RECEIVED

May 04 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Lexington County
Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

PETITIONER

Opinion No. 2025-UP-428 (S.C. Ct. App. Filed December 23, 2025)

APPELLATE CASE NO. 2026-000949

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

APPELLANT

APPELLATE CASE NO. 2023-001075

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court abuse its discretion by excluding Appellant's testimony that he was aware the decedent was in a gang since the evidence was relevant to Appellant's state of mind during the confrontation with the decedent, particularly as to whether Appellant had a reasonable apprehension of violence from the decedent, an element of his self-defense case?

2.

Did the trial court err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense?

3.

Did the trial court abuse its discretion by excluding testimony from Appellant's expert in firearms and use of force when the evidence was admissible pursuant to Rule 702, SCRE, as it would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation affects an individual's decision making process?

STATEMENT OF THE CASE

A Lexington County grand jury indicted Appellant on August 8, 2022, for the offense of murder. R. 832-833. His case was called to trial on June 19, 2023, before the Honorable Debra McCaslin, and a jury. R. 1. Assistant Solicitors Sutania Fuller and Rhonda Patterson represented the state. John Mobley represented Appellant. R. 1.

On June 23, 2023, the jury found Appellant guilty as indicted. R. 809, ll. 13-19. He was sentenced to forty-five years' imprisonment. R. 827, ll. 8-10.

This appeal follows.

ARGUMENT

1.

The trial court abused its discretion by excluding Appellant's testimony that he was aware the decedent was in a gang since the evidence was relevant to Appellant's state of mind during the confrontation with the decedent, particularly as to whether Appellant had a reasonable apprehension of violence from the decedent, an element of his self-defense case.

Relevant Facts

The state moved pretrial to exclude any evidence the decedent was in a gang. The assistant solicitor argued any such evidence was not relevant and should be excluded pursuant to Rule 403, SCRE, because it is "highly prejudicial."

Defense counsel argued Appellant's belief that he was being attacked by a "violent gang member" was relevant to Appellant's self-defense case. More specifically, counsel argued the evidence was relevant to Appellant's state of mind and whether he "had a reasonable belief of death, of serious bodily injury." He distinguished this case from State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013), where this Court held the trial judge did not abuse his discretion by finding evidence the decedent and other individuals present during the shooting were members of a gang was not relevant. Counsel explained to the trial court that this Court emphasized in Sobers that the defendant could have offered gang evidence if he could have established the requisite relevancy. However, Sobers, who alleged he acted in self-defense, never testified the mob that surrounded his car was part of a gang. According to Sobers, the mob action caused him to fear for his life and fire his gun, but he never testified that he was more fearful because the mob was part of a gang. R. 73, l. 7 – 74, l. 12. Accordingly, the decedent's gang affiliation was not relevant.

Based on the holding in Sobers, defense counsel argued that "if the defendant relates part of his fearfulness to the gang activity, the gang affiliation of the deceased, that makes it relevant because [the evidence] goes to the reasonableness of his apprehension of serious bodily harm." R. 72, l. 13 – 74, l. 22.

The assistant solicitor asserted that "the only person who can make that [the decedent's gang affiliation] relevant right now in camera is the defendant, because it's not coming in [the] State's case in chief, we're not going to offer anything about the victim being in a gang. We're not going to offer anything about, oh, the defendant was in fear of the victim because he was in a gang." R. 76, l. 24 – 77, l. 5. Consequently, she requested the trial court restrict Appellant from discussing the decedent's gang affiliation during opening statements and cross-examination until the court ruled on the matter. R. 79, ll. 10-25.

The trial court refused to rule on the motion pretrial and stated Appellant would have to proffer the evidence later on. R. 75, ll. 6-19.

Before Appellant testified before the jury, defense counsel requested to proffer his testimony concerning the decedent's gang affiliation. Counsel explained that Appellant was "prepared to testify" that he knew the decedent was a member of a gang and, critically, as a result of this knowledge, Appellant was more fearful for his life. R. 431, l. 23 – 432, l. 18.

The assistant solicitor argued the evidence was not relevant and was a "blatant attempt to assassinate the character of the victim." She suggested the evidence was "fabricated" because Appellant did not mention the decedent's gang affiliation during his statement to law enforcement shortly after his arrest. While Appellant stated he acted in self-defense during his statement and that the decedent attacked him first, Appellant did not say he was more fearful because the decedent was in a gang. Because Appellant did not mention the decedent's gang

membership previously, the solicitor suggested Appellant must have made it up. She also argued the evidence should be excluded pursuant to Rule 403, SCRE. R. 434, l. 3 – 436, l. 10.

Appellant testified *in camera* that the decedent "would boast about being in a gang." He "would express openly about" being a "member of . . . one of the most notorious gangs in South Carolina." Appellant explained that the decedent told him "that he could have me gone." Appellant did not know if this meant "gone from the job [at the House of Raeford] or having stuff done to me through his gang or he would do it himself." Appellant testified that his knowledge of the decedent's gang affiliation made him more fearful of the decedent on the day of the shooting. His knowledge "made everything more of a . . . terrorizing situation or a fearful situation." R. 445, l. 6 – 446, l. 24.

On cross-examination during the proffer, Appellant testified that he did not tell his supervisor at the House of Raeford or the police that the decedent threatened to harm him or have members of his gang harm him. However, he clarified that the threats occurred on the day of the shooting. Specifically, Appellant testified, "On that day he threatened to kill me and have things done to me by members of his gang." This occurred at the gas station shortly before the shooting. R. 447, l. 6 – 449, l. 14; R. 451, l. 22 – 452, l. 2.

Appellant further testified that other employees at the House of Raeford were members of the decedent's gang and the decedent "helped plenty of gang members at the job." While Appellant never witnessed any violence committed by the decedent or his gang, he heard "them talk about stuff that they did." R. 453, l. 10 – 454, l. 23. However, on the day of the shooting, there were no other gang members in the parking lot and no one beside the decedent threatened him. R. 455, l. 13 – 456, l. 13.

After the proffer, defense counsel argued Appellant's testimony that the decedent's gang affiliation was "a basis for him being fearful of the deceased" should be admitted. He maintained that the solicitor could cross-examine Appellant about the "legitimacy" of his belief or fear. Counsel concluded Appellant should be permitted to testify to the "facts and circumstances that were a reasonable basis for him to believe his life was in danger and be fearful of the deceased." R. 457, l. 17 – 458, l. 4.

The assistant solicitor continued to argue the evidence was irrelevant. She maintained there was "no suggestion here that gang influence played any part of this shooting." She also argued Rule 403 should "keep that out." R. 458, l. 5 – 459, l. 13.

After taking the matter under advisement overnight, the trial court ultimately held the evidence was inadmissible. It stated, "The Defendant was proffered yesterday on the stand. He testified that the victim belonged to a gang, that there were employees at the chicken plant that were also gang members, that some of them wore red bandanas. And maybe this victim bragged about committing robberies and shootings. However, he also testified that in the two years that he worked with him [the decedent], he really had no problems with him. That it was the day of the incident that he felt that the victim threatened him. I find the defendant has failed to show the relevance of any possible gang association with this shooting." R. 474, l. 5 – 475, l. 4. In support of its ruling, the court cited to State v. Robinson, 438 S.C. 421, 882 S.E.2d 883 (Ct. App. 2023), Johnson v. State, 433 S.C. 550, 860 S.E.2d 696 (Ct. App. 2021), and State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020). Pursuant to these cases, the court asserted the evidence had to be "logically relevant" to a "material factor." In Johnson, the court emphasized there "was a critical connection between gang activity and the incident itself." R. 475, ll. 4-10.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Sobers, 404 S.C. 263, 267, 744 S.E.2d 588, 590 (Ct. App. 2013) (quoting State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. at 267-68, 744 S.E.2d at 590 (quoting State v. Jennings, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011)).

Discussion

The trial court abused its discretion by excluding Appellant's testimony that he was aware the decedent was in a gang since the evidence was relevant to Appellant's state of mind during the confrontation with the decedent, particularly as to whether Appellant had a reasonable apprehension of violence from the decedent, an element of his self-defense case.

As a general rule, all relevant evidence is admissible. Rule 402, SCRE. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." Rule 403, SCRE. Unfair prejudice pursuant to Rule 403 "is the tendency of the evidence to suggest a decision based on something other than the legitimate probative force of the evidence." State v. Phillips, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020) (citing State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014)); See State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228-229 (2010).

Appellant testified *in camera* that the decedent "would boast about being in a gang." He "would express openly about" being a "member of . . . one of the most notorious gangs in South Carolina." Appellant explained that the decedent told him "that he could have me gone." Appellant did not know if this meant "gone from the job [at the House of Raeford] or having stuff done to me through his gang or he would do it himself." Appellant later clarified that the decedent made threats related to his gang on the day of the shooting. Specifically, Appellant testified, "On that day he threatened to kill me and have things done to me by members of his gang." This occurred at the gas station shortly before the shooting. Appellant testified that his knowledge of the decedent's gang affiliation made him more fearful of the decedent on the day of the shooting. His knowledge "made everything more of a . . . terrorizing situation or a fearful situation." R. 445, l. 6 – 446, l. 24; R. 447, l. 6 – 449, l. 14.

This evidence was relevant to Appellant's state of mind during the confrontation with the decedent. It was also relevant as to whether Appellant's fear of great bodily injury or death was reasonable, a critical element of his defense. See State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) ("There are four elements required by law to establish self-defense . . . First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. *Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.* Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or

sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.") (emphasis added).

The decedent's gang affiliation and threats related to his gang logically created some apprehension of the decedent by Appellant. The trial court abused its discretion by excluding this relevant evidence which was probative of Appellant's defense. Our Supreme Court has been protective of a defendant's right to present a complete self-defense case when he is charged with murder, and to have a fully charged jury if the charge went to the jury. See State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011); State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978).

Moreover, the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice *to the state*. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). For the same reasons the evidence was relevant, as argued above, the evidence was probative. It was essential to Appellant's self-defense case. Additionally, there was little, if any, prejudice to the state, let alone *unfair* prejudice. Appellant did not seek to admit the evidence to "assassinate" the decedent's character. He only sought to use the evidence to show why his apprehension of the decedent was reasonable.

The trial court's citation to State v. Robinson, 438 S.C. 421, 882 S.E.2d 883 (Ct. App. 2023) and State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) was misplaced as these cases address the admission of prior bad act evidence pursuant to Rule 404(b), SCRE. Additionally,

Johnson v. State, 433 S.C. 550, 860 S.E.2d 696 (Ct. App. 2021), which was also cited by the trial court, concerned the admission of the *defendant's* gang affiliation and is easily distinguishable from this case.

However, State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013), which was cited by defense counsel at trial, is directly on point. In Sobers, this Court held the trial judge did not abuse his discretion by finding evidence the decedent and other individuals present during the shooting were members of a gang was not relevant. In so holding, this Court emphasized that Sobers, who alleged he acted in self-defense, never testified the mob that surrounded his car was part of a gang. According to Sobers, the mob action caused him to fear for his life and fire his gun, but he never testified that he was more fearful because the mob was part of a gang. R. 73, l. 7 – 74, l. 12. Accordingly, the decedent's gang affiliation was not relevant.

In this case, however, Appellant specifically testified that the decedent's gang affiliation caused him to fear the decedent and increased his apprehension of violence from the decedent. Consequently, it was relevant to Appellant's self-defense case and should have been admitted.

Respectfully, because the trial court abused its discretion by excluding this relevant evidence, this Court should reverse Appellant's conviction and remand for a new trial.

2.

The trial court erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense.

Relevant Facts

Appellant requested the trial court charge the jury that he did not have to wait before acting in self-defense. Defense counsel cited to State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) in support of his request. R. 691, l. 5 – 699, l. 12. The assistant solicitor objected to the charge. She argued the instruction that the defendant has a right to act on appearances, which the court had already agreed to charge, "covers that." R. 697, ll. 12-22.

Defense counsel disagreed. He asserted, "But there's also the argument by the state that even if he [the decedent] was going for his [Appellant's] gun, my client could've exercised a number of other options before firing. . . . [S]o my point is, he [Appellant] doesn't have to hesitate to act if he believes he's in imminent danger. If he - - once he has that belief, he does not have to hesitate. The law does not require that. . . . The jury needs to understand that if he [Appellant] believed he's in imminent danger at that point, he did not have to hesitate." R. 701, ll. 15-25.

The trial court found the requested charge only applies when the defendant and the victim are both armed. It asserted, "I think what the Court in those cases [State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) and State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936)] is saying is when both are armed you don't have to wait." It concluded that "if he [Appellant] believed that the victim was going for his gun, then he had a right to act on it. I think that [the right to act on

appearances charge] covers it. And that's what I'm charging." R. 702, l. 10 – 703, l. 4. Consequently, the court refused to charge the requested instruction.

The trial court ultimately charged the jury on self-defense as follows:

> The defendant has raised the defense of self-defense. Self-defense is a complete defense, and if it is established, you must find the defendant not guilty. The state has a burden of disproving self-defense by proof beyond a reasonable doubt.
>
> If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.
>
> The elements of self-defense are as follows. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was a type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.
>
> The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would've warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.
>
> If the defendant believed he was in imminent - - imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would've had the same belief. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the parties involved.
>
> The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief.
>
> The defendant has a right to act on appearances even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would've been felt by an ordinary person in the same situation.

> Words accompanied by hostile acts may, depending on the circumstances, establish self-defense. Evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat existed, whether the defendant had a reason to believe a threat existed and how serious that threat was.
>
> The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.
>
> Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter.

R. 796, l. 17 – 799, l. 2.

Standard of Review

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608 (Ct. App. 2012) (quoting State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)) (internal quotation marks omitted). "The law to be charged must be determined from the evidence presented at trial." Id. (quoting State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000)) (internal quotation marks omitted); See Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should "consider the court's jury charge as a whole in light of the evidence and issues presented at trial").

"When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant." Id. at 314, 733 S.E.2d at 608-609 (citing Cole, 338 S.C. at 101, 525 S.E.2d at 512-513). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the [circuit court's] refusal to do so is reversible error." Id. at 314, 733 S.E.2d at 609 (quoting State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000)) (alteration in original).

Discussion

The trial court erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense.

In State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984), our Supreme Court suggested a standard self-defense instruction. However, in State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Court made clear that it did not intend Davis to be the exclusive self-defense charge. State v. Burkhart, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002). Instead, "a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant." State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Id. (citing Fuller, 297 S.C. 440, 377 S.E.2d 328).

In State v. Day, our Supreme Court held the trial judge's failure to charge the specific elements of self-defense that were applicable to Day's theory constituted reversible error. Day, 341 S.C. at 418, 535 S.E.2d at 435. The Court found the trial judge's instruction was incomplete because it failed to include a charge indicating: (1) Day had a right to judge the conduct of the decedent more harshly than otherwise because of the decedent's drug consumption, and (2) the jury could consider prior instances of violence or unprovoked aggression by the decedent in determining whether Day had a reasonable belief of imminent danger. Id. Part of Day's defense was his argument that the decedent had previously pulled a gun on him and that the decedent was in a "drug induced paranoia" the day of the incident. Id. Consequently, the Court held the jury

charge, which only included the standard self-defense instruction as outlined by our Supreme Court in Davis along a the charge on the right to act on appearances, was incomplete because the trial judge failed to charge on the decedent's substance abuse or his prior acts of violence. Id. Ultimately, the Court reversed Day's convictions and remanded for a new trial.

In State v. Nichols, 325 S.C. 111, 116-117, 481 S.E.2d 118, 121 (1997), the defendant argued the trial judge's instructions on the law of self-defense were inadequate under State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), where the judge instructed the jury solely on the common law elements of self-defense. Nichols objected to the charge and requested additional instructions on: (1) the right to act on appearances; (2) relevance of prior difficulties; and (3) that a person does not have to wait before acting in self-defense. Id. at 117, 481 S.E.2d at 121. Nichols contended the trial judge's refusal to give further instructions was reversible error. Our Supreme Court agreed. Id.

The Court emphasized that the charge suggested in Davis was not intended to be the exclusive charge for self-defense and that trial courts have been instructed to consider the facts and circumstances of the case at hand to fashion a proper charge. Id. (citing Fuller, 297 S.C. at 443, 377 S.E.2d at 330). The Court held Nichols was entitled to a charge on the right to act on appearances because Nichols testified he thought he had seen a shiny object in the deceased's hand. Id. (citing State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955)). The Court also found the evidence showed there had been prior difficulties between Nichols and the deceased including an instance where the deceased pointed a rifle at Nichols. Consequently, the Court concluded Nichols was entitled to a charge on the relevance of prior difficulties. Id. (citing State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) (prior bad blood, intoxication, and prior threats by deceased were relevant to defendant's reasonable apprehension of bodily harm)). Further, the

Court held Nichols was entitled to a charge that he did not have to wait before acting in self-defense since Nichols testified he thought he saw a gun in the deceased's hand and did not wait for the deceased to fire or aim at him. Id. (citing State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936)). Accordingly, the Supreme Court reversed Nichols conviction and remanded for a new trial. Id. at 118, 481 S.E.2d at 122.

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), our Supreme Court held Hendrix was entitled to a directed verdict since he was acting in self-defense as a matter of law when he shot the decedent. Id. at 661-662, 244 S.E.2d at 507. Hendrix was celebrating Labor Day with his family at his property on the shore of Lake Murray. Id. at 655, 244 S.E.2d at 504. Evidence established that "ill feelings characterized the relationship" between Hendrix and the decedent. Id. The decedent had confronted Hendrix earlier in the day and warned "they were going to have to fight to settle" the matter. Id. Hendrix was standing next to his truck, which was parked on his land, when the decedent arrived at the property, stopped his vehicle in the road, jumped out, and advanced toward Hendrix. Id. at 656, 244 S.E.2d at 505. Hendrix reached into the cab of his truck, pulled out a shotgun, leveled it at the decedent, and told him three times to back off. Id. The decedent immediately turned around, walked back to his truck, reached into the cab, drew out his own shotgun, and walked straight back to where Hendrix was standing. Id. A neighbor of the decedent observed the commotion and approached the scene. Id. at 657, 244 S.E.2d at 505. When she saw the two men facing each other with shotguns, she screamed the decedent's name. Id. The decedent turned his head in the direction of the scream. Id. As the decedent turned, Hendrix began firing. Id. He fired four times in rapid succession, killing the decedent. Id.

The Court determined Hendrix was not at fault in bringing on the difficulty since he armed himself on his own land in a legal manner after he was threatened. Id. at 659, 244 S.E.2d at 506. The Court further found the second and third elements of self-defense were established since the evidence showed Hendrix was actually in imminent danger of losing his life. Id. at 659-660, 244 S.E.2d at 506. Having no duty to retreat because he was on his own property and being without fault in bringing on the fatal confrontation, the Court held Hendrix was warranted in reacting to the situation with force. Id. at 660, 244 S.E.2d at 507. In so holding, and relevant to this case, the Court emphasized, "Once [Hendrix's] right to fire in self-defense arose, he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon." Id. at 660-661, 244 S.E.2d at 507. This is significant since the evidence showed Hendrix shot the decedent when he was distracted by his neighbor's scream.

In this case, as in Day and Nichols, the trial court erred by refusing to instruct the jury on the specific element of self-defense requested by Appellant since it was applicable to Appellant's account of what occurred. Appellant testified that the decedent confronted him at his vehicle and threatened to take Appellant's firearm. The decedent then reached for the gun. Appellant explained that as soon as the decedent tried to reach for Appellant's gun, Appellant grabbed the gun and backed up. Appellant backed up as far as he could until his back was up against his car. Appellant testified that the decedent then tried to take Appellant's legs out from under him. The decedent tried to "lift and drop" Appellant. Appellant felt his "legs start to lift from under [him]." Appellant testified that he knew if the decedent got his gun, he would use it on Appellant and Appellant "could be shot and killed." So before the decedent was able to take Appellant's gun, Appellant "shot as fast as [he] could." R. 540, l. 16 – 541, l. 25.

Based on Appellant's account of what occurred, it was crucial for the jury to understand that Appellant was not required "to wait until his assailant gets the drop on him" and that he had a "right to act under the law of self-preservation and prevent his assailant from getting the drop on him." See Rash, 182 S.C. at 42, 188 S.E. at 438. As our Supreme Court stated in Day, "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). Since the trial court failed to charge an important element of self-defense relevant to Appellant's account of what occurred, respectfully this Court should hold the trial court erred and reversed Appellant's conviction.

3.

The trial court abused its discretion by excluding testimony from Appellant's expert in firearms and use of force since the evidence was admissible pursuant to Rule 702, SCRE, as it would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation affects an individual's decision making process.

Relevant Facts

Appellant sought to admit expert testimony from Scott Ballard on use of force. Ballard is a consultant for "use of force and firearm" as well as self-defense. He also owns a private security company. R. 655, ll. 1-3. Ballard was in the Navy for six years and worked for the Office of Naval Intelligence as a behavioral analyst. After he left the Navy, Ballard worked for Seven P International, a "protective security company that recruited, trained, and installed private security personnel in protective roles around the world." R. 655, l. 17 – 656, l. 4. He then went to work for Sig Sauer Academy. He was a master firearms instructor and taught classes to civilians. In order to become a master firearms instructor, he had to become certified as an instructor in pistol, rifle, shotgun, and force on force. Ballard explained that "force on force is scenario-based training" based on "real world scenarios." Such training involves simulating "live combat situations or live fire situations," which "forces decision making." R. 656, l. 5 – 657, l. 21.

Ballard explained that he has experience investigating shootings. This was part of his responsibilities in the Navy as a behavioral analyst and while he was working at Seven P International. One of his primary functions as director of training at Seven P International "was to review all after action reports to verify whether or not the use of force was in compliance with company standards." R. 658, ll. 12-20.

Ballard further asserted that in the field of use of force, there are national standards and accepted principles regarding firearm safety and use of force. Such guidelines are administered by the National Rifle Association (NRA) and the International Chiefs of Police Association (IALEFI). R. 659, ll. 18-24.

Ballard explained that a "deadly force situation" is "anything that involves the application or use of deadly force. So meaning the - - imminent and unavoidable risk of grave bodily injury or death to a person or innocent persons." R. 660, ll. 17-22. He testified that there are "accepted principles" in his field regarding "how people are going to react" in a deadly force situation. Ballard explained that "we can predict that behavior when [individuals are] placed under those severe levels of stress." He has personally investigated 147 shootings while working with Seven P. R. 660, l. 23 – 661, l. 9.

Ballard testified that he has been qualified in a Court of law in the United States and in South Carolina. He has been qualified as an expert in firearms, use of force, self-defense, external and internal ballistics, and the "psychology of the gunfight." The "psychology of the gunfight" entails "What goes on in the person's head? Decision making? You know, base don what we train people to do . . . in those situations. Not - - not offering opinions based on what somebody was thinking, but what we have garnered from people's behavioral analysis, so that we know that humans are humans, and they are going to act a certain way when placed under severe levels of stress." R. 661, l. 18 – 662, l. 9.

After proffering Ballard's qualifications, defense counsel requested the trial court qualify him as "an expert in firearms, use of force, and allow him to testify regarding the physiological effects on individuals in deadly force situations as it relates to their decision making." R. 669, ll. 20-24. The court indicated that it had "no doubt that he's an expert." However, the court wanted

to hear "what it is that he offers to this case that's not going to be confusing to this jury." R. 669, l. 25 – 670, l. 3. Consequently, counsel proffered additional testimony from Ballard.

Ballard explained that a "deadly force situation is an extreme that draws back to basic human instincts for self-preservation. It's primal instinct. So what happens with that is, is that they become singularly focused on the threat, the individual thing that's happening to them, that is causing them to believe that they could be losing their life. Now, that creates a lot of issues with regards to how the body responds. It responds with auditory exclusion. It responds with elevated heart rate. It responds with . . . high levels of blood pressure that if they were sustained, the person would probably black out and suffer a stroke. It has a tremendous impact on decision making, which leads to you know, a whole host of problems." R. 670, l. 19 – 671, l. 11.

He further testified that the stress a person experiences during a deadly force situation will cause the individual to have tunnel vision and impact the brain's ability to process the information it is receiving. The "brain starts to go into self-preservation mode." The individual starts "to think about too many things and they end up with basically what we call analysis paralysis. There's too many things going on. The stress won't let them calm down enough to actually think. And it interferes with . . . . their decision making functions." R. 671, l. 23 – 672, l. 20. He concluded, "The brain just isn't processing it as fast as the body's reacting." R. 673, ll. 6-7.

When questioned by the trial court, Ballard explained that both police officers and private citizens are human beings and, while trained differently, both will react "in a very similar manner." He asserted that "vocation doesn't matter" and the physiological effects that result from a deadly force situation are the same for the majority of individuals. R. 673, l. 24 – 675, l. 13.

The court and the assistant solicitor agreed that Ballard was qualified as an expert. However, the court found his testimony would confuse the jury. She concluded his testimony would not assist the jury in determining a fact at issue. R. 676, ll. 4-24.

Defense counsel argued Ballard's testimony was relevant as to how a person responds under the stress of a deadly force situation. He asserted, "The Defendant shot an unarmed man a substantial number of times. This testimony would help the jury understand how something like that could happen, because on one hand it might be perceived that this individual was making conscious and deliberate malicious choices. One the other hand, if he is under the stress of a deadly force situation and all these factors, the stress of the situation is affecting what he's observing, his decision making and how that's being processed in this short time period, and that would be helpful for the jury to understand what was going on at the time, and would explain possibly why this individual was moving forward and why he was continuing to fire on somebody that was unarmed." R. 677, l. 2 – 679, l. 19.

The court ultimately excluded the testimony. It found it would "be absolutely confusing to the jury." The court was also concerned Ballard would "be stepping into the state of mind of the Defendant and the victim in this case." R. 680, l. 16 – 681, l. 6.

Standard of Review

"The question of whether to admit or exclude testimony of an expert witness is within the discretion of the trial court. Absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal." State v. Jarrell, 350 S.C. 90, 101, 564 S.E.2d 362, 369 (Ct. App. 2002) (quoting State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (1999)).

Discussion

The trial court abused its discretion by excluding Ballard's expert testimony on firearms and use of force since his testimony was admissible pursuant to Rule 702, SCRE, and relevant to Appellant's self-defense case. Expert testimony is governed by Rule 702, SCRE, which provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE.

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (emphasis added). In Watson, our Supreme Court provided a three prong test that a trial court must consider in executing its gatekeeping duties before allowing a jury to hear expert testimony. Id. at 446, 699 S.E.2d 169, 175. The Court asserted:

> [E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.

Id. at 446, 699 S.E.2d 169, 175 (emphasis added and internal citations omitted).

Ballard's testimony should have been admitted pursuant to Rule 702, SCRE. Both the trial court and the state agreed during trial that Ballard was properly qualified. There was also no concerns below that Ballard's testimony was unreliable. Moreover, the subject matter is clearly beyond the ordinary knowledge of the jury. Ballard's testimony would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation can affect an individual's decision making process. Consequently, all three factors under Rule 702 were satisfied.

Based on the record, it appears the trial court excluded Ballard's testimony pursuant to Rule 403, SCRE. Rule 403 states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ballard's testimony was probative to explain, in part, how stress during a deadly force situation may affect an individual's decision making process. Unlike the trial court found, it was not confusing. His testimony was straightforward and could have been used by the jury to evaluate whether the state disproved self-defense beyond a reasonable doubt. Simply put, its probative value was not substantially outweighed by confusion of the issues.

Respectfully, this Court should hold the trial court abused its discretion by excluding Ballard's testimony, reverse Appellant's conviction, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully Submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of December, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

December 20, 2024.

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

APPELLANT

APPELLATE CASE NO. 2023-001075

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon R. Brandon Larrabee, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 20th day of December, 2024.

Lara M Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

TREVOR ANTHONY IRVIN,

APPELLANT.

Appellate Case No. 2023-001075

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. S. RICK HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072
(803) 785-8285

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court abuse its discretion by excluding Appellant's testimony that he was aware the decedent was in a gang since the evidence was relevant to Appellant's state of mind during the confrontation with the decedent, particularly as to whether Appellant had a reasonable apprehension of violence from the decedent, an element of his self-defense case?

2.

Did the trial court err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense?

3.

Did the trial court abuse its discretion by excluding testimony from Appellant's expert in firearms and use of force when the evidence was admissible pursuant to Rule 702, SCRE, as it would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation affects an individual's decision-making process?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court act within its discretion by barring vague and conclusory testimony about the victim's alleged involvement in a gang when that testimony would have involved prohibited

descriptions of other bad acts and were not relevant to whether Appellant had the right to act in self-defense, and were in any case substantially more prejudicial than probative?

2.

Did the trial court adequately tailor the self-defense instruction in this case by declining to give a charge that Appellant did not have to wait before acting in self-defense when the charge covered the law on self-defense and Appellant's instruction was not supported by the evidence at trial?

3.

Did the trial court appropriately exclude testimony from an expert offered by Appellant when that expert's evidence would have confused the jury and would have included testimony on issues that were within the knowledge of lay jurors?

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

The victim and Appellant worked at the House of Raeford chicken processing plant in West Columbia (R. p. 121, ll. 7–9; p. 122, ll. 10–15; p. 160, ll. 12–25). In the words of one of its employees, the plant "turn[ed] chickens into food." (R. p. 122, l. 12). Appellant and the victim sometimes butted heads; one fellow employee recalled the two of them "beefing." (R. p. 161, ll. 3–21).

Shortly after 5 a.m. on June 24, 2021, as the employees were returning from a break, the victim and Appellant began to argue. (R. p. 161, l. 21–p. 163, l. 24). According to one employee, the victim used a homophobic slur, and Appellant responded by saying that the victim "let a bitch run [his] life." (R. p. 163, ll. 20–24).[1] The latter comment was a reference to the victim's girlfriend, Mary Geiger. (R. p. 171, ll. 2–9). At one point during the conflict between the two, Appellant had to be physically restrained by another employee. (R. p. 165, ll. 5–21). Appellant reportedly told victim that he would "fuck [the victim] up in the parking lot" and "I'll kill you." (R. p. 165, l. 25–p. 166, l. 3).

For her part, Geiger said she believed Appellant was harassing the victim. (R. p. 178, ll. 1–6). She also remembered Appellant telling the victim "that if you do anything or you try anything, then I want to catch a free body." (R. p. 183, ll. 22–24). She interpreted that as a threat to harm the victim. (R. p. 184, ll. 3–5). Geiger denied that the victim used a knife to threaten the appellant. (R. p. 184, ll. 20–25).

[1] Appellant recalled the incident this way: "He got very, like, angry and started calling me names. I'm a B word, F word. He tell me, I don't know nothing." (R. p. 520, ll. 9 – 11). In return, Appellant said he told the victim that "you supposed to be a man, but you, you know, this lady is taking care of you[.]" (R. p. 520, ll. 11 – 13).

The employees of the chicken plant typically parked at a shopping center across from the plant. (R. p. 122, l. 19–p. 123, l. 8). Some would hang out in the parking lot after their shift. (R. p. 188, ll. 6–8). When Geiger left the plant, she found the victim near Appellant's car in the parking lot. (R. p. 187, ll. 8–12). Worried that the conflict between Appellant and the victim might flare up again, Geiger asked the victim to move away from Appellant's car; the victim did so. (R. p. 187, ll. 15–20). She asked the victim to go to a nearby store, thinking it might give the victim the opportunity to "get his mind off of what happened inside the plant." (R. p. 188, ll. 2–5).

When the victim returned from the store, Geiger noticed that there was a cut on his lip. (R. p. 190, ll. 5–15).[2] Later, Geiger saw Appellant apparently reenacting a confrontation with the victim at the store. (R. p. 191, ll. 13–17).[3] She believed Appellant "was trying to get [the victim's] attention again." (R. p. 192, ll. 5–20).

If that was Appellant's goal, he succeeded. The victim walked over to where Appellant was talking about the conflict, and there was an exchange of words. (R. p. 192, l. 21–p. 193, l. 8). The victim walked away but, according to Geiger, Appellant continued to taunt the victim. (R. p. 193, ll. 12–24). Eventually, the victim went back to where Appellant was. (R. p. 195, ll. 10–20). The victim was not carrying a gun or a knife. (R. p. 195, ll. 21–25). Geiger conceded that she encouraged the victim to fight Appellant. (R. p. 199. ll. 5–13).

During the renewed confrontation with Appellant, the victim "swooped down for [Appellant's] legs." (R. p. 196, ll. 6–10). Appellant responded by pulling his firearm and, as the victim was backing away from the confrontation, opening fire. (R. p. 196, ll. 10–13). Appellant

---

[2] It is undisputed that there was a conflict between Appellant and the victim at a nearby convenience store. Appellant said that the victim came to the store looking for a fight. (R. p. 527, ll. 6–18).

[3] Another witness denied that Appellant reenacted the supposed confrontation. (R. p. 496, l. 24 – p. 497, l. 4)

continued to shoot as the victim ran away. (R. p. 197, ll. 3–5). After the shooting, Geiger ran to the victim and asked for someone to call the police. (R. p. 197, ll. 23–25). She unsuccessfully attempted CPR, then remained with the victim until the paramedics arrived. (R. p. 198, ll. 2–7). One of the bullets was "smashed down into the concrete" underneath the victim's body when law enforcement moved it. (R. p. 221, ll. 1–12). As many as two of the projectiles were found under the body. (R. p. 263, ll. 14–20). A SLED employee testified that the position of the bullets suggest that the victim was shot as he lie on the ground. (R. p. 267, ll. 9–15). In all, the victim suffered 15 gunshot wounds. (R. p. 417, ll. 8–11). Appellant first drove away from the scene, but returned and surrendered himself to the authorities as they were beginning their investigation. (R. p. 544, l. 22–p. 545, l. 5; p. 239, l. 25–p. 240, l. 8).

On videos introduced at trial, the victim can be seen walking toward Appellant as he gestures between two cars. (State's Exh. 65). Appellant and the victim appear to have a dispute. (State's Exh. 65; State's Exh. 66; State's Exh. 67). The victim bends over and appears to swat at Appellant's lower body. *Id.* As the victim stands back up and begins backing away, Appellant pulls out his gun and fires. *Id.* The victim then turns around and runs, then sprawls to the ground, as Appellant continues shooting. *Id.* Appellant then stands over the victim, still pointing the gun. *Id.*

At trial, Appellant attempted to introduce evidence of the victim's alleged gang affiliation. During a proffer of his testimony related to these allegations, Appellant said:

> Judge[,] Daniel would boast about being in the gang saying stuff like, you know -- you know, a member of, you know, one of the most notorious gangs in South Carolina and responsible for a lot of violent crimes. Crimes like robberies and even shootings and stuff. And he would express openly about that he was came from the background where, you know, he would get to a -- a aggressive nature, which you would need to be, or you could have people, you know, do -- do things to you as far as members of his gang. And

> also -- also they would wear we had issues at work with them wearing bandanas, red bandanas and stuff where we -- and we had to, you know, stop them from wearing stuff like that.

(R. p. 445, ll. 8–19). Appellant further testified that the victim "told me basically that he could have me gone, like, I don't know exactly how in references to me being gone from the job or having like, stuff done to me through his [gang] or he would do it himself." (R. p. 446, ll. 10–13). Appellant testified that this increased his fear of the victim. (R. p. 446, ll. 14–24).

On cross-examination, Appellant conceded that he did not call the police about the alleged threats or discuss them with his supervisor at work, even though he had discussed some of his issues with the victim. (R. p. 447, l. 6–p. 448 l. 3). Appellant gave contradictory answers about whether the victim had specifically threatened to have members of the victim's alleged gang harm Appellant on the day of the shooting. (R. p. 448, l. 4–p. 449, l. 10). Appellant said those threats happened during the confrontation at the convenience store. (R. p. 449, ll. 11–20; p. 451, l. 22 – p. 452, l, 2). Appellant also testified that other workers at the plant were part of the gang. (R. p. 454, ll. 7–13). Appellant testified that gang members did not surround him or threaten him in the parking lot, though he contended it was possible some were there. (R. p. 455, l. 13–p. 457, l. 15). The trial court took the matter under advisement. (R. p. 471, ll. 7–9). The following day, the trial court ruled that the testimony regarding gang activity was not admissible. (R. p. 474, l. 17–p. 475, l. 12).

Appellant also attempted to introduce the testimony of Scott Allen Ballard, a consultant and owner of a private security company, as an expert. (R. p. 653, ll. 9–10; p. 655, ll. 1–3). Ballard was also a behavioral analyst for the Office of Naval Intelligence. (R. p. 655, ll. 7–16). In addition to writing training manuals and lesson plans regarding the use of force for countries outside the United States, Ballard said he was familiar with national standards regarding the use of force and

how individuals react to situations in which they might need to use force. (R. p. 659, ll. 5–p. 661, l. 4). Ballard also was involved in investigating 147 shootings at a previous employer. (R. p. 661, ll. 5–9).

Appellant offered Ballard as "an expert in firearms, use of force" and asked the court to "allow him to testify regarding the physiological effects on individuals in deadly force situations as it relates to their decision making." (R. p. 669, ll. 20–24). While saying that Ballard was an expert, the court requested hearing more about Ballard's testimony. (R. p. 669, l. 25–p. 670, l. 3). At that point, Ballard was further examined, and spoke more about the physiological effects of stress on decision-making. (R. p. 670, l. 19–p. 673, l. 7).

The trial court declined to allow the testimony. (R. p. 680, l. 16–20). The court found that the testimony would confuse the jury, could implicate medical issues for which the witness was not trained, and could discuss Appellant's state of mind. (R. p. 680, l. 20–p. 681, l. 6).

Appellant requested, but did not receive, a charge on whether Appellant had to wait to act in self-defense. (R. p. 693, l. 7–p. 703, l. 5). After the testimony was given in the trial and closing statements concluded, the court charged the jury. (R. p. 787, l. 25–p. 801, l. 22). With regards to the self-defense charge, the court gave the following instruction:

> The defendant has raised the defense of self-defense. Self-defense is a complete defense, and if it is established, you must find the defendant not guilty. The state has a burden of disproving self-defense by proof beyond a reasonable doubt.
>
> If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt, after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.
>
> The elements of self-defense are as follows. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was a type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in

bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would've warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.

If the defendant believed he was in imminent -- imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would've had the same belief. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury. You should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the parties involved.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger. And a reasonably prudent person of ordinary firmness and courage would have had the same belief.

The defendant has a right to act on appearances. Even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would've been felt by an ordinary person in the same situation.

Words accompanied by hostile acts may, depending on the circumstances, establish self-defense. Evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat existed, whether the defendant had a reason to believe a threat existed and how serious that threat was.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter.

(R. p. 796, l. 17–p. 799, l. 2). In response to a juror question, the trial court gave substantially the same charge. (R. p. 805, l. 16–p. 807, l. 25).

The jury found Appellant guilty of murder. (R. p. 809, ll. 13–18). The trial court sentenced him to 45 years. (R. p. 827, ll. 8–11). This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Sobers*, 404 S.C. 263, 266, 744 S.E.2d 588, 589 (Ct. App. 2013) (quoting *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). In regards to the Appellant's specific issues in this case, appellate review is conducted under deferential standards. For example, "[t]he appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." *State v. Torres*, 390 S.C. 618, 625, 702 S.E.2d 226, 230 (2010). Likewise, a trial court's decision not to give a jury charge is evaluated for an abuse of discretion. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. . . . An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." (citation omitted)).

ARGUMENT

I. Appellant did not establish that the victim's alleged membership in a gang was relevant to his self-defense charge, and so the trial court appropriately excluded Appellant's self-serving testimony to that effect.

Appellant argues that the trial court erred by excluding his testimony that the victim was allegedly a member of a gang. However, this evidence was irrelevant to the issues at trial and would have suggested the jury reach its verdict on an improper basis. The trial court was correct to exclude it.

The South Carolina Rules of Evidence narrowly constrain when character evidence and evidence of other crimes or bad acts may be admitted at trial. *See* Rule 404, SCRE. These protections are not just for defendants, but extend to others involved in our court system as well. *See* Rule 404(a) (restricting "[e]vidence of a person's character or a trait of character"); Rule 404(b) (holding that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show conformity therewith"). The rules also allow a trial court to exclude relevant evidence "if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," among other considerations, *see* Rule 403.

As an initial matter, South Carolina courts have recently held that evidence of gang membership is subject to the prohibition against introducing evidence of other bad acts to prove character. *See Johnson v. State*, 433 S.C. 550, 556, 860 S.E.2d 696, 699 (Ct. App. 2021) ("Without question, the testimony about [the defendant's] gang affiliation was prior bad act evidence."); *see also State v. Robinson*, 438 S.C. 421, 437, 882 S.E.2d 883, 891 (Ct. App. 2023) (same), *reh'g denied* (Feb. 9, 2023). For that reason, Appellant must show that his testimony that the victim was in a gang was relevant for some purpose other than demonstrating the victim's bad character. *See Johnson*, 433 S.C. at 555, 860 S.E.2d at 699 ("Such evidence—commonly referred to in our state

as 'prior bad act' or *Lyle* evidence[4]—is not admissible unless its proponent can demonstrate it has a legitimate purpose, i.e. the evidence does something more than prove a person has a propensity to commit crimes.").

Here, Appellant's argument regarding self-defense is inextricably bound up with the evidence's tendency to show propensity. Appellant wanted to prove to the jury that the victim was someone to be feared because he was someone who was dangerous; Appellant knew (and the jury can know) that the victim was dangerous because he was allegedly in a gang and gang members are inherently dangerous.[5] *Cf. Johnson*, 433 S.C. at 556, 860 S.E.2d at 699–700 ("Prior bad act evidence 'is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.'" (quoting *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213, 93 L.Ed. 168 (1948))). For example, in *Johnson*, the evidence showed the motive for a murder that otherwise might have appeared "senseless." *See id.* at 557, 860 S.E.2d at 700. But in the present case, jurors had no need to try to extrapolate a motive for the shooting, because the entire incident was captured on video. They could judge for themselves whether the victim was acting threateningly to Appellant.

---

[4] After *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

[5] This case is distinguishable from *State v. Day,* in which the court held that other bad acts evidence could be admitted in a self-defense case if they "were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm." 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000). Appellant's vague, conclusory statements about hearing conversations of unspecified gang activity by the victim and others differs from the specific act that the court was considering in *Day*. *See id.* at 421, 535 S.E.2d at 437.

Furthermore, even if the evidence of victim's alleged gang membership was for an appropriate purpose, the risk that the jury would use it for improper purposes far outweighed its probative value.

Probative value is decided in light of the full context of the trial, especially considering what issues were before the jury. "To understand the probative value of any evidence, we must consider what was practically in dispute at trial. . . . We must then consider how important the challenged evidence is to resolving the practically disputed questions." *State v. Phillips*, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020).

The issue in dispute at Appellant's trial was whether he had a right to defend himself against the victim. If Appellant feared that the victim might overpower the Appellant and take his weapon—the primary theory offered by Appellant at the trial—then the victim's alleged gang membership is of limited probative value. After all, someone who could overpower Appellant and grab his weapon might endanger him whether that person was a member of a gang or a pillar of the community.

On the other hand, the prejudicial value of testimony regarding victim's alleged gang membership was enormous. It could have led the juror to believe that the victim had it coming; that he was a danger to the community who was better disposed of than left to walk the streets; that Appellant, in some way, did everyone a favor. *Cf. Johnson*, 433 S.C. at 559, 860 S.E.2d at 701 ("Mention of gangs summons a stigma of lawlessness, and Rule 403 requires exclusion of gang evidence if the prejudicial risk substantially outweighs the evidence's probative value.").

Not only was the evidence here not probative, its relevancy is dubious. *See* Rule 402, SCRE ("Evidence which is not relevant is not admissible.").

Courts in other states have also confronted the relevancy of gang membership in self-defense cases. For example, the court in *London v. State* faced a similar situation. *See London*, 325 S.W.3d 197 (Tex. Ct. App. 2008).[6] There, the court affirmed the trial court's decision to exclude evidence of the victim's "'violent past'—gang affiliation and terrorizing the neighborhood."[7] *Id.* at 206. The defendant in London claimed that he shot back at a car in which the victim was riding after someone from the car shot at him. *See id.* at 203. The Texas Court of Appeals reasoned that because the defendant could claim self-defense based on the alleged shots being fired from the car, the victim's other actions were not admissible. *See id.* at 205–06. The court held:

> When a deceased's unambiguous, violent, or aggressive act needs no explaining, evidence of the deceased's extraneous conduct would have no relevance apart from its tendencey to prove his character conformity, and thus would be inadmissible. Before a specific, violent act will be admissible to support a claim of self-defense, there must be some evidence of a violent or aggressive act by the deceased that tends to raise the issue of self-defense and that the specific extraneous conduct may explain.

Id. at 205 (citations omitted).

---

[6] The Texas rule regarding character evidence is structured slightly differently than South Carolina's, but contains substantively the same restrictions on such evidence. *Compare* Tex. R. Evid. Rule 404(a)(3) ("(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it. (B) In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor."), *with* Rule 404(a)(2), SCRE (allowing "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor[.]"). The Texas Court of Appeals found that the defendant in *London* had not preserved an argument regarding the first aggressor provision of the rule. *See London*, 325 S.W.2d at 205.

[7] The *London* court reversed the conviction on other grounds. *See id.* at 207–09.

The same reasoning applies here. Appellant's self-defense argument was premised on his belief that the victim went for his gun during their altercation. Whether the victim was a member of a gang had no relevance to that, much less probative value.

Nothing in *Sobers* is to the contrary. It is true that the *Sobers* court noted that the defendant did not testify that the victim's and some witnesses' involvement in a gang increased his fear. *See State v. Sobers*, 404 S.C. 263, 268, 744 S.E.2d 588, 590–91 (Ct. App. 2013). However, the court discussed that as part of its consideration of the relevance of the evidence to the defendant's self-defense argument. *See id.* ("According to Sobers, the mob action caused him to fear for his life and fire his gun, but he never testified he was more fearful because the mob was part of a gang. Thus, Sobers never introduced evidence that would make the gang activity relevant."). Likewise, in this case, even with Appellant's testimony, there was little basis for claiming that the victim's alleged gang membership made the victim a greater danger to Appellant than anyone reaching for the gun would be.

Finally, even if admission of the evidence was error, it was without a doubt harmless. *See State v. Reeves*, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) ("Error is harmless when it could not reasonably have affected the result of the trial."). Jurors were able to watch footage of the altercation between Appellant and his victim. As a result, the jurors had an opportunity to consider for themselves whether the victim's actions were threatening enough to justify Appellant's fear that the victim endangered him. According to its verdict, the jury obviously did not believe Appellant's self-defense. Assassinating the character of the victim would not have changed that.

For those reasons, this court should find there was no error in the trial court's decision to exclude the allegations that the victim was involved in a gang, and if there was such error, it was harmless. Appellant's conviction should be affirmed.

II. The trial court gave a full and accurate summation of South Carolina's law regarding self-defense in its instructions to the jury, and so there was no error in those instructions.

Appellant next argues that the trial court did not properly instruct the jury in regard to South Carolina's law of self-defense. Appellant's requested charge was unnecessary, and the trial court properly declined to give it. There was no error.

Here, the State and Appellant agree on the relevant rule. "[A] trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant. A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues presented by the defendant." *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citation omitted).

Here, the trial court tailored its instructions to Appellant's case. Appellant simply asked for an instruction that was not applicable.

Appellant argues that the standard self-defense instruction in *State v. Davis* is not sufficient if there are additional relevant aspects of South Carolina law that must be charged. *See Davis*, 282 S.C. 45, 46, 317 S.E.2d 452 (per curiam). That is true. It is also true that the trial court in this case did not simply give a *Davis* charge. In fact, the trial court gave two of the three charges that the *Fuller* court found erroneously excluded in that case—those regarding the right to act on appearances and "words accompanied by hostile acts." *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 331 (1989).

Contrary to Appellant's assertion, whether or not Appellant had to wait before opening fire was not relevant to his self-defense claim. This was not a case where Appellant had to act to "prevent his assailant from getting the drop on him." *See State v. Rash*, 182 S.C. 42, 188 S.E. 435, 438 (1936). In this case, the series of events that Appellant argued made him feel that self-defense

was warranted took place *before* the fatal shots were fired. The victim had already attempted to get the drop on Appellant and failed; the victim appeared to have been backing away from the confrontation when he was shot. The video shows that, if anything, Appellant did not act too hastily, but acted at best amid the confrontation and at worst after the danger had passed.

The court did not err in failing to charge that the Appellant did not have to wait before exercising his right of self-defense. That charge would not have been relevant to the facts in front of the jurors. Appellant's conviction should be affirmed.

III. Appellant's purported expert witness would not have assisted the jury in deciding Appellant's state of mind at the time of the shooting, and so the trial court made the appropriate decision in excluding the testimony.

Finally, Appellant argues that the trial court erred when it excluded his expert witness. But the expert witness's testimony would not have assisted the jury in assessing the facts in this case. The trial court's decision was not in error.

In order to admit the testimony of an expert witness, the trial court must find the witness's testimony could assist the jury in its role as fact-finder. *See* Rule 702, SCRE ("If scientific, technical, or other specialized knowledge *will assist the trier of fact* to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." (emphasis added)); *State v. Galloway*, 443 S.C. 229, 237, 904 S.E.2d 866, 870 (2024) ("To admit expert testimony under Rule 702, the proponent . . . must demonstrate, and the trial court must find, the existence of three elements: the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." (quoting *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023)) (cleaned up)); *State v. Phillips*, 430 S.C. 319, 335, 844 S.E.2d 651, 659 (2020) ("Before any expert opinion may be admitted into evidence, the proponent of the opinion must convince the trial court that each element of the Rule 702 foundation has been established."). This is particularly true for so-called "blind experts." *See Galloway* at 240, 904 S.E.2d at 872 (finding that for blind experts, "the question of whether the testimony 'will assist the trier of fact' becomes more important").

Galloway is instructive. There, our supreme court held that the trial court properly excluded testimony from a blind expert about the potential effects of the victim's post-traumatic stress disorder and schizoaffective disorder on her memory. *See id.* at 236–242, 904 S.E.2d at

870–873. The expert had proffered testimony that PTSD "could . . . have an effect on [the person's] ability to relate what happened objectively" and that schizoaffective disorder "can cause false memories." *See id.* at 236, 904 S.E.2d at 870. The court reasoned that the defendant did not show that the evidence was relevant in that case. *See id.* at 240, 904 S.E.2d at 872 ("There was no way the jury could use the knowledge that schizoaffective disorder 'can' cause false memories other than to speculate whether the disorder might have done so in this instance."). The court found that, unlike delayed disclosure testimony in sexual abuse cases, the broad testimony given by the expert did not help the jury decide whether to believe the victim. *See id.* at 229, 240, 904 S.E.2d at 872 ("[T]he abstract fact that 'some' people with schizoaffective disorder 'can' have false memories gives the jury nothing it can use to determine this victim's credibility other than to guess. If abstract specialized knowledge is not connected to the facts of the particular case, the jury has no basis on which to use the knowledge except to speculate whether it could have played a role in the case.").

The same is true here. First, Appellant's purported expert was not testifying about a particular psychological phenomenon—such as delayed disclosure—that might be unfamiliar to most jurors. He simply explained how stress could affect an individual's judgment in high-stress situations. Appellant did not clearly connect any particularized fact about himself or the shooting to the broad pronouncements of the expert. The jury could only speculate as to whether any of the testimony the expert provided applied to Appellant or the situation he found himself in leading up to the fatal shots.

Further, the trial court zeroed in on a critical flaw in Appellant's attempt to use the expert's testimony: The expert's testimony largely concerned how people other than Appellant would react to life-threatening situations. The expert worked for Naval intelligence and private security contractors; he spoke about training those who might use weapons in their jobs. While he referred

to standards that can be applied to civilians, his expertise was largely derived from situations unlike the one at issue here. As the trial court noted: "This isn't a -- a somebody who's a police officer or a solider or a private investigator or somebody being placed in a wartime country or anything like that." (R. p. 674, ll. 10–12). "One has training and one doesn't." (R. p. 674, l. 21).

To the extent that the expert would have testified to the reactions of trained law enforcement officers, the evidence was irrelevant to the case. To the extent that he intended to testify about how civilians might react in such a situation, he added nothing to the knowledge of the jury. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) ("Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter *falls outside the realm of ordinary lay knowledge*." (emphasis added)); *cf. Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 80, 735 S.E.2d 650, 659 (2012) ("In some design defect cases, expert testimony is required to make this showing because the claims are too complex to be within the ken of the ordinary lay juror.").

The trial court did not err in excluding the expert's testimony, as it properly found that testimony would have been unhelpful to the jury and confusing. Appellant's conviction should be affirmed.

CONCLUSION

Appellant demonstrates no instance where the trial court erred in its evidentiary rulings or its jury instructions. The court properly excluded gang evidence that was irrelevant; properly instructed the jury on self-defense; and properly excluded expert testimony that would not have helped the jury render a fair verdict. Appellant's conviction should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
Fed. ID No. 104865

P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: *s/ R. Brandon Larrabee*
ATTORNEYS FOR RESPONDENT

December 31, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

TREVOR ANTHONY IRVIN,

APPELLANT.

Appellate Case No. 2023-001075

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to R. Brandon Larrabee, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Lara M. Caudy, Esq., via email today, December 31, 2024 to lcaudy@sccid.sc.gov, and to her assistant at smcinnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 31st day of December, 2024.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
R. Brandon Larrabee,
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Trevor Anthony Irvin, Appellant.

Appellate Case No. 2023-001075

Appeal From Lexington County
Debra R. McCaslin, Circuit Court Judge

Unpublished Opinion No. 2025-UP-428
Submitted November 4, 2025 – Filed December 23, 2025

AFFIRMED

Senior Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, and Assistant Attorney General Richard Brandon Larrabee, all of Columbia; and Solicitor Samuel R. Hubbard, III, of Lexington, all for Respondent.

PER CURIAM: Trevor Anthony Irvin (Appellant) was convicted by a jury of murder and sentenced to forty-five years' imprisonment. Appellant appeals, arguing the trial court erred by (1) excluding his testimony that he was aware Victim was in a gang; (2) failing to tailor the self-defense instruction as he requested; and (3) excluding testimony from his expert in firearms. We affirm.

1. Appellant argues the trial court abused its discretion by excluding his testimony that he was aware of Victim's gang affiliation. He argues the evidence was relevant to Appellant's state of mind during the confrontation with Victim, particularly as to whether Appellant had a reasonable apprehension of violence from Victim, an element of his self-defense case. Further, Appellant argues the trial court's citations to *State v. Robinson*,[1] *Johnson v. State*,[2] and *State v. Perry*[3] were misplaced because those cases were evaluated under Rule 404 of the South Carolina Rules of Evidence. We hold the trial court did not abuse its discretion, and the evidence was properly excluded. The trial court properly excluded Appellant's testimony regarding Victim's alleged gang affiliation because Appellant's vague, inconclusive statements were not relevant or logically related to the circumstances of the shooting. Victim's potential involvement in a gang was irrelevant to the circumstances surrounding the shooting. Appellant admitted he did not see Victim with a weapon, despite waving his own firearm at Victim prior to the shooting. Appellant also admitted he was not aware of any other gang members present in the parking lot at the time of the shooting. Additionally, after Appellant shot at Victim over fifteen times, no one in the parking lot retaliated or attacked Appellant in response. Appellant did not mention his fear of Victim because of gang affiliation to law enforcement in his initial statement. Further, witness testimony established Appellant was the primary aggressor and made threats that day to Victim that he would "f--- him up" in the parking lot. Finally, witnesses testified that on the day of the shooting, Appellant and Victim were engaged in a verbal altercation that focused on Victim's romantic relationship, not gang affiliation. We find the gang evidence did not make any fact of consequence more or less probable. Rather, Appellant admitted he shot because he was afraid Victim would be able to reach Appellant's gun and shoot. *See State v. Sobers,* 404 S.C. 263, 268, 744 S.E.2d 588, 590–91 (Ct. App. 2013) (finding the trial court did not abuse its discretion in excluding evidence of gang activity because Sobers failed to establish the relevance of gang activity to his self-defense claim and the trial court's decision was supported by the record.) We hold the trial court did not

---

[1] 438 S.C. 421, 882 S.E.2d 883 (Ct. App. 2023).
[2] 433 S.C. 550, 860 S.E.2d 696 (Ct. App. 2021).
[3] 430 S.C. 24, 842 S.E.2d 654 (2020).

abuse its discretion in excluding Appellant's testimony related to Victim's alleged gang affiliation because it was irrelevant and not logically related to the circumstances surrounding the shooting. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.").

2. Appellant argues the trial court erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense. We disagree. "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v. Kerr*, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct. App. 1998)). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Perry*, 440 S.C. 396, 403, 892 S.E.2d 273, 276–77 (2023) (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)).

In *State v. Rash*, the trial court instructed the jury that one may act on appearances, even if they are mistaken. 182 S.C. 42, 50, 188 S.E. 435, 438 (1936). Our supreme court agreed a person does not have to wait for until his attacker "gets the drop on him," rather, "he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him." *Id.* Here, Appellant knew Victim was unarmed. He was not in a position for Victim to "get the drop on him;" therefore, a jury charge relating to waiting before acting was not applicable. Further, the jury was able to consider the witness testimony related to the incident as well as see the video of the shooting. The jury was in the best position to view the evidence and decide if Appellant acted in self-defense, which was properly charged. In addition, the jury was given a charge on self-defense that adequately covered the law of self-defense and properly left the question to the jury. Appellant argues a standard self-defense instruction was insufficient, and the trial court should have given additional charges. However, the trial court gave additional charges and addressed Appellant's right to act on appearances. We conclude the overall jury charge was proper, and Appellant's requested charge was inapplicable. *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."). We affirm as to this issue.

3. Appellant argues the trial court abused its discretion by excluding testimony from Appellant's expert in firearms and use of force pursuant to Rule 702 of the South Carolina Rules of Evidence, because it would have assisted the jury in understanding how stress during a deadly force situation affects an individual's decision-making process. We disagree. "To admit expert testimony under Rule 702, the proponent . . . must demonstrate, and the trial court must find, the existence of three elements: 'the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.'" *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023) (quoting *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999)). Here, we conclude the trial court did not abuse its discretion when it excluded Scott Ballard's testimony regarding stress in a deadly force situation. While we agree with the trial court that Ballard was qualified as an expert, we also agree that his testimony would only serve to confuse the jury. Ballard's background in the Navy and his experience with force-on-force training is not applicable in this situation because, as the trial court noted, "This isn't . . . somebody who's a police officer or a soldier . . . or somebody being placed in a wartime country . . . . One has training and one doesn't." This testimony would likely confuse the jury because it was not specific or applicable to Appellant. Ballard was not detailing a particular psychological condition Appellant had that would assist the jury in determining Appellant's mindset at the time of the shooting. His testimony would leave the jury to speculate as to whether this psychological phenomenon applied to Appellant in this situation. Further, Ballard's testimony was not clarifying or informing the jury on something outside the realm of their own knowledge. Rather, Ballard was simply stating that, in a stressful situation, one's decision-making may be affected. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (holding "[e]xpert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge"). It is obvious that a verbal and physical altercation leading to a shooting death would create a high stress situation. The jury was able to deduce this fact through their own lay knowledge, witness testimony, and video surveillance of the entire incident. We affirm as to this issue. *See Wallace*, 440 S.C. at 541–42, 892 S.E.2d at 312 ("We will not reverse a trial court's ruling on [expert testimony] unless . . . we find the trial court has not acted within the discretion we grant to trial courts.").

Based on the foregoing, Appellant's conviction and sentence are

AFFIRMED.[4]

WILLIAMS, C.J., and THOMAS and CURTIS, JJ., concur.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

APPELLANT

APPELLATE CASE NO. 2023-001075

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

Opinion No. 2025-UP-428

PETITION FOR REHEARING

On December 23, 2025, this Court affirmed Appellant's conviction in an unpublished opinion. State v. Trevor Anthony Irvin, Op. No. 2025-UP-428 (S.C. Ct. App. filed December 23, 2025). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court in reaching its decision.

Evidence of Decedent's Gang Membership

On appeal, Appellant argued the trial court abused its discretion by excluding Appellant's testimony that he was aware the decedent was in a gang since the evidence was relevant to

Appellant's state of mind during the confrontation with the decedent, particularly as to whether Appellant had a reasonable apprehension of violence from the decedent, an element of his self-defense case.

This Court held the trial judge did not abuse his discretion and the evidence was properly excluded "because Appellant's vague, inconclusive statements were not relevant or logically related to the circumstances of the shooting." In so holding, this Court emphasized that Appellant admitted he did not see the decedent with a weapon and he was not aware of any other gang members present in the parking lot at the time of the shooting. The Court also noted that after Appellant shot the decedent, no one in the parking lot retaliated or attacked Appellant in response. The Court found that "witness testimony established Appellant was the primary aggressor and made threats to [the decedent] that he would 'f--- him up" in the parking lot." Finally, this Court emphasized that witnesses testified that on the day of the shooting, Appellant and the decedent were engaged in a verbal altercation that focused on the decedent's romantic relationship, not gang affiliation. Thus, the Court concluded that the gang evidence did not make any fact of consequence more or less probable. "Rather, Appellant admitted he shot because he was afraid [the decedent] would be able to reach Appellant's gun and shoot."

For the reasons that follow, Petitioner respectfully requests this Court grant rehearing and hold the trial court abused its discretion by excluding Petitioner's testimony concerning the decedent's gang membership.

Appellant testified *in camera* that the decedent "would boast about being in a gang." He "would express openly about" being a "member of . . . one of the most notorious gangs in South Carolina." Appellant explained that the decedent told him "that he could have me gone." Appellant did not know if this meant "gone from the job [at the House of Raeford] or having

stuff done to me through his gang or he would do it himself." Appellant later clarified that the decedent made threats related to his gang *on the day of the shooting*. Specifically, Appellant testified, "On that day he threatened to kill me and have things done to me by members of his gang." This occurred at the gas station shortly before the shooting. Appellant testified that his knowledge of the decedent's gang affiliation made him more fearful of the decedent on the day of the shooting. His knowledge "made everything more of a . . . terrorizing situation or a fearful situation." R. 445, l. 6 – 446, l. 24; R. 447, l. 6 – 449, l. 14.

This evidence was relevant to Appellant's state of mind during the confrontation with the decedent. It was also relevant as to whether Appellant's fear of great bodily injury or death was reasonable, a critical element of his defense. See State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) ("There are four elements required by law to establish self-defense . . . Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. *Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.*") (emphasis added).

Notably, this Court completely ignored Appellant's argument that the decedent's gang affiliation was relevant as to whether Appellant's fear of great bodily injury or death was reasonable. The decedent's gang affiliation and the threats the decedent made related to his gang, which Appellant testified were made *the day of the shooting*, logically created some apprehension of the decedent by Appellant. The trial court abused its discretion by excluding

this relevant evidence which was probative of Appellant's defense. Our Supreme Court has been protective of a defendant's right to present a complete self-defense case when he is charged with murder, and to have a fully charged jury if the charge went to the jury. See State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011); State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978).

Moreover, the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice *to the state.* See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). For the same reasons the evidence was relevant, as argued above, the evidence was probative. It was essential to Appellant's self-defense case. Additionally, there was little, if any, prejudice to the state, let alone *unfair* prejudice. Appellant did not seek to admit the evidence to "assassinate" the decedent's character. He only sought to use the evidence to show why his apprehension of the decedent was reasonable.

The trial court's citation to State v. Robinson, 438 S.C. 421, 882 S.E.2d 883 (Ct. App. 2023) and State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) was misplaced as these cases address the admission of prior bad act evidence pursuant to Rule 404(b), SCRE. Additionally, Johnson v. State, 433 S.C. 550, 860 S.E.2d 696 (Ct. App. 2021), which was also cited by the trial court, concerned the admission of the *defendant's* gang affiliation and is easily distinguishable from this case.

However, State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013), which was cited by defense counsel at trial, is directly on point. In Sobers, this Court held the trial judge did

not abuse his discretion by finding evidence the decedent and other individuals present during the shooting were members of a gang was not relevant. In so holding, this Court emphasized that Sobers, who alleged he acted in self-defense, never testified the mob that surrounded his car was part of a gang. According to Sobers, the mob action caused him to fear for his life and fire his gun, but he never testified that he was more fearful because the mob was part of a gang. R. 73, l. 7 – 74, l. 12. Accordingly, the decedent's gang affiliation was not relevant.

In this case, however, Appellant specifically testified that the decedent's gang affiliation caused him to fear the decedent and increased his apprehension of violence from the decedent. Consequently, it was relevant to Appellant's self-defense case and should have been admitted. Respectfully, this Court must have misapprehended the holding in Sobers since the Court relied on Sobers in affirming Appellant's conviction even though unlike the defendant in Sobers, Appellant specifically testified that he was more fearful of the decedent because of his gang affiliation and the threats the decedent made the day of the shooting related to his gang.

Respectfully, this Court should grant rehearing, hold the trial court abused its discretion by excluding Appellant's testimony about the decedent's gang affiliation, and reverse Appellant's conviction.

Failure to Tailor Self-Defense Instruction

Appellant also argued on appeal that the trial court erred by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense.

This Court held the trial court did not err since the jury was given a charge that adequately covered the law of self-defense. This Court further held Appellant's requested charge was "inapplicable" because Appellant knew the decedent was unarmed and was not in a position to "get the drop on him." The Court also emphasized that the trial court instructed the jury on the right to act on appearances.

For the reasons that follow, Petitioner respectfully requests this Court grant rehearing and hold the trial court erred by failing to instruct the jury that Appellant did not have to wait before acting in self-defense.

In State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984), our Supreme Court suggested a standard self-defense instruction. However, in State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Court made clear that it did not intend Davis to be the exclusive self-defense charge. State v. Burkhart, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002). Instead, "a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant." State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Id. (citing Fuller, 297 S.C. 440, 377 S.E.2d 328).

In State v. Day, our Supreme Court held the trial judge's failure to charge the specific elements of self-defense that were applicable to Day's theory constituted reversible error. Day, 341 S.C. at 418, 535 S.E.2d at 435. The Court found the trial judge's instruction was incomplete because it failed to include a charge indicating: (1) Day had a right to judge the conduct of the decedent more harshly than otherwise because of the decedent's drug consumption, and (2) the jury could consider prior instances of violence or unprovoked aggression by the decedent in

determining whether Day had a reasonable belief of imminent danger. Id. Part of Day's defense was his argument that the decedent had previously pulled a gun on him and that the decedent was in a "drug induced paranoia" the day of the incident. Id. Consequently, the Court held the jury charge, which only included the standard self-defense instruction as outlined by our Supreme Court in Davis along a the charge on the right to act on appearances, was incomplete because the trial judge failed to charge on the decedent's substance abuse or his prior acts of violence. Id.

In State v. Nichols, 325 S.C. 111, 116-117, 481 S.E.2d 118, 121 (1997), the defendant argued the trial judge's instructions on the law of self-defense were inadequate under State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), where the judge instructed the jury solely on the common law elements of self-defense. Nichols objected to the charge and requested additional instructions on: (1) the right to act on appearances; (2) relevance of prior difficulties; and (3) that a person does not have to wait before acting in self-defense. Id. at 117, 481 S.E.2d at 121. The Supreme Court held Nichols was entitled to a charge on the right to act on appearances because Nichols testified he thought he had seen a shiny object in the deceased's hand. Id. (citing State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955)). The Court also found the evidence showed there had been prior difficulties between Nichols and the deceased, including an instance where the deceased pointed a rifle at Nichols. Consequently, the Court concluded Nichols was entitled to a charge on the relevance of prior difficulties. Id. Further, the Court held Nichols was entitled to a charge that he did not have to wait before acting in self-defense since Nichols testified he thought he saw a gun in the deceased's hand and did not wait for the deceased to fire or aim at him. Id. (citing State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936)). Accordingly, the Supreme Court reversed Nichols conviction and remanded for a new trial. Id. at 118, 481 S.E.2d at 122.

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), our Supreme Court held Hendrix was entitled to a directed verdict since he was acting in self-defense as a matter of law when he shot the decedent. Id. at 661-662, 244 S.E.2d at 507. Evidence established that "ill feelings characterized the relationship" between Hendrix and the decedent. Id. at 655, 244 S.E.2d at 504. The decedent had confronted Hendrix earlier in the day and warned "they were going to have to fight to settle" the matter. Id. Hendrix was standing next to his truck, which was parked on his land, when the decedent arrived at the property, stopped his vehicle in the road, jumped out, and advanced toward Hendrix. Id. at 656, 244 S.E.2d at 505. Hendrix reached into the cab of his truck, pulled out a shotgun, leveled it at the decedent, and told him three times to back off. Id. The decedent immediately turned around, walked back to his truck, reached into the cab, drew out his own shotgun, and walked straight back to where Hendrix was standing. Id. A neighbor of the decedent observed the commotion and approached the scene. Id. at 657, 244 S.E.2d at 505. When she saw the two men facing each other with shotguns, she screamed the decedent's name. Id. The decedent turned his head in the direction of the scream. Id. As the decedent turned, Hendrix began firing. Id. He fired four times in rapid succession, killing the decedent. Id.

The Court determined Hendrix was not at fault in bringing on the difficulty since he armed himself on his own land in a legal manner after he was threatened. Id. at 659, 244 S.E.2d at 506. The Court further found the second and third elements of self-defense were established since the evidence showed Hendrix was actually in imminent danger of losing his life. Id. at 659-660, 244 S.E.2d at 506. Having no duty to retreat because he was on his own property and being without fault in bringing on the fatal confrontation, the Court held Hendrix was warranted in reacting to the situation with force. Id. at 660, 244 S.E.2d at 507. In so holding, and relevant

to this case, the Court emphasized, "Once [Hendrix's] right to fire in self-defense arose, he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon." Id. at 660-661, 244 S.E.2d at 507. This is significant since the evidence showed Hendrix shot the decedent when he was distracted by his neighbor's scream.

In this case, as in Day and Nichols, the trial court erred by refusing to instruct the jury on the specific element of self-defense requested by Appellant since it was applicable to Appellant's account of what occurred. Appellant testified that the decedent confronted him at his vehicle and threatened to take Appellant's firearm. The decedent then reached for the gun. Appellant explained that as soon as the decedent tried to reach for Appellant's gun, Appellant grabbed the gun and backed up. Appellant backed up as far as he could until his back was up against his car. Appellant testified that the decedent then tried to take Appellant's legs out from under him. The decedent tried to "lift and drop" Appellant. Appellant felt his "legs start to lift from under [him]." Appellant testified that he knew if the decedent got his gun, he would use it on Appellant and Appellant "could be shot and killed." So before the decedent was able to take Appellant's gun, Appellant "shot as fast as [he] could." R. 540, l. 16 – 541, l. 25.

Based on Appellant's account of what occurred, it was crucial for the jury to understand that Appellant was not required "to wait until his assailant [got] the drop on him" and that he had a "right to act under the law of self-preservation and prevent his assailant from getting the drop on him." See Rash, 182 S.C. at 42, 188 S.E. at 438. Respectfully, unlike this Court held, the instruction was applicable to Appellant's case. It was critical for the jury to understand that Appellant did not have to wait until the decedent grabbed Appellant's gun or for the decedent to knock Appellant to the ground for Appellant to act. The fact that Appellant knew the decedent was unarmed is not dispositive. The decedent could have become armed during the altercation

or could have gotten the "drop on" Appellant despite being unarmed by knocking Appellant to the ground or physically attacking Appellant. Accordingly, Appellant was entitled to a charge that he did not have to wait before acting in self-defense

Since the trial court failed to charge an important element of self-defense relevant to Appellant's account of what occurred, respectfully this Court should grant rehearing, hold the trial court erred, and reverse Appellant's conviction.

Excluding Testimony from Appellant's Firearms and Use of Force Expert

Appellant also argued on appeal that the trial court abused his discretion by excluding testimony from Scott Ballard, Appellant's expert in firearms and use of force, since the evidence was admissible pursuant to Rule 702, SCRE, as it would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation affects an individual's decision making process.

This Court held the trial court did not abuse its discretion by excluding Ballard's testimony because his testimony would only have confused the jury and was "not applicable" in this case since Ballard's background was in the Navy and with "force-on-force training" and Appellant was not a police officer, solider, or someone in a "wartime country." This Court concluded that Ballard's "testimony would leave the jury to speculate as to whether this psychological phenomenon applied to Appellant in this situation." Further, this Court held that "Ballard's testimony was not clarifying or informing the jury on something outside the realm of their own knowledge. Rather, Ballard was simply stating that, in a stressful situation, one's decision-making may be affected." Accordingly, the Court determined that Ballard's testimony was not outside the realm of ordinary lay knowledge as required.

For the reasons that follow, Petitioner respectfully requests this Court grant rehearing and hold the trial court abused his discretion by excluding Ballard's testimony.

Ballard's testimony should have been admitted pursuant to Rule 702, SCRE. Both the trial court and the state agreed during trial that Ballard was properly qualified. This Court likewise agreed that Ballard was qualified as an expert. There was also no concerns below that Ballard's testimony was unreliable. Moreover, the subject matter of Ballard's testimony is clearly beyond the ordinary knowledge of the jury. Ballard's testimony would have assisted the jury in this self-defense case in understanding how stress during a deadly force situation can affect an individual's decision making process. This was specialized knowledge that Ballard gained through his years of training and experience. Unlike this Court concluded, the subject matter was not common knowledge that the average juror would understand without the benefit of Ballard's expert testimony. Consequently, all three factors under Rule 702 were satisfied.

Based on the record, it appears the trial court excluded Ballard's testimony pursuant to Rule 403, SCRE. Rule 403 states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ballard's testimony was probative to explain, in part, how stress during a deadly force situation may affect an individual's decision making process. Unlike this Court held, it was not confusing. Ballard's testimony was straightforward and could have been used by the jury to evaluate whether the state disproved self-defense beyond a reasonable doubt. Simply put, its probative value was not substantially outweighed by confusion of the issues.

Respectfully, this Court should grant rehearing, hold the trial court abused his discretion by excluding Ballard's testimony, and reverse Appellant's conviction.

Based on the foregoing, Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in affirming Appellant's conviction and sentence.

Respectfully Submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

APPELLANT

APPELLATE CASE NO. 2023-001075

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 R. Brandon Larrabee, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 7th day of January, 2025.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Trevor Anthony Irvin, Appellant.

Appellate Case No. 2023-001075

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams C.J.

Paula C. Thomas J.

Kristi Curtis J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Lara Mary Caudy, Esquire
Richard Brandon Larrabee, Esquire
Donald J. Zelenka, Esquire

FILED
Mar 18 2026

Samuel R. Hubbard, III, Esquire
The Honorable Debra R. McCaslin