STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable William A. McKinnon, Circuit Court Judge

Opinion No. 2025-UP-398

THE STATE,

RESPONDENT,

V.

MANLY MAURICE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2022-001038

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Petitioner Manly M. Thompson requests that this Court grant rehearing. Petitioner respectfully asserts this Court misapprehended and/or overlooked his argument the trial court erred by concluding S.T. was not competent to testify where the court based its ruling on irrelevant factors such as the potential for testifying to traumatize the witness and because in the trial court's view, the testimony seemed rehearsed. Whether S.T. would be upset by testifying before the jury should not have factored into the admissibility decision. Nor should the trial court's view that S.T.'s testimony was rehearsed, which was a matter for the jury. Further, this Court misapprehended critical facts regarding the substance of S.T.'s testimony—

this Court's finding S.T. told the trial court he did not know the difference between the truth and a lie is unsupported by the record.

The court erred where it ruled eleven-year-old S.T. was not competent to testify, since S.T. was mature enough to relate the facts and understand the duty to tell the truth when testifying.

Petitioner's son, S.T., was present in the living room and witnessed the shooting. S.T.'s mother sought to have him excused from testifying and she presented a letter from his therapist's office. The defense attempted to call S.T. as a witness in its case-in-chief. S.T. was questioned *in camera*, and he testified that he was eleven years old and had finished the fourth grade. R. 14, l. 2 – 19, l. 25; R. 7, l. 11 – 28, l. 13; R. 385, ll. 1-6; R. 635. S.T. was asked what happened the day of the shooting, and he testified:

> I was riding my bike and Uncle Tony pulled up and dad asked, did Uncle Tony want a drink? Then Uncle Tony said, no, then started being mean by saying bad words and went in the house on the couch. And I went in and got grapes and dad came in and they started arguing and fighting.

R. 386, l. 15 – 387, l. 3. S.T. clarified that by "fighting," he meant the men were "wrestling." S.T. also testified that "Uncle Tony," i.e., the alleged victim, was the one who started the wrestling. R. 387, ll. 4-8.

The judge asked S.T. about the difference between the truth and a lie, in an unfortunately and confusingly couched hypothetical regarding a non-existent five-year-old.

> THE COURT: . . . [S.T.], if someone who was like five years old and said to you, [S.T.], tell me the difference between the truth and a lie, what would you tell that five year old?
>
> THE WITNESS: I know the truth.

THE COURT: If a five year old said, what's the difference between the truth and a lie, how would you explain that to a five year old? It's okay, there's no rush. Take your time.

THE WITNESS: I know the difference from a lie or the truth?

THE COURT: What is the difference there? How would you explain that to a five year old if they said, I don't understand what the difference is, what would you say? How about this: What if a five year old said, [S.T.], what is a lie? Can you tell me, what would you tell a five year old, what does it mean to lie?

THE WITNESS: I don't know.

R. 385, l. 21 – 386, l. 12. In contrast, defense counsel questioned S.T. in more age-friendly, concrete terms:

Q. When you go to church, did you learn about evil and good?

A. Yes, sir.

Q. Is it good or evil to tell a lie?

A. Evil.

Q. Do you know the difference between good and evil?

A. Yes.

Q. What is the difference?

A. Good is telling the truth. Evil is telling lies.

Q. Can you give me an example of telling the truth. Let me ask you this: Did you come here today to tell the truth or to tell lies?

A. Tell the truth.

R. 388, ll. 13-25.

The court asked S.T. if he had spoken with anyone "about what you're going to say in court today with anyone before today?" and S.T. said, "No." However, defense counsel asked S.T. if he had spoken with his mother and sister "about this case" and S.T. said, "Yes." R. 387, l.

9 – 389, l. 9. S.T. later stated he did talk to his mother about what he was supposed to say. But he clarified that neither his mother nor his sister had told him to lie. R. 389, ll. 7-9. S.T. further stated his mother did not tell him to testify to the narration of events he had provided. R. 390, l. 13 – 401, l. 9.

Defense counsel argued he should be permitted to call S.T. as a necessary and material witness based on Petitioner's rights to due process and a fair trial. Defense counsel noted, "this child says clearly, that – and he spit it right out. He says what he saw." R. 394, ll. 2-8; R. 393, ll. 19-20.

The court ruled as follows.

> **I find the witness is not competent to testify**. As an initial matter, one of the key --- **looking at the factors for *South Carolina Department of Social Services v. Doe* from 1987. It's an eight-factor analysis. One of the key ones is to understand the difference between the truth and a lie. I asked the witness, could he do that? He was unable to answer**, even though I gave him a significant amount of time and I phrased it. I tried to make it a child friendly form. I said, "If a 5 year old asked you what's the difference between a truth and a lie, what would you say?" He said he didn't know. And so that – that, alone, I think is the basis to exclude the testimony.
>
> **Further, the Court is concerned that the testimony was rehearsed**, obviously, not by counsel. Counsel just met the witnesses, But when I asked him questions, he was very hesitant and you could tell he was nervous about being in court, except one question. When I asked him what happened and he gave a monologue. That struck the Court as rehearsed. That's troublesome.
>
> **Further, I have the letter from his therapist** which says – and according to the letter, "He is terrified and extremely emotional when questioned about this incident and mentally unstable to cope or regulate his feelings."
>
> Again, what his therapist says, "He is terrified and emotional when questioned about this incident." He has told me he – he was unable to explain to me on the witness stand the difference between the

> truth and a lie. And the concern is the Court is concerned about the rehearsed nature of his testimony. **In addition, the fact that you're asking a child to testify in a matter involving the shooting of his father and his uncle.** I find the child is not competent to testify and I will not allow him to testify.

R. 394, l. 16 – 395, l. 24 (emphasis added).

The jury was charged on murder, voluntary manslaughter, and self-defense. In closing argument, the prosecutor argued to the jury that "[t]he only evidence in the record that there was any sort of altercation or fight or tussle, was from Mr. Thompson himself." Petitioner was convicted of murder and sentenced to life imprisonment. R. 547, l. 11 – 553, l. 21; R. 561, ll. 13-15.

This Court concluded there was no abuse of discretion in excluding the testimony. This Court reasoned,

> The witness was inconsistent in his answers to several questions; for example, although he stated at one point that he came to court to "tell the truth" and stated that lies were "evil," he also told the trial court he did not know the difference between the truth and a lie. Further, he inconsistently responded to the questions about whether he had talked to anyone regarding the incident that had occurred. Additionally, the witness stated his mother told him "what [he] was supposed to say," and the State noted for the record that "every time [S.T.] hesitated to respond, he was looking at his mother for guidance."

State v. Thompson, Op. No. 2025-UP-398 at 2 (S.C. Ct. App. filed December 3, 2025).

"Incompetency means that the witness lacks the mental capacity to perceive, recall, or relate the facts or to understand the duty to tell the truth when testifying." *S.C. Dep't of Soc. Servs. v. Doe*, 292 S.C. 211, 219, 355 S.E.2d 543, 548 (Ct. App. 1987). "[A] child of tender years is not per se incompetent because of age." *Id.*, 292 S.C. at 218, 355 S.E.2d at 547. "Every person is competent to be a witness except as otherwise provided by statute or these rules." Rule 601(a), SCRE. "A person is disqualified to be a witness if the court determines that (1) the

proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth." Rule 601(b), SCRE.

"The question of the competency of a child witness is to be determined by the trial judge." *Doe*, 292 S.C. at 219, 355 S.E.2d at 547 (citing *State v. Green*, 267 S.C. 599, 230 S.E.2d 618 (1976)). "In making his determination, the judge must rely on his personal observation of the child's demeanor and responses to inquiry on voir dire examination." *Doe*, 292 S.C. at 219, 355 S.E.2d at 547. "Courts presume a witness to be competent because bias or other defects in a witness's testimony—revealed primarily through cross examination—affect a witness's credibility and may be weighed by the factfinder." *State v. Needs*, 333 S.C. 134, 142, 508 S.E.2d 857, 861 (1998), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). "[A] witness is presumed competent and the party opposing the witness's competency has the burden of proving the witness is incompetent." *State v. Reyes*, 432 S.C. 394, 402, 853 S.E.2d 334, 338 (2020) (citing *Needs*, 333 S.C. at 143, 508 S.E.2d at 861).

The trial court's finding that an application of the eight-factor test laid out in *Doe* precluded S.T.'s testimony was unsupported by the record. "If the child is mature enough (1) to understand questions and narrate answers, (2) to perceive facts accurately through the medium of the senses, (3) to recall them correctly, (4) to relate a true version of the facts perceived, (5) to know the difference between right and wrong, good and bad, (6) to understand it is right or good to tell the truth and wrong or bad to lie, (7) to be willing to tell the truth, and (8) to fear punishment if he lies, then he is competent to testify." *Doe*, 292 S.C. at 219, 355 S.E.2d at 547. S.T.'s *in camera* testimony established that he was mature enough (1) to understand the

questions and give answers, (2) to perceive what happened in the living room that day, (3) to remember what he had seen, and (4) to relate a true version of what he saw. S.T.'s testimony also established that (5) He knew the difference between good and evil. (6) He understood it was right to tell the truth and wrong to lie. S.T. testified, "Good is telling the truth, Evil is telling lies." (7) He was willing to tell the truth. When asked whether he came to court to tell the truth or tell lies, S.T. said: "Tell the truth." (8) S.T. was mature enough to fear punishment for lying: he was eleven and said he learned about good and evil in church. That S.T. was unable to answer the judge's hypothetical about how he would explain what it means to lie if he were asked by an imaginary five-year-old does not mean he did not understand truth and lying. S.T. stated, "I know the truth."; "Good is telling the truth. Evil is telling lies."

S.T. had finished the fourth grade and was eleven years old. S.T. knew he had to tell the truth. For example, when he first mistakenly stated he was ten, he quickly corrected that he was eleven. This Court's conclusion that S.T. "told the trial court he did not know the difference between the truth and a lie" is without support in the record. *State v. Thompson*, Op. No. 2025-UP-398 at 2. S.T. did not state he did not know the difference between the truth and a lie. R. 384, l. 16 – 391, l. 9. S.T. stated he knew it was good to tell the truth and evil to tell lies, and he stated he came to court to tell the truth. R. 388, ll. 18-25. *See State v. Hudnall*, 293 S.C. 97, 99, 359 S.E.2d 59, 61 (1987) (*overruled on other grounds by State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993)) (victim three years old at time of trial was not competent to testify because "her responses to questioning indicate she is incapable of distinguishing right from wrong, truth from falsehood, or reality from make-believe"); *State v. Green*, 267 S.C. at 606, 230 S.E.2d at 621 (six-year-old competent to testify where he knew difference between right and wrong, and feared punishment for lying, even if he was not questioned about belief in God); *State v. Adams*,

430 S.C. 420, 428, 845 S.E.2d 217, 221 (Ct. App. 2020) ("victim, who was eight at the time of trial, was competent to testify despite his young age because he could express himself in a way the jury could understand, and he understood the concept of the truth and his duty to tell the truth"); *see also Peyton v. Strickland*, 262 S.C. 210, 213, 203 S.E.2d 388, 389–90 (1974) (no objection to eight-year-old's competency to testify); *State v. Ladner*, 373 S.C. 103, 108, 644 S.E.2d 684, 686 (2007) (three-and-a-half-year-old victim not competent to testify). S.T. was eleven, not three.

S.T. met the *Doe* test and the testimony was admissible pursuant to Rule 601, SCRE. That was all that was required. The court erred when it imposed additional prerequisites to admission beyond those laid out in *Doe* and the evidence rules: a requirement that a party show the witness's testimony did not seem rehearsed; a requirement that a party show the witness's testimony had been approved by his therapist; and a requirement a party show the testimony was not regarding conduct by the witness's family members. Respectfully, this Court has overlooked Petitioner's argument that these considerations should not have weighed in the trial court's analysis. The trial court committed an error of law when it determined competency by applying these irrelevant, impermissible factors.

The trial court improperly found that an opinion from S.T.'s therapist's office, that he would be upset and emotional if he testified, weighed against competency. The trial court also improperly found the subject matter of the testimony (that it involved S.T.'s father and uncle) precluded a finding of competency. "We have no doubt that many witnesses, adults as well as children, find a court appearance stressful." *Doe*, 292 S.C. at 220, 355 S.E.2d at 548. "Where a potential for harm exists, the wise exercise of judicial discretion can protect the child witness from undue stress." *Doe*, 292 S.C. at 220–21, 355 S.E.2d at 548. "Means already exist to insure

a child witness is treated sensitively and in a manner designed to ameliorate the stress of giving testimony . . ." *Id.*, 292 S.C. at 221, 355 S.E.2d at 548. Moreover, emotional distress did not prevent S.T. from testifying rationally *in camera* about what he witnessed and it would not have prevented him from testifying about it before the jury. Additionally, any harm to the child from testifying was done—he was placed on the witness stand and testified, albeit *in camera.*

The trial court also erred in finding concerns about the child being coached precluded admissibility. Respectfully, this Court similarly misapprehended Petitioner's argument regarding this point when it concluded that the judge's ruling was correct because S.T. "inconsistently responded to the questions about whether he had talked to anyone regarding the incident that had occurred," that "the witness stated his mother told him 'what [he] was supposed to say,' and the State noted for the record that 'every time [S.T.] hesitated to respond, he was looking at his mother for guidance.'" *State v. Thompson*, Op. No. 2025-UP-398 at 2. Whether S.T was credible or appeared to have been coached was a matter for the jury to determine. *See State v. Needs*, 333 S.C. at 142, 508 S.E.2d at 861 ("bias or other defects in a witness's testimony—revealed primarily through cross examination—affect a witness's *credibility* and may be weighed *by the factfinder*") (emphasis added). "Under South Carolina law, the competency of a witness is to be determined by the trial court, whereas the credibility of a witness is exclusively for the jury to decide." *State v. Reyes*, 432 S.C. at 401, 853 S.E.2d at 338.

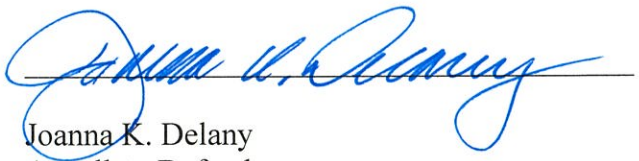
The court abused its discretion when it excluded S.T.'s testimony. He knew the difference between good and evil from church, and he knew lying was evil. He demonstrated that he was capable of rationally expressing himself about what he saw: he said that Petitioner and Decedent had been "wrestling" before the shooting. S.T. was eleven years old—not a

toddler. He was presumed to be competent, and the State did not argue or demonstrate otherwise. Rule 601(b), SCRE; *Doe*, 292 S.C. at 219, 355 S.E.2d at 547.

Petitioner had a right to call this witness in his defense. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). The Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law includes "a right to be heard and to offer testimony." *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). The Sixth Amendment "grants a defendant the right to call 'witnesses in his favor.'" *Rock*, 483 U.S. at 52. "Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense." *Washington v. Texas*, 388 U.S. 14, 19 (1967).

The solicitor argued in closing that the only evidence there was a fight was from Petitioner's own testimony. The testimony of S.T. would have supported Petitioner's version of events. It was relevant to both self-defense and voluntary manslaughter. This was a prejudicial error. *See State v. King*, 367 S.C. 131, 138, 623 S.E.2d 865, 869 (Ct. App. 2005) (reversal where defendant improperly denied the chance to present exculpatory evidence from an available witness). Rehearing should be granted to Petitioner Manly Thompson.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 18th day of December, 2025.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MANLY MAURICE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2022-001038

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 Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Manly M. Thompson, #313584, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 18th day of December, 2025.

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ATTORNEY FOR APPELLANT

From: Mcinnis, Sara
To: Melody Brown
Cc: SC - BROWN ANGELA; Delany, Joanna
Subject: 2022-001038 The State v. Manly M. Thompson Petition for Rehearing
Date: Thursday, December 18, 2025 4:54:00 PM
Attachments: 2022-001038 The State v. Manly M. Thompson Petition for Rehearing.pdf

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Good Afternoon Ms. Brown,

Attached for service in the above-referenced case is the petition for rehearing, which will be filed with the Court of Appeals today, December 18, 2025, via email filing.

Thank you!

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
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