STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2018-000911

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 12, 2022. App. 25-26.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed?

II. Did the Court of Appeals err in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense?

STATEMENT OF THE CASE

Petitioner and Tyhira Harrington were friends. R. 132, ll. 16-20; R. 172, ll. 13-18. On May 10, 2016, Petitioner was aware that there were rumors going around Estill that were damaging his friendship with Harrington. R. 333, l. 21 – R. 334, l. 2. As a result, Petitioner went to visit with Harrington to clear his name. R. 136, ll. 13-14; R. 177, ll. 1-2; R. 333, l. 25 – R. 334, l. 13. Harrington had been drinking all day. R. 181, ll. 22-23; R. 192, ll. 2-23. Initially, the two engaged in a civil discussion, however, Harrington punched Petitioner and her friends, Kywana Bradley and Yhantyse "Daisy" Priester, joined in to assist Harrington. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Eventually, Petitioner was able to get out of Harrington's apartment. R. 334, ll. 23-24.

Later that evening, Petitioner and his girlfriend, Javasha Forrester, were walking down the street, going home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. A car drove past them, slammed on brakes, backed up, and then pulled into a parking lot within inches of the pair. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. From the car emerged Harrington, Priester, and two young men named Randy White and Marquis Alston. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Petitioner was scared. R. 339, ll. 1-2; R. 344, ll. 6-7. Harrington was in "full effect" and immediately started threatening Petitioner and Forrester. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. According to White, Harrington was "full of rage." R. 107, l. 25; R. 181, l. 22. Harrington wanted to fight and was intent on doing violence. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Petitioner put Forrester behind him to shield her from Harrington and the two backed up. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. Harrington's

boyfriend, Randy White, was "right beside" Harrington as she continued to approach Petitioner and Forrester. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. Harrington's other compatriots were not far behind them. R. 341, l. 23 – R. 342, l. 1.[1] When Forrester repeatedly assured Harrington that she did not want to fight, Harrington turned her ire toward Appellant. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Petitioner at she had a gun in her car. R. 341, ll. 13-15.

Petitioner explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Appellant's repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Petitioner did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17. Petitioner and Forrester then ran to safety. R. 345, l. 18 – R. 346, l. 7.

On February 6, 2017, the Hampton County grand jury indicted Petitioner for possession of a weapon during the commission of a violent crime (2016-GS-25-177) and murder (2016-GS-25-178). R. 460-465. On May 7-9, 2018, the state, represented by Tameaka Legette and Bryan Hollen, called the case for trial before the Honorable Carmen T. Mullen and a jury. R. 1-2. Stephen T. Plexico represented Petitioner. R. 2.

During the trial, the state relied heavily upon a text message allegedly from an individual who did not testify. The text message was unauthenticated and hearsay.

Marilyn Garvin, the deceased's mother, told the jury that on May 10, 2016, she and her boyfriend, Samson Williams, were moving out of the deceased's apartment and into an

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[1] Marquis Alston claimed that when the car stopped he got out and went to the home of a friend who lived nearby. R. 154, ll. 10-12; R. 155, ll. 17-24; R. 157, ll. 1-7. Yhantyse Priester claimed that she sent Alston and Randy White to get Kywana Bradley to calm Tyhira Harrington. R. 181, ll. 7-11.

apartment of their own. R. 74, ll. 4-12. Late that evening, Garvin went to her new apartment. R. 74, ll. 13-22. While at her new apartment, she allegedly received "a call from Johnny - - Johnny McKnight saying - - calling and said that Hard and his girlfriend [were] on the back of [the deceased's] apartment fiddling with the door." R. 75, ll. 6-12. Petitioner objected to the testimony as hearsay, moved to strike the testimony, and requested a curative instruction. R. 75, ll. 13-14. Although the solicitor had elicited the testimony, the solicitor agreed to "strike it." R. 75, l. 15. The judge instructed the jury, "Ladies and gentlemen, that last comment is not appropriate. Someone cannot say what someone else has said." R. 75, ll. 16-18.

The solicitor then asked if Garvin "also g[o]t a text message from anyone." R. 75, ll. 20-21. Garvin responded, "Mr. Johnny McKnight. Johnny known as Johnny Blaze." R. 75, l. 20. She further explained that she had "Mr. McKnight programmed" into her phone "under Johnny Blaze." R. 76, ll. 1-3. Garvin claimed she knew "his telephone number when it came in." Tr. 76, ll. 4-6. She later stated she could recognize the text message "[b]ecause they programmed in my phone as Johnny Blaze, and the same text is in my phone." R. 77, ll. 3-5. According to Garvin, she called the deceased and told her what McKnight allegedly said to her via text message. R. 77, ll. 10-14; R. 77, ll. 21-22. Garvin claimed the deceased had no reaction and simply hung up the phone. R. 77, ll. 23-24.

During the examination, the solicitor instructed Garvin not to say "what he said." R. 77, l. 15. While this instruction appeared to demonstrate the solicitor's understanding that what McKnight said to Garvin via text message was inadmissible hearsay and was not authenticated, the solicitor then sought to introduce the message into evidence. R. 77, l. 25 – R. 78, l. 2. Defense counsel immediately objected, explaining the text message itself was hearsay and unauthenticated because the sender was unknown. R. 78, ll. 3-6; R. 78, ll. 11-13. The state

defended its request for admission by arguing, "she knows that it was her phone, and it - - the text message came to her phone." R. 78, ll. 7-9. Ultimately, the trial judge allowed the text message to be admitted into evidence. R .78, l. 23 – R. 79, l. 7; R. 459.

Subsequently, Garvin read the text message to the jurors: "I just seen Hard girlfriend walking behind apartment. He's probably behind her to[o] trying something." R. 79, ll. 23-25. According to Garvin, the message meant "that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house." R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, "Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment." R. 80, ll. 20-24.

After hearing this testimony, the jury found Petitioner guilty as charged. R. 454 l. 21 – R. 455, l. 2. Judge Mullen sentenced Petitioner to life imprisonment without the possibility of parole for murder and to five years imprisonment for the weapon. R. 456, l. 21 – R. 457, l. 4; R. 460-465. She ordered the sentences to be served concurrently. R. 457, l. 5; R. 460-465.

On May 14, 2018, Petitioner filed his notice of appeal. On appeal, Petitioner challenged the trial court's ruling that the text message allegedly received by Garvin from Johnny McKnight was admissible as evidence to be considered by the jury against Petitioner. After briefing, the Court of Appeals heard argument on November 10, 2021. On July 13, 2022, the Court of Appeals issued an unpublished opinion. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 1-12.

The Court held that although the text message was properly authenticated, it was inadmissible hearsay. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 1-12. Nevertheless, the Court concluded the erroneous admission of the text message was

harmless. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 9-12. On July 28, 2022, Petitioner filed his petition for rehearing requesting the Court of Appeals rehear its decision that the state presented sufficient evidence to authenticate the text message and its determination that although the text message was hearsay, its introduction was harmless. App. 13-24. On August 12, 2022, the Court of Appeals denied Petitioner's request for rehearing. App. 25-26. This petition for writ of certiorari follows.

ARGUMENT

I. The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.

This Court should grant certiorari to clarify the law regarding authentication in the age of digital media. While authentication in general is not necessarily a novel question, how to properly authenticate materials created digitally is a novel question for this Court. When this issue was presented to the Court two years ago, this Court simply "affirmed the trial court's authentication determination and admission of social media posts without further comment." See State v. Green, 432 S.C. 97, 99, 851 S.E.2d 440, 440 (2020). This Court should take this opportunity to put the final word on what satisfies the requirement of authentication in the novel area of materials created and obtained from digital media. See Rule 242(b)(1), SCACR. In this modern age of omnipresence of digital media in every aspect of life, the circuit courts in South Carolina are inundated with material from digital media that the various parties propose to admit into evidence for consideration on the ultimate question before the judge or the jury. Thus, clarity from this Court for circuit judges and litigants regarding the proper way to authenticate materials gained from digital media is necessary.

The proponent of evidence must satisfy "[t]he requirement of authentication or identification as a condition precedent to admissibility." Rule 901(a), SCRE. This requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Id. While the burden is not high, the proponent must offer a satisfactory

foundation to permit the jury to conclude the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (citing United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)).

The Court of Appeals held the state properly authenticated the text message allegedly sent by Johnny McKnight and received by Garvin by showing the text message "contained distinctive characteristics and the like." See Rule 901(b)(4), SCRE; App. 6-7. The Court of Appeals. relied on Garvin's testimony, which was admittedly inadmissible and stricken from the record, that "she received a phone call and spoke to McKnight." App. 6-7. According to the Court of Appeals, "Garvin's statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be." App. 7.

Pursuant to Rule 901(b)(4), SCRE, "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances" may serve to authenticate evidence. Recently, the Court of Appeals addressed the authentication of social media messages through circumstantial evidence. State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), aff'd as modified State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020). The Court held the state authenticated Facebook messages despite neither the sender nor the recipient testifying. Id. at 232-233, 830 S.E.2d at 715-716. Rather, a witness testified that a co-defendant, who was not on trial, used the name "Ruby Rina" on Facebook. Id. at 228, 830 S.E.2d at 713. The witness claimed he saw the co-defendant and the defendant "laughing while texting." Id. Later that day, the deceased arrived at the co-defendant's home. Id. Subsequently, the police found the deceased's body. Id. The police learned of the messages from the deceased's father. Id. at 227, 830 S.E.2d at 712. The father claimed he had the deceased's Facebook password and

viewed the messages after the deceased went missing. Id. Among the messages was an invitation from Ruby Rina to the deceased on the day of his death for a sexual rendezvous at her home. Id. at 227, 830 S.E.2d at 712-713.

The Court held "the content of the messages was distinctive enough that a reasonable jury could find [co-defendant] wrote them." Id. at 233, 830 S.E.2d at 715. According to the Court,

> Numerous facts link[ed] the Facebook messages to [co-defendant] and, consequently, Green: the use of the screen name 'Ruby Rina,' which [a witness] testified was [co-defendant]'s; reference to 'Julissa' on the messages, which testimony showed was [co-defendant]'s sister's name; Ruby Rina's invitation to her home, which she stated was at 108 Queens Circle; [the deceased]'s reference to Ruby Rina as [co-defendant] ...; comments throughout the messages about Ruby Rina's erstwhile boyfriend that were consistent with her relationship with Green; the timing of the messages; and the tragic fact that [deceased] disappeared shortly after Ruby Rina invited him to 108 Queens Circle, where his blood was later discovered.

Id. at 233, 830 S.E.2d at 715-716. The Court held that "[t]aken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets." Id. at 233, 830 S.E.2d at 716.

Shortly after deciding Green, the Court of Appeals addressed the authentication of text messages. State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021). The state introduced text messages allegedly sent and received by Benton. Id. at 261, 865 S.E.2d at 924. There was even evidence in the record that others used Benton's phone to send messages. Id. The Court held "sufficient distinctive characteristics and accompanying circumstances existed to authenticate the text messages." Id. at 261, 865 S.E.2d at 925. Although the Court noted the trial court erred by stating the fact that the messages were sent from Benton's phone provided sufficient proof to establish Benton was the author, the Court found the timing, distinctive characteristics, and a witness's identification of certain messages provided the circumstantial evidence necessary for authentication. Id. at 263, 865 S.E.2d at 926.

The Court explained that "[d]uring the time Benton concede[d] he was in possession of his phone, he frequently sent text messages to a phone number saved in his phone as 'My Love.'" Id. at 263-264, 865 S.E.2d at 926. Leading up to the day of the alleged crime, Benton frequently sent messages to this person using similar language. Id. at 264, 865 S.E.2d at 926. Also during that time period, there were text messages from Benton's phone to others involved in the alleged crime; thus, the Court concluded, "[t]he contents of the text messages to [his love interest] provide[d] circumstantial evidence from which a reasonable jury could find Benton was in possession of his phone and sent the text messages to others during this same period. Id.

Other jurisdictions addressing authentication of text messages and social media posts have noted the difficulty of authenticating these forms of evidence. Holding a printout of a MySpace page was not authenticated, the Maryland Court of Appeals noted the significant challenges presented from authenticating social media posts due to the ease of creating fictitious accounts. Griffin v. State, 19 A.3d 415, 420-424 (Md. 2011). Likewise, the Mississippi Supreme Court explained "[t]he authentication of social media poses unique issues regarding what is required to make a prima facie showing that the matter is what the proponent claims." Smith v. State, 136 So.3d 424, 432 (Miss. 2014). See also United States v. Vayner, 769 F.3d 125 (2nd Cir. 2014) (holding a profile page was not authenticated); Commonwealth v. Mangel, 181 A.3d 1154, 1162 (Pa. Super. Ct. 2018) (discussing the "additional challenges" presented by "[s]ocial media evidence" "because of the great ease with which a social media account may be falsified, or a legitimate account may be accessed by an imposter"); Com. v. Williams, 926 N.E.2d 1162, 1172-1173 (Mass. 2010) (finding error in the admission of messages sent via MySpace where there was no evidence of the identity of the sender of the messages).

Here, contrary to the opinion issued by the Court of Appeals, the state failed to

authenticate the text message contained within State's Exhibit #25. The Court relied upon Garvin's inadmissible and stricken testimony "she received a phone call from and spoke to McKnight." The Court held that "Garvin's statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be." Therefore, this exact exchange between the solicitor and Garvin is critical:

> Q. Did anything else happen after you got to your apartment? Did you get any other phone calls?
>
> A. Oh. Yeah, I got a call from Johnny - - Johnny McKnight saying - - calling and said that Hard and his girlfriend was on the back of my daughter apartment fiddling with the door. And then, I called her and I told her. She just still - -

R. 75, ll. 6-12. At this point, defense counsel objected, the state consented, and the testimony was stricken from the record. R. 75, ll. 12-15. After Garvin testified that she received a text message from Johnny McKnight "known as Johnny Blaze," the solicitor asked if the text message went to her phone. R. 75, ll. 20-24. Garvin testified, "It came to my phone." R. 76, l. 25.

The Court of Appeals' opinion presupposes – and requires – that Garvin used the same phone for the phone call with McKnight as the text message. However, the record is devoid of *any* evidence that the phone on which Garvin received a voice call from McKnight was the same phone on which she received the text message. Similarly, there is no evidence in the record that the name programmed in her phone, "Johnny Blaze," for McKnight was the name that appeared when she took the phone call. Garvin did not even testify that she could recognize McKnight's voice – in order to identify the caller – based on any prior experience with McKnight.

She never indicated that she communicated with Blaze using that phone number or that she recognized the style of writing. In fact, the writer of the text message used a signature of

"GOD S GIFT," not anything related to "Johnny," "McKnight," or "Blaze." This was a far cry from what is required to authenticate evidence. The state simply failed to show how Garvin knew the author of the text message. The Court of Appeals erred in opining that the state presented sufficient evidence to authenticate the text message. Petitioner respectfully requests this Court grant certiorari to review the erroneous opinion issued by the Court of Appeals.

II. The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.

This Court should grant certiorari to review the erroneous harmless error analysis conducted by the Court of Appeals. As detailed in great detail below, the Court of Appeals concluded the erroneous admission of a text message was harmless because of overwhelming evidence of guilt. The analysis conducted by the Court of Appeals conflicts with this Court's decision in Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), wherein this Court explained what overwhelming evidence of guilt means. See Rule 242(b)(3), SCACR. This Court should grant certiorari to reiterate that the Court of Appeals must follow the opinions issued by this Court, including those regarding when the state has presented overwhelming evidence of guilt.

As previously noted, the Court of Appeals held the text message was inadmissible hearsay. Petitioner, of course, agreed with the Court's analysis and conclusion concerning hearsay. Petitioner did not challenge that portion of the opinion in his petition for rehearing, and Petitioner does not challenge that portion of the opinion now. Notably, the state did not file a petition for rehearing challenging the holding by the Court of Appeals that the text message was inadmissible hearsay. Thus, the only dispute on appeal as it relates to the hearsay aspect of the text message is whether the introduction of the message was harmless.

The Court of Appeals held "admitting the content of the text message was harmless error because the evidence establishing [Appellant]'s guilt was overwhelming." This was error.

This Court recently clarified when evidence is considered overwhelming regarding guilt of the accused. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). This Court explained that "for

the evidence to be 'overwhelming' ... the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong." Id. at 191, 810 S.E.2d at 845.

In the instant matter, it was undisputed that Petitioner killed the deceased. The question was whether Petitioner was justified in using deadly force. For purposes of the harmless error analysis, the question was whether a combination of physical and corroborating evidence presented by the state was so strong as to defeat self-defense beyond a reasonable doubt. The Court of Appeals concluded that the evidence showed the state disproved the elements of self-defense beyond a reasonable doubt without consideration of the text message. However, the record, especially the closing argument made by the solicitor, belies the Court of Appeals' contention.

The state relied upon the text message in its closing argument to claim Petitioner was at fault for bringing on the difficulty. R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Petitioner was "behind the house, trying something." R. 390, ll. 11-15; R. 390, ll. 19-24. According to the solicitor, this meant Petitioner "started the whole thing." R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Petitioner "started it" "when he was trying to get in her house" and the only evidence to support this contention was the text message allegedly sent by Johnny McKnight claiming that Petitioner and his girlfriend were near the apartment. R. 391, ll. 16-19.

Furthermore, the Court of Appeals erred in concluding that the evidence "conclusively showed no person of ordinary firmness and courage would have entered the same belief" – being scared when confronted by the deceased and her crew. The record evidence showed that earlier

in the day on May 10, 2016, *the deceased punched Petitioner.* R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Her friends, Kywana Bradley and Yhantyse "Daisy" Priester, joined in to help the deceased. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1.

Late at night on May 10, 2016, Petitioner and his girlfriend were walking home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. Suddenly, a car drove past them, slammed on its brakes, backed up, and then pulled into a parking lot within inches the two. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. Harrington, Priester, White and Alston jumped from the car. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Harrington was in "full effect" and "full of rage." R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 107, l. 25; R. 181, l. 22; R. 194, ll. 8-11; R. 340, ll. 1-11. She immediately started threatening Petitioner and his girlfriend. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. Harrington wanted to fight. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Petitioner shielded his girlfriend from Harrington as the two backed up from the gang of four. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. White was "right beside" Harrington as she continued to approach Petitioner and his girlfriend. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. The others were not far behind. R. 341, l. 23 – R. 342, l. 1. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Petitioner that she had a gun in her car, which was nearby. R. 341, ll. 13-15.

The Court of Appeals ignored this evidence and relied on the deceased being skinny and unarmed to conclude no person of ordinary firmness and courage would have entertained the

belief that he was in imminent danger of death or serious bodily injury despite the undisputed evidence that the deceased was threatening Petitioner and his girlfriend. See App. 9-12.

The Court of Appeals also determined "the evidence ... conclusively showed he could have avoided the danger without using deadly force." App. 11. The Court ignored the evidence in the record that Petitioner could not "simply leav[e]." Petitioner explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Petitioner's repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Petitioner did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17.

The state's evidence against Petitioner to disprove self-defense beyond a reasonable doubt was far from conclusive so as to be considered overwhelming evidence of guilt. Instead, the evidence showed the deceased physically assaulted Petitioner earlier in the day on May 10, 2016, and her friends helped her. The evidence showed the deceased and three other people confronted Petitioner while he and his girlfriend were walking down the street. Further, the evidence showed the deceased threatened the deceased and his girlfriend – she was ready for a fight. Finally, the evidence showed Petitioner had no means of escape. Based on these reasons, Petitioner respectfully requests this Court grant the petition for writ of certiorari to address the flawed opinion issued by the Court of Appeals.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issues presented.

Respectfully Submitted,

Susan B. Hackett

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Appellate Defender

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ATTORNEY FOR PETITIONER

This 1st day of September, 2022.

STATE OF SOUTH CAROLINA
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APPELLATE CASE NO. 2018-000911

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals and Appendix in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is juliannabattenfield@scag.gov; and the South Carolina Court of Appeals; and on Gregory Sanders, #314824, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of September, 2022.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER