STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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

Lower Court Case No. 2022-GS-32-02749

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THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

PETITIONER

APPELLATE CASE NO. 2026-000949

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# PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and ruled on by the Court of Appeals on March 18, 2026.

## QUESTIONS PRESENTED

1.

Did the Court of Appeals err by holding the trial court did not abuse its discretion by excluding Petitioner's testimony that he was aware the decedent was in a gang since the evidence was relevant to Petitioner's state of mind during the confrontation with the decedent, particularly as to whether Petitioner had a reasonable apprehension of violence from the decedent, an element of his self-defense case?

2.

Did the Court of Appeals incorrectly hold that the trial court did not err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Petitioner, specifically that Petitioner 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 Court of Appeals err by holding the trial court did not abuse its discretion by excluding testimony from Petitioner'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 Petitioner 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 Petitioner. R. 1.

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

On December 23, 2025, the Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. State v. Trevor Anthony Irvin, Op. No. 2025-UP-428 (S.C. Ct. App. filed December 23, 2025); App. 59-63. Petitioner filed a petition for rehearing with the Court of Appeals on January 7, 2026. App. 64-76. By order filed March 18, 2026, the Court of Appeals denied the petition for rehearing. App. 77.

This petition for writ of certiorari follows.

## ARGUMENT

1.

The Court of Appeals erred by holding the trial court did not abuse its discretion by excluding Petitioner's testimony that he was aware the decedent was in a gang since the evidence was relevant to Petitioner's state of mind during the confrontation with the decedent, particularly as to whether Petitioner 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." R. 67, l. 22 – 69, l. 17.

Defense counsel argued Petitioner's belief that he was being attacked by a "violent gang member" was relevant to Petitioner's self-defense case. More specifically, counsel argued the evidence was relevant to Petitioner'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 the Court of Appeals 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 the Court of Appeals 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. 72, l. 9 – 74, l. 12. Accordingly, the Court of Appeals determined 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. Accordingly, she requested the trial court restrict Petitioner 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 Petitioner would have to proffer the evidence later on. R. 75, ll. 6-19.

Before Petitioner testified before the jury, defense counsel requested to proffer his testimony concerning the decedent's gang affiliation. Counsel explained that Petitioner was "prepared to testify" that he knew the decedent was a member of a gang and, critically, as a result of this knowledge, Petitioner 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 Petitioner did not mention the decedent's gang affiliation during his statement to law enforcement shortly after his arrest. While Petitioner stated he acted in self-defense during his statement and that the decedent attacked him first, Petitioner did not say he was more fearful because the decedent was in a gang. Because Petitioner did not mention the decedent's gang

membership previously, the solicitor suggested Petitioner 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.

Petitioner 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." Petitioner explained that the decedent told him "that he could have me gone." Petitioner 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." Petitioner 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, Petitioner 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, Petitioner 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.

Petitioner 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 Petitioner 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 besides the decedent threatened him. R. 455, l. 13 – 456, l. 13.

After the proffer, defense counsel argued Petitioner'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 Petitioner about the "legitimacy" of his belief or fear. Counsel concluded Petitioner 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 that 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 found the evidence was not admissible. 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.

On appeal, the Court of Appeals held the trial court did not abuse its discretion by excluding Petitioner's testimony that he was aware of the decedent's gang affiliation. The court held the evidence was properly excluded "because Petitioner's vague, inconclusive statements were not relevant or logically related to the circumstances of the shooting." App. 60. In so

holding, the Court of Appeals emphasized that Petitioner 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. App. 60. The court also noted that after Petitioner shot the decedent, no one in the parking lot retaliated or attacked Petitioner in response. App. 60. The court found that "witness testimony established Petitioner was the primary aggressor and made threats to [the decedent] that he would 'f--- him up" in the parking lot." App. 60. Finally, the Court of Appeals emphasized that witnesses testified that on the day of the shooting, Petitioner and the decedent were engaged in a verbal altercation that focused on the decedent's romantic relationship, not gang affiliation. App. 60. Thus, the court concluded that the gang evidence did not make any fact of consequence more or less probable. "Rather, [Petitioner] admitted he shot because he was afraid [the decedent] would be able to reach [Petitioner's] gun and shoot." App. 60.

**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 Court of Appeals erred by holding the trial court did not abuse its discretion by excluding Petitioner's testimony that he was aware the decedent was in a gang. The evidence was relevant to Petitioner's state of mind during the confrontation with the decedent, particularly

as to whether Petitioner 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)).

Petitioner 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." Petitioner explained that the decedent told him "that he could have me gone." Petitioner 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." Petitioner later clarified that the decedent made threats related to his gang *on the day of the shooting*. Specifically, Petitioner 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. Petitioner 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 – 449, l. 14.

This evidence was relevant to Petitioner's state of mind during the confrontation with the decedent. It was also relevant as to whether Petitioner'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. . . .").

Notably, the Court of Appeals completely ignored Petitioner's argument that the decedent's gang affiliation was relevant as to whether Petitioner's fear of great bodily injury or death was reasonable. The decedent's gang affiliation and threats related to his gang logically created some apprehension of the decedent by Petitioner. The trial court abused its discretion by excluding this relevant evidence which was probative of Petitioner's defense. This 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 Petitioner's self-

defense case. Additionally, there was little, if any, prejudice to the state, let alone *unfair* prejudice. Petitioner 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, the Court of Appeals 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, the Court of Appeals 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. Accordingly, the decedent's gang affiliation was not relevant.

In this case, however, Petitioner 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 Petitioner's self-defense case and should have been admitted. Respectfully, the Court of Appeals must have misapprehended the holding in Sobers since the court relied on Sobers in affirming Petitioner's conviction, even though, unlike the defendant in

Sobers, Petitioner 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, because the trial court abused its discretion by excluding Petitioner's testimony about the decedent's gang affiliation, this Court should grant certiorari, hold the Court of Appeals erred by affirming the decision of the Court of Appeals, and reverse Petitioner's conviction.

2.

The Court of Appeals incorrectly held that the trial court did not err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Petitioner, specifically that Petitioner 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**

Petitioner 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 [Petitioner's] gun, my client could've exercised a number of other options before firing. . . . [S]o my point is, he [Petitioner] 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

[Petitioner] 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 decedent 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 [Petitioner] 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.

On appeal, the Court of Appeals held the trial court did not err by refusing to instruct the jury that Petitioner did not have to wait before acting in self-defense since the jury was given a charge that adequately covered the law of self-defense. App. 61. The Court of Appeals concluded that the requested charge was "inapplicable" because Petitioner knew the decedent was unarmed and was not in a position to "get the drop on him." App. 61. The court also emphasized that the trial court instructed the jury on the right to act on appearances. App. 61.

**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 Court of Appeals incorrectly held that the trial court did not err by refusing to instruct the jury that Petitioner 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), this 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, this 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 this 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, 116-17, 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. This 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, this Court reversed Nichols conviction. Id. at 118, 481 S.E.2d at 122.

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), this 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 661-62, 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. 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. As the decedent turned, Hendrix began firing. 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 held 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, this 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 660-61, 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 Petitioner since it was applicable to Petitioner's account of what occurred. Petitioner testified that the decedent confronted him at his vehicle and threatened to take Petitioner's firearm. The decedent then reached for the gun. Petitioner explained that as soon as the decedent tried to reach for Petitioner's gun, Petitioner grabbed the gun and backed up. Petitioner backed up as far as he could until his back was up against his car. Petitioner testified that the decedent then tried to take Petitioner's legs out from under him. The decedent tried to "lift and drop" Petitioner. Petitioner felt his "legs start to lift from under [him]." Petitioner testified that he knew if the decedent got his gun, he would use it on Petitioner and Petitioner "could be shot and killed." So before the decedent was able to take Petitioner's gun, Petitioner "shot as fast as [he] could." R. 540, l. 16 – 541, l. 25.

Based on Petitioner's account of what occurred, it was crucial for the jury to understand that Petitioner 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. Respectfully, unlike the Court of Appeals held, the instruction was applicable to Petitioner's case. It was critical for the jury to understand that Petitioner did not have to wait until the decedent grabbed Petitioner's gun or for the decedent to knock Petitioner to the ground for Petitioner to act. The fact that Petitioner knew the decedent was unarmed is not dispositive. The decedent could have become armed during the altercation or could have gotten the "drop on" Petitioner despite being unarmed by knocking Petitioner to the ground or physically attacking Petitioner. Accordingly, Petitioner 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 Petitioner's account of what occurred, respectfully, this Court should grant certiorari, hold the Court of Appeals erred by affirming the decision of the trial court, and reverse Petitioner's conviction.

3.

The Court of Appeals erred by holding the trial court did not abuse its discretion by excluding testimony from Petitioner'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.

**Relevant Facts**

Petitioner 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. 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. 3 – 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." He concluded, "The brain just isn't processing it as fast as the body's reacting." R. 671, l. 23 – 673, l. 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 trial court and the assistant solicitor agreed that Ballard was qualified as an expert. However, the court found Ballard's testimony would confuse the jury and 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 trial 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.

The Court of Appeals 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 Petitioner was not a police officer, solider, or someone in a "wartime country." App. 62. The Court of Appeals concluded that Ballard's "testimony would leave the jury to speculate as to whether this psychological phenomenon applied to [Petitioner] in this situation." App. 62. Further, this court held that "Ballard's testimony was not clarifying or informing the jury on something outside the realm of their own knowledge. App. 62. Rather, Ballard was simply stating that, in a stressful situation, one's decision-making may be affected." Accordingly, the Court of Appeals determined that Ballard's testimony was not outside the realm of ordinary lay knowledge as required. App. 62.

**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 Court of Appeals erred by holding the trial court did not abuse 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 Petitioner'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.

"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. The Court of Appeals 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 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 the Court of Appeals 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 the Court of Appeals held and the trial court found, 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 certiorari, hold the Court of Appeals erred by affirming the trial court's decision to exclude Ballard's testimony, and reverse Petitioner's conviction.

## CONCLUSION

Based on the foregoing argument, this Court should grant certiorari and order further briefing on the questions presented. Petitioner ultimately requests this Court reverse the decision of the Court of Appeals and remand for a new trial.

Respectfully Submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of May, 2026.

RECEIVED
May 04 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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Opinion No. 2025-UP-428 (S.C. Ct. App. Filed December 23, 2025)
Lower Court Case No. 2022-GS-32-02749

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THE STATE,

RESPONDENT,

V.

TREVOR ANTHONY IRVIN,

PETITIONER

APPELLATE CASE NO. 2026-000949

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals and Appendix in this case have been served on R. Brandon Larrabee, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 4th day of May, 2026.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

| | |
|---|---|
| **From:** | Mcinnis, Sara |
| **To:** | Brandon Larrabee |
| **Cc:** | SC - BROWN ANGELA; Caudy, Lara |
| **Subject:** | 2026-000949 The State v. Trevor A. Irvin Petition for Writ of Certiorari to the Court of Appeals and Appendix |
| **Date:** | Monday, May 4, 2026 10:40:00 AM |
| **Attachments:** | 2026-000949 The State v. Trevor A. Irvin Appendix.pdf<br>2026-000949 The State v. Trevor A. Irvin Petition for Writ of Certiorari to the Court of Appeals.pdf |

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Good Morning Mr. Larrabee,

Attached for service in the above-referenced case are the Petition for Writ of Certiorari to the Court of Appeals and accompanying Appendix, which will be filed with the Supreme Court today, May 4, 2026, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330