RECEIVED
May 14 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable H. Steven DeBerry IV, Circuit Court Judge

Opinion No. 2026_UP-204

THE STATE,

RESPONDENT,

V.

WILLIE JAMES SMITH,

PETITIONER.

APPELLATE CASE NO. 2024-000879

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Willie James Smith, requests this Court grant rehearing. On May 6, 2026, this Court affirmed the murder conviction finding the trial court did not abuse its discretion in refusing Smith's request for a self-defense jury instruction because, viewing the evidence in the light most favorable to Smith, there was no evidence presented that Smith was, or believed he was, in actual danger of losing his life or sustaining bodily injury. State v. Smith, Op. No. 2026-UP-204 (S.C. Ct. App. filed May 6, 2026). Counsel respectfully submits that this Court overlooked the fact that words accompanied by hostile acts establish self-defense in this case. See State v. Fuller, 297 S.C. 440, 377 S.E.2d

328, (1989). There is evidence in the record from which it can be reasonably inferred that Petitioner acted in self-defense. At 4:00 AM the deceased entered the motel room he was sharing with Petitioner, was loud, waking Petitioner, used a highly offensive racial slur against Petitioner three times, and jumped up toward Petitioner before being stabbed. The racial slurs accompanied by the hostile act of jumping up toward Petitioner is evidence from which Petitioner reasonably believed he was in danger of sustaining great bodily injury. The jury should have been instructed on the law of self-defense. Petitioner respectfully seeks rehearing.

In this murder trial where the evidence supported that Petitioner acted in self-defense, the trial judge erred in refusing to charge self-defense to the jury.

The jury found Petitioner guilty of the fatal stabbing of his roommate, James McNamara on June 9, 2022. Petitioner and McNamara both worked for an asphalt paving company and the two men were sharing a motel room while they worked on a job in Florence. (R. pp. 174-177). The incident took place inside the motel room. A short time after the incident Petitioner called 911 and was still at the motel when first responders arrived. (R. p. 48, lines 1-17; p. 64, lines 1-25).

Petitioner provided a statement to investigators and a video of the interview was admitted in evidence, without objection, as State's exhibit #50. (R. p. 240, lines 4-8). Petitioner told the investigators that McNamara came into the room at 4:00 AM making noise and woke him up. McNamara told Petitioner that he was his "pet nigger" three times. (State's exhibit #50 at 14:21). When the investigator asked if McNamara came at Petitioner physically Petitioner said McNamara came off the bed and Petitioner came off the bed. (State's exhibit #50 at 17:54). Petitioner said McNamara jumped up toward him and Petitioner jumped up toward McNamara

and he guessed McNamara did not see that Petitioner had a knife. (State's exhibit #50 at 18:05). When asked if Petitioner saw if McNamara had any weapons Petitioner said he did not have time to look because when McNamara jumped up, Petitioner jumped up. (State's exhibit #50 at 18:15). Petitioner told the investigators that while he had never seen McNamara with a gun, he knew he carried a box cutter or blade or some sort of a weapon. (State's exhibit #50 at 22:24). Petitioner told the investigators that he knew it was all bad for him and indicated it was his fault. (State's exhibit #50 at 24:21).

During the charge conference the judge asked the parties about charging voluntary manslaughter. (R. p. 270, lines 7-8). The assistant solicitor said, "I think there's enough in the records for a charge on manslaughter, Judge." (R. p. 270, lines 9-10). Petitioner objected to the charge on voluntary manslaughter. (R. p. 270, line 12 – pp. 271 – 274, lines 1-6). The judge ruled, "I'll tell you what. Everybody be prepared to argue both charges, murder and voluntary manslaughter. And if I decide any differently, then I'll certainly let you know before we reconvene at 2 o'clock." (R. p. 274, lines 7-10).

Counsel for Petitioner asked about a self-defense charge. (R. p. 277, lines 8-9). The judge said:

> Well, this is the first time it's been brought up, but, no, I don't think - - you know, at this point in time, there's been no evidence of the elements of self-defense except for the one of, you know, that he may have been coming at him.
>
> There's been absolutely no evidence that your client was afraid for his life. There's been no evidence in the record that he thought he was armed, you know, that would – I mean, now certainly he was in his hotel room where he had a right to defend himself. He didn't have the duty to retreat. So I'm not, you know, considering that element of self-defense, but I don't think as we stand right now with what's in the record that - -that there's the evidence - - the existence of evidence that would justify a self-defense charge.

(R. p. 277, lines 10-23).

In closing argument the assistant solicitor stated, without objection, "They admit it's not a self-defense case. You won't hear any law about self-defense." (R. p. 290, lines 1-3). The judge charged the jury with the law of voluntary manslaughter but not self-defense. (R. pp. 307-309). The jury convicted Petitioner of murder. The trial judge erred in refusing to instruct the jury on the law of self-defense.

In State v. Williams, 400 S.C. 308, 314–15, 733 S.E.2d 605, 608–09 (Ct. App. 2012), the South Carolina Court of Appeals wrote:

> "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. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (internal citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) (internal citations omitted); see also 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. Cole, 338 S.C. at 101, 525 S.E.2d at 512–13.
>
> "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." State v. Day, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000).

In State v. Jackson, 384 S.C. 29, 35–36, 681 S.E.2d 17, 20 (Ct. App. 2009), the South Carolina Court of Appeals wrote:

> "If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense." State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct.App.2007). When any evidence in the record entitles the accused to a jury charge on self-defense, a trial judge's refusal to give the charge is reversible error. State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984).

Viewing the evidence in the light most favorable to Petitioner, there is evidence from which it could reasonably be inferred that Petitioner acted in self-defense. The trial judge's

refusal to charge self-defense is reversible error. In State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011), the South Carolina Supreme Court wrote:

> A person is justified in using deadly force in self-defense when:
>
> (1) The defendant was without fault in bringing on the difficulty;
>
> (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
>
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
>
> (4) 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.

In the present case there is evidence of the first three elements of self-defense discussed above. As to the fourth element, the trial judge correctly found that Petitioner had no duty to retreat from the motel room he shared with the deceased. There is no evidence that Petitioner was at fault in bringing on the difficulty. The highly offensive words used accompanied by the deceased coming at Petitioner support a belief that Petitioner was in imminent danger of losing his life or sustaining serious bodily injury. Those words accompanied by the hostile act show that a reasonably prudent person would have had the same belief. Petitioner was entitled to a self-defense instruction that included language that words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense. In State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989), the South Carolina Supreme Court wrote:

> Moreover, the trial judge erred in not charging the jury that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense" as this court stated in State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951), and previously in State v. Mason, 115 S.C. 214, 105 S.E. 286 (1920). Like the appearances charge, Fuller was entitled to the above set forth charge. Testimony presented at trial revealed that Dixon stated "he was going to take care" of Fuller; that Dixon grabbed Fuller by the throat; and, that Dixon and Phillips called Fuller a "nigger." Testimony also revealed that Dixon and Phillips

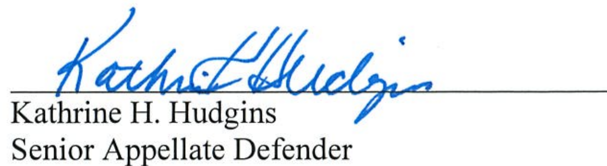
> rammed Fuller's car with their truck. Because of the evidence presented at trial, we find that the trial judge should have charged the jury that words accompanied by hostile acts may establish self-defense.

Petitioner was entitled to a full self-defense charge to include words accompanied by hostile acts may establish self-defense as discussed in Fuller. There is evidence in the record from which it can be reasonably inferred that Petitioner acted in self-defense. The trial judge erred in refusing to charge self-defense. The error in failing to charge self-defense requires reversal. "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 trial judge's refusal to do so is reversible error." State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008) (citing State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007)). The error was compounded by the assistant solicitor's closing argument stating, "They admit it's not a self-defense case. You won't hear any law about self-defense." (R. p. 290, lines 1-3). Petitioner did not admit that this was not a self-defense case. Petitioner requested an instruction on self-defense that the judge refused to give.

There was not "one clear-cut conclusion" as the Court of Appeals noted in State v. Battle, 408 S.C. 109, 122, 757 S.E.2d 737, 743 (Ct. App. 2014), distinguishing State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). The jury should have been given the option of determining if Petitioner acted in self-defense or not. The trial judge abused his discretion in refusing to charge self-defense. The error requires reversal.

In affirming the conviction this Court wrote, "We hold the trial court did not abuse its discretion in refusing Smith's request for a self-defense jury instruction. Viewing the evidence in a light most favorable to Smith, there was no evidence presented at trial showing Smith was, or believed he was, in actual imminent danger of losing his life or sustaining serious bodily injury."

State v. Smith, Op. No. 2026-UP-204 (S.C. Ct. App. filed May 6, 2026). Respectfully, this Court overlooked the fact that, viewing the evidence in the light most favorable to Petitioner, the racial slurs accompanied by the hostile act of jumping up toward Petitioner is evidence from which Petitioner reasonably believed he was in imminent danger of sustaining great bodily injury. This evidence satisfies the "any evidence" standard requiring a charge on self-defense. Petitioner respectfully seeks rehearing and a finding that the judge's refusal to charge self-defense is reversible error requiring a new trial.



Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

This 14th day of May, 2026.

RECEIVED
May 14 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE JAMES SMITH,

PETITIONER.

APPELLATE CASE NO. 2024-000879

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 MacKinnon Westraad, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Willie James Smith, #394161, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 14th day of May, 2026.

Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

RECEIVED
May 14 2026
SC Court of Appeals

From: Stock, Chris
To: mackinnonwestraad@scag.gov; Angela Brown; Melody Brown
Cc: Hudgins, Kathrine
Subject: 2024-000879 - The State v. Willie James Smith - Petition for Rehearing
Date: Thursday, May 14, 2026 4:25:00 PM
Attachments: 2024-000879 - The State v. Willie James Smith - Petition for Rehearing.pdf
2024-000879 - The State v. Willie James Smith - Petition for Rehearing - AG Cover Letter.pdf

---

Ms. Westraad,

Please find attached for service the Petition for Rehearing for Willie James Smith's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330