Bowers’s conviction for ABHAN should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals should be vacated and Bowers's conviction for assault and battery of a high and aggravated nature should be affirmed.

Respectfully submitted,

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June 22, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 22 2020

S.C. 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

THE STATE,

Petitioner,

vs.

JOSEPH BOWERS,

Respondent.

CERTIFICATE OF COUNSEL

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

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