

IN THE SUPREME COURT OF GEORGIA

ANTAVIO PIERCE,
Appellant,

v.

THE STATE OF GEORGIA,
Appellee.

On Appeal from the Superior Court of Tift County
Trial Court No. 2023CR0195

APPELLANT'S BRIEF

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INTRODUCTION

Antavio Pierce and Vincent Myers hated each other. They spent years fighting over a woman. When Pierce saw Myers at the gas station, he pulled up to him in his pickup truck. The State said, “What happened was contemporaneous in terms of the drawing of the weapons.” They started shooting. But Myers had badly injured his right hand three weeks earlier while knocking Pierce unconscious at the same gas station. So Myers shot with his left hitting Pierce’s ankle. Pierce shot Myers in the chest, and Myers died.

Pierce sought an instruction on voluntary manslaughter based on mutual combat. If it had been granted, the jury would have been told that, if it found combat by agreement, it must acquit him of murder. Instead, the trial court instructed the jury that, if it found combat by agreement, it could not find Pierce justified unless he withdrew from the fight and communicated his withdrawal.

With the voluntary-manslaughter instruction, a finding of combat by agreement would have required the jury to acquit Pierce of murder. Without the combat-by-agreement limitation, the jury could have acquitted him based on justification. But these halfway instructions eliminated both routes on these facts.

Because the jury was misinformed about the law over defense objection, Pierce respectfully requests a new trial with accurate instructions.

PROCEDURAL HISTORY

On September 11, 2023, a Tift County grand jury indicted Antavio Latrez Pierce on one count of felony murder, predicated on aggravated assault, and one count of aggravated assault. (R. 14–16.) The charges arose from the July 17, 2023 shooting death of Vincent Myers at a Tift County Sunoco station.

The case was tried before a jury on March 5 and 6, 2025, the Honorable Bill Reinhardt presiding. (T. 1.) At the charge conference, trial counsel Gabe Banks requested an instruction on voluntary manslaughter as a lesser included offense, both in a written request to charge and in argument. (R. 122–124; T. 325–326.) The trial court denied the request, ruling that voluntary manslaughter was “not adjusted to the evidence in this case,” and expressly noting that the objection was “timely made and preserved for the record.” (T. 335.) Counsel renewed the objection after the jury was charged. (T. 407.)

On March 6, 2025, the jury found Pierce guilty on both counts. (R. 141.) The trial court sentenced Pierce to life imprisonment with the possibility of parole on the felony-murder count and merged the aggravated-assault count into the murder conviction. (R. 142–143.) Judgment was entered on March 19, 2025 and filed on March 21, 2025. (R. 142, 147.)

Trial counsel filed a timely preliminary motion for new trial on April 3, 2025. (R. 147.) Appellate counsel entered an appearance on October 14, 2025 (R. 150), and filed an amended motion for new trial on January 14, 2026, raising the trial court's refusal to charge voluntary manslaughter and, in the alternative, trial counsel's ineffectiveness in failing to request an instruction on mutual combat. (R. 151–156.) The court held an evidentiary hearing on April 6, 2026, followed by an additional hearing on April 28, 2026. By order filed May 8, 2026, the trial court denied the motion for new trial. (R. 157–161; MNT T. 1.)

Pierce filed a timely notice of appeal on May 22, 2026. (R. 1.)

STATEMENT OF JURISDICTION

This is a direct appeal from a final judgment of conviction and the denial of a timely motion for new trial. See OCGA § 5-6-34 (a) (1).

Pierce was convicted of felony murder and sentenced to life imprisonment. Jurisdiction lies in this Court rather than the Court of Appeals because the Supreme Court retains jurisdiction over non-death-penalty murder appeals under its certiorari authority and the standing transfer order adopted in *State v. Thornton*, 253 Ga. 524, 524 (1) (1984). See *Hart v. State*, 322 Ga. 1, 22–23 (2025).

The judgment of conviction was filed on March 21, 2025. (R. 142–147.) Pierce filed a timely motion for new trial on April 3, 2025. (R. 147–149.) The order denying that motion was filed on May 8, 2026. (R. 160.) Pierce filed his notice of appeal on May 22, 2026, within 30 days of the order denying his motion for new trial. (R. 1.) See OCGA § 5-6-38 (a).

ENUMERATION OF ERRORS

1. *The trial court erred by failing to charge the jury on voluntary manslaughter.*
2. *Trial counsel was ineffective for failing to specifically request a mutual combat instruction.*

STATEMENT OF FACTS

Antavio Pierce and Vincent Myers got along pretty well, until Myers learned Pierce was sleeping with his wife, Brittany. (T. 59–60). Obviously, this created some “bad blood.” (T. 60). A GBI agent described the situation as “a love triangle.” (T. 240).

From then on, these men hated each other. The first time they got arrested as a result was in 2020. (T. 241–42). When Myers found out that Pierce was at Brittany’s apartment, he went over there. (T. 242). They fought, and they both got locked up for disorderly conduct. (T. 242).

For a few years, they managed to avoid each other. But that changed on June 28, 2023. (T. 243).

By then, Brittany had separated from Myers and chosen Pierce. (T. 62–63). So when Myers saw Pierce driving away from Brittany’s home, Myers turned around and followed him to the local Sunoco station. (T. 243–44). Pierce went inside to play the lottery and buy food. (T. 107). Myers was close behind.

The men exchanged words. When Pierce lowered his head, Myers punched him in the face. (T. 107). The blow bloodied Pierce’s nose, chipped his tooth, and knocked him unconscious. (T. 66). Myers hit Pierce so hard that he tore up the tendons in his hand, leading to an infection and surgery. (T. 66, 232).

After the fight, Myers called Brittany to say that he had knocked Pierce out and she could come pick her “boyfriend” up from the gas-station floor. (T. 107–08). Brittany described Myers as angry but “prideful.” (T. 108).

Three weeks later, Pierce and Myers crossed paths again at the same Sunoco. Nothing showed that Pierce knew Myers would be there. Investigators found no calls or messages between the men that day. They also found no communication showing that anyone had told Pierce where Myers was. (T. 258–59).

Surveillance cameras captured the encounter. *Defense Ex. 2*; T. 274–77.

Pierce pulled into the parking lot in his pickup truck. Myers stood beside his own truck at the gas pumps. As Pierce began opening his door, Myers reached toward the left side of his body, where he carried his gun. (T. 275–76). At that point, the video showed no gun in Pierce’s hand. (T. 276). Myers pulled his gun, and his holster fell to the pavement beside his truck. (T. 176, 276). Only after Myers began reaching upward did the video show a silver object rise above Pierce’s door frame. (T. 277). Even the prosecutor described the men’s weapon draws as “contemporaneous.” (T. 383).

Then they started shooting.

Both men fired several times. (T. 269). Investigators recovered twelve nine-millimeter cartridge casings—four brass and eight silver. (T. 177, 191). Because Myers had injured his dominant right hand while punching Pierce three weeks earlier, he drew and fired his gun with his left hand. (T. 232). Myers shot Pierce in the ankle. (T. 215). Pierce shot Myers once in the left front of his chest. (T. 161). Myers was not shot in the back. (T. 161).

After Pierce shot him, Myers ran from the pumps toward the front of the store. (T. 269–71). He collided with a concrete barrier and collapsed. (T. 216). Officers found his gun beside him. (T. 216). Myers died from the gunshot wound to his chest and abdomen. (T. 158). Pierce later went to the hospital for treatment of the gunshot wound Myers had inflicted. (T. 215).

Pierce never denied shooting Myers. He told investigators that, as he pulled into the station, he saw Myers draw and cock his gun. Pierce said he fired to defend himself. (T. 214, 234). Investigators later showed Pierce the surveillance video, but the video did not cause him to change his account. (T. 233).

The State offered a different interpretation. It argued that Pierce drove aggressively into the parking lot and initiated the confrontation. But the State conceded that Pierce and Myers drew their weapons contemporaneously. (T. 383).

STANDARD OF REVIEW

Whether the evidence authorized a requested charge on a lesser included offense is a question of law that this Court reviews de novo. A requested charge on voluntary manslaughter must be given if there is any evidence, however slight, to support it; the persuasiveness of that evidence is a question reserved for the jury. *Shah v. State*, 300 Ga. 14, 21 (2016). Because Pierce preserved his objection to the refusal of that charge, the State bears the burden of showing that it is highly probable the error did not contribute to the verdict. *Id.* at 21–22.

A claim of ineffective assistance of counsel presents a mixed question of law and fact. This Court accepts the trial court’s findings of fact and credibility

determinations unless they are clearly erroneous, but it independently applies the law to those facts. *Suggs v. State*, 272 Ga. 85, 88 (2000); see *Strickland v. Washington*, 466 U.S. 668, 698 (1984).

ARGUMENT AND CITATION OF AUTHORITY

I. The trial court erred by failing to charge the jury on voluntary manslaughter.

A. There was at least slight evidence to support a voluntary manslaughter charge.

Mutual combat exists when both parties share a present willingness, readiness, and intent to fight. That agreement need not be spoken. The jury may infer it from what the parties do. See *Askins v. State*, 210 Ga. 532, 538 (1954). And when two parties, upon a sudden quarrel, willingly enter an armed fight and one kills the other, the jury may find voluntary manslaughter regardless of who struck the first blow. *Cotton v. State*, 201 Ga. 285, 290 (1946).

Here, the men didn't just fight when they saw each other at the gas station. They also fought every single time the record showed they were within a hundred feet of one another.

Myers hated Pierce enough to go uninvited to his wife's apartment, where he fought Pierce and got arrested in the process. (T. 242). Three years later, Myers saw Pierce leaving his wife's home, turned around, followed him

to a gas station, and punched him in the face. (T. 107, 243–44). Myers struck Pierce so hard that he badly injured his right hand and required surgery. He then called his wife to gloat that he had knocked out her “boyfriend.” (T. 66, 107–08, 232).

More importantly, there was evidence that Myers intended to fight Pierce “on the spot.” Pierce told police that Myers drew and cocked his weapon as Pierce drove into the parking lot. (T. 214, 234). The video—particularly the slowed-down version introduced by the defense—showed Myers reaching for his weapon first, although the State described the draws as “contemporaneous.” (T. 275–77, 383; Defense Ex. 2).

These were two armed men, with every intention to fight, shooting at each other until one of them was dead. If that is not mutual combat, then the law is off the books. See *Craw v. State*, 369 Ga. App. 231, 238–39 (2) (2023) (holding a mutual-combat instruction warranted where the evidence showed that the defendant and the victim decided to resolve their differences by firing handguns at each other).

The State may argue that Pierce could not pursue voluntary manslaughter based on mutual combat because that theory conflicted with justification. But “criminal defendants, like other litigants, are entitled to pursue alternative theories, even when those theories are inconsistent.” *McClure v. State*, 306 Ga. 856, 863 (2019). And a defendant is entitled to an

instruction on an alternative theory when at least slight evidence supports it, even if it conflicts with another theory advanced by the defense. *Id.* at 864. The State’s anticipated argument therefore fails.

The parties’ longstanding hostility did not categorically foreclose mutual combat. The relevant question was whether, when they encountered one another, both shared a present willingness and intent to fight. See *Cotton v. State*, 201 Ga. 285, 290 (1946). There, the State’s evidence supported murder, the defense evidence supported justification, and a composite of the two supported mutual combat. The jury was entitled to choose among those competing inferences. So was Pierce’s jury.

B. The error was preserved.

Pierce preserved this error. Trial counsel requested a charge on voluntary manslaughter, explained that the evidence supported both justification and voluntary manslaughter, and cited authority involving mutual combat. (T. 324–27). The trial court denied the request, stating: “That’s over the defense objection, which is timely made and preserved for the record.” (T. 335). Counsel renewed the objection after the court charged the jury. (T. 407). Trial counsel’s position was clear enough that, in describing the defense theory, the State told the jury that the defense wanted to characterize the shooting as “some sort of mutual combat.” (T. 381).

Under OCGA § 17-8-58 (a), a defendant preserves a charging error by stating the specific objection and its grounds before the jury retires. Pierce did so: he explained the basis for the requested instruction at the charge conference and renewed his objection after the charge was given. See *Blake v. State*, 292 Ga. 516, 518 (3) (2013) (holding the refusal to give a voluntary-manslaughter instruction preserved where counsel restated the objection after the court charged the jury).

Because the error was preserved, the State must show that it is highly probable the refusal to charge voluntary manslaughter did not contribute to the verdict. *Shah v. State*, 300 Ga. 14, 21–22 (2016). It cannot make that showing.

C. The State cannot show harmlessness because, on the undisputed facts, the instruction required the jury to convict Pierce of murder if it found combat by agreement.

Pierce admitted that he intentionally shot Myers. No one disputed that the shot caused Myers's death. And Pierce never claimed that he withdrew from the fight or communicated an intent to withdraw.

The jury should therefore have been told that, if it found Pierce killed Myers during combat by agreement, it could not convict him of murder:

If you find that the Defendant killed the deceased during combat by agreement, then you **may not** convict of murder but you may be authorized to convict of voluntary manslaughter, and you should consider the instructions I give you on voluntary manslaughter.

Georgia Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, “Murder; Mutual Combat.”

Instead, the court told the jury that, if Pierce engaged in combat by agreement, he could not be justified unless he withdrew from the fight and clearly communicated his intent to withdraw. (T. 398–99).

On these facts, that instruction required conviction. Once the jury found combat by agreement, it could not acquit Pierce based on justification because he had neither withdrawn nor claimed to have withdrawn. And because the court withheld the voluntary-manslaughter instruction, the jury had no lesser homicide verdict available. A finding that should have barred a murder conviction instead compelled one.

This was not a minor downside. In describing the tradeoffs involved in requesting a mutual-combat instruction, this Court explained that the withdrawal requirement imposes a cost on a justification defense, while the possibility of voluntary manslaughter supplies the corresponding benefit. “Whether the potential upside of a charge is worth its costs is a quintessential question of trial strategy.” *State v. Mobley*, 296 Ga. 876, 881 (2015). But Pierce received only the cost.

Nor can the State reasonably argue that the guilty verdict shows the error was harmless. When a jury is told that a finding of mutual combat requires conviction on the undisputed facts, a conviction does not disprove the harm. The jury was denied not only the basis to acquit Pierce based on justification, but also the reasonable middle ground of voluntary manslaughter. See *Shah v. State*, 300 Ga. 14, 21–22 (2016).

The omission also affected the felony-murder verdict. If the aggravated assault that caused Myers's death was mitigated by the passion and provocation arising from mutual combat, that same assault could not support felony murder. See *Edge v. State*, 261 Ga. 865, 865–67 (1992). Because the jury was instructed that the same finding that barred murder instead required conviction, the State cannot show that the error was harmless.

II. Alternatively, trial counsel was ineffective for failing to request and preserve the mutual-combat instruction.

Pierce's primary argument is that trial counsel adequately preserved his request for voluntary manslaughter based on mutual combat. But if the Court concludes that counsel was required to request the mutual-combat instruction more specifically, then counsel rendered ineffective assistance by failing to do so.

To prove ineffective assistance, Pierce must show that counsel performed deficiently and that there is a reasonable probability the result would have been different but for that deficiency. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). When the alleged deficiency is counsel's failure to request a jury instruction, the prejudice inquiry is whether, had the charge been requested, authorized, and given, there is a reasonable probability that it would have changed the outcome of the trial. *Powell v. State*, 307 Ga. 96, 100–01 (2019).

Both requirements are satisfied here.

A. No reasonable lawyer would fail to request a mutual combat instruction when the jury was already instructed on combat by agreement.

In an ordinary case, the State would have a good answer. A mutual-combat instruction can weaken a justification defense, so a lawyer may reasonably decide that its possible benefit is not worth the cost. See *State v. Mobley*, 296 Ga. 876, 880–81 (2015).

But that is not this case. Pierce paid the cost anyway.

The court told the jury that Pierce could not be justified if he engaged in combat by agreement unless he withdrew and communicated his withdrawal.

Pierce never claimed that he did either. So the mutual-combat instruction had already done all the damage it could do to self-defense.

At that point, there was no strategic reason to forgo the rest of the instruction. The favorable portion could not weaken justification any further. It could only tell the jury that the same finding of combat by agreement barred a murder conviction.

Swanson v. State, 306 Ga. 153, 157–58 (2019), is instructive. There, counsel pursued self-defense even though the facts legally foreclosed it, while failing to request a defense-of-habitation instruction that remained available. This Court found deficient performance because no reasonable lawyer would choose a foreclosed defense over an available one supported by the evidence.

The same problem exists here. Banks told the court he was considering a mutual-combat instruction. (T. 293). He requested voluntary manslaughter, argued that the evidence supported both justification and voluntary manslaughter, and relied on the parties' fighting and contemporaneous weapon draw. (T. 324–27). He also testified that he wanted a voluntary-manslaughter verdict and considered it a good result. (MNT T. 6–7).

No reasonable lawyer seeking voluntary manslaughter would allow the jury to receive mutual combat's entire downside while withholding its only benefit. Pierce was already paying the cost of the instruction. Counsel simply failed to ask for the part that could have saved him from a murder conviction.

That was deficient performance.

B. There is a reasonable probability that the omission changed the verdict.

Georgia courts have often found harm when instructions mislead the jury. Take *Pindling v. State*, 311 Ga. 232, 235–37 (2021), for instance. An important witness implicated the defendant, the jury was told that the testimony of a single witness was sufficient to prove a fact beyond a reasonable doubt, but they were never told that if that witness was an accomplice, she would need to be corroborated. That was harmful error even under the unforgiving plain error standard.

Here, similarly, the jury was misled by a missing instruction. The jury was told that, if it found combat by agreement, Pierce could not be justified unless he withdrew from the fight and communicated his withdrawal. (T. 398–99). On the undisputed facts, that finding left the jury no path to acquit him of murder. But the omitted instruction required the opposite result: if the jury found that Pierce killed Myers during combat by agreement, it could not convict him of murder.

The misleading charge affected the felony-murder verdict as well. The State relied on the aggravated assault that killed Myers as the predicate for felony murder. If that assault was mitigated by the passion and provocation

arising from mutual combat, it could not support felony murder. See *Edge v. State*, 261 Ga. 865, 865–67 (1992).

Had the mutual-combat instruction been requested, authorized, and given, there is a reasonable probability the outcome would have been different. Counsel’s objectively unreasonable omission deprived Pierce of the effective assistance of counsel and requires a new trial.

CONCLUSION

For the foregoing reasons, Antavio Pierce respectfully requests that this Court reverse his convictions and remand this case for a new trial.

Respectfully submitted this 24th day of July 2026. This submission does not exceed the word-count limit imposed by Rule 20.

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CERTIFICATE OF SERVICE

I certify that, before filing, I served a copy of the foregoing Appellant's Brief by United States Postal Service, first-class mail, postage prepaid, upon the following:

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