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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

RESPONDENT,

v.

TREVOR ANTHONY IRVIN,

APPELLANT.

Appellate Case No. 2026-00949

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S 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?

RESPONDENT'S QUESTIONS PRESENTED

1.

Did the trial Court of Appeals err in finding the trial court did not abuse its discretion by excluding Petitioner's vague and self-serving testimony about the victim's alleged gang

membership when that testimony was irrelevant to his theory of self-defense and would have been more unfairly prejudicial than probative?

2.

Did the Court of Appeals err in affirming the trial court's jury instructions on self-defense when those instructions sufficiently covered the law in South Carolina, and Petitioner's proposed instruction did not apply to his situation?

3.

Did the Court of Appeals err in finding that the trial court did not abuse its discretion by excluding expert testimony that would not have assisted the jury in considering Petitioner's self-defense claim and could have confused jurors?

STATEMENT OF THE CASE

Respondent accepts Petitioner's statement of the case for the purposes of this petition.

ARGUMENT

I. The Court of Appeals did not err in finding the trial court did not abuse its discretion by excluding testimony about the victim's alleged gang membership when the Petitioner's vague and self-serving testimony was irrelevant to his theory of self-defense and the danger of unfair prejudice outweighed the prejudicial value of the evidence.

Factual Background

The victim and Petitioner 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). Petitioner and the victim sometimes butted heads; one fellow employee recalled the two of them "beefing." (R. p. 161, ll. 3–20).

Shortly after 5 a.m. on June 24, 2021, as the employees were returning from a break, the victim and Petitioner began to argue. (R. p. 161, l. 21–p. 163, l. 24). According to one employee, the victim used a homophobic slur, and Petitioner 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, Petitioner was physically restrained by another employee. (R. p. 165, ll. 5–22). Petitioner reportedly told the 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 Petitioner was harassing the victim. (R. p. 178, ll. 1–6). She also remembered Petitioner 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

[1] Petitioner 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, Petitioner 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).

to harm the victim. (R. p. 184, ll. 3–5). Geiger denied that the victim used a knife to threaten Petitioner. (R. p. 184, ll. 20–25).

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 Petitioner's car in the parking lot. (R. p. 187, ll. 8–12). Worried that the conflict between Petitioner and the victim might flare up again, Geiger asked the victim to move away from Petitioner'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 Petitioner apparently reenacting a confrontation with the victim at the store. (R. p. 191, ll. 13–17).[3] She believed Petitioner "was trying to get [the victim's] attention again." (R. p. 192, ll. 5–20).

If that was Petitioner's goal, he succeeded. The victim walked over to where Petitioner 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, Petitioner continued to taunt the victim. (R. p. 193, ll. 12–24). Eventually, the victim went back to where Petitioner 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 Petitioner. (R. p. 199. ll. 5–13).

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

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

During the renewed confrontation with Petitioner, the victim "swooped down for [Petitioner's] legs." (R. p. 196, ll. 6–10). Petitioner responded by pulling his firearm and, as the victim was backing away from the confrontation, opening fire. (R. p. 196, ll. 10–13). Petitioner continued to shoot as the victim ran away. (R. p. 197, ll. 3–12). 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). Petitioner 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 Petitioner as he gestures between two cars. (State's Exh. 65). Petitioner 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 Petitioner's lower body. *Id.* As the victim stands back up and begins backing away, Petitioner pulls out his gun and fires. *Id.* The victim then turns around and runs, then sprawls to the ground, as Petitioner continues shooting. *Id.* Petitioner then stands over the victim, still pointing the gun. *Id.*

At trial, Petitioner attempted to introduce evidence of the victim's alleged gang affiliation. During a proffer of his testimony related to these allegations, Petitioner 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 that 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). Petitioner 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). Petitioner testified that this increased his fear of the victim. (R. p. 446, ll. 14–24).

On cross-examination, Petitioner conceded that he did not call the police about the alleged threats or mention them to 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). Petitioner testified about whether the victim had specifically threatened to have members of the victim's alleged gang harm Petitioner on the day of the shooting. (R. p. 448, l. 4–p. 449, l. 10). Petitioner said those threats happened during the confrontation at the convenience store. (R. p. 449, ll. 11–20; p. 451, l. 20–p. 452, l. 2). Petitioner also testified that other workers at the plant were part of the gang. (R. p. 454, ll. 7–13). Petitioner 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). The Court of Appeals later held that the trial court's decision was not an abuse of discretion. (App. 60–61).

Standard of Review

"The 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).

Discussion

Petitioner argues that Court of Appeals erred when it found that the trial court did not abuse its discretion in excluding the gang testimony. However, as the trial court and the Court of Appeals recognized, this evidence was irrelevant to the issues at trial and would have suggested the jury reach its verdict on an improper basis. As a result, excluding it was not error.

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; they 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 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). For that reason, Petitioner 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, Petitioner's argument regarding self-defense is inextricably bound up with the evidence's tendency to show propensity. Petitioner wanted to prove to the jury that the victim was someone to be feared because he was someone who was dangerous; Petitioner 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 Petitioner.

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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 Petitioner's trial was whether he had a right to defend himself against the victim. If Petitioner feared that the victim might overpower Petitioner 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 Petitioner 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."). This is one place where the Court of Appeals found that the Petitioner came up short. The Court of Appeals noted that Petitioner's "vague,

inconclusive statements were not relevant or logically related to the circumstances of the shooting." (App. 60). As the Court of Appeals found, "the gang evidence did not make any fact of consequence more or less probable." (App. 60). Petitioner'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 Petitioner's testimony, there was little basis for claiming that the victim's alleged gang membership made the victim a greater danger to Petitioner 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 Petitioner 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 Petitioner's fear that the victim endangered him. According to its verdict, the jury obviously did not believe Petitioner's self-defense.

For those reasons, the Court of Appeals did not err in holding that the trial court did not abuse its discretion in excluding the allegations that the victim was involved in a gang. The petition for writ of certiorari should be denied.

II. The Court of Appeals did not err in affirming the trial court's jury instructions when those instructions sufficiently covered self-defense law by giving a full and accurate summation of that law.

Factual Background

During his trial, Petitioner requested, but did not receive, a charge on whether Petitioner 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 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 Court of Appeals later affirmed the trial court, noting that the victim was "not in a position . . . to 'get the drop on[]'" Petitioner and "the overall jury charge was proper, and [Petitioner's] requested charge was inapplicable. (App. 61).

Standard of Review

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)).

Discussion

Petitioner argues that the Court of Appeals erred in finding that the trial court did not abuse its discretion in finding Petitioner's charge unnecessary and declining to give it. There was no error.

Here, the State and Petitioner 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).

In this case, the trial court tailored its instructions to Petitioner's case. As the Court of Appeals found, Petitioner simply asked for an instruction that was not applicable.

Petitioner 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—an instruction regarding the right to act on appearances and one addressing "words accompanied by hostile acts." *State v. Fuller*, 297 S.C. 440, 443–44, 377 S.E.2d 328, 331 (1989).

Contrary to Petitioner's assertion, whether Petitioner 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). The Court of Appeals recognized this in its opinion. In this case, the series of events that Petitioner argued at trial 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 of Appeals did not err in affirming the trial court's decision not to give the requested additional charge on self-defense. That charge would not have been relevant to the facts in front of the jurors. The petition for writ of certiorari should be denied.

III. The Court of Appeals did not err in finding the trial court did not abuse its discretion by excluding expert testimony that would not have assisted the jury in considering Petitioner's self-defense claim and instead would likely have confused jurors.

Factual Background

At trial, Petitioner 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).

Petitioner 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 acknowledging that Ballard was an expert, the court asked to hear more about the substance of Ballard's proposed testimony. (R. p. 669, l. 25–p. 670, l. 9). 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. 16–25). The court found that the testimony would confuse the jury, could implicate medical issues for which the witness was not trained, and could impermissibly discuss Petitioner's state of mind. (R. p. 680, l. 20–p. 681, l. 6). The Court of Appeals affirmed, finding that the testimony "would like confuse the jury because it was not specific or applicable to" Petitioner and would not have helped the jury with an area of expert knowledge. (App. 62).

Standard of Review

"The 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).

Discussion

Petitioner argues that the Court of Appeals erred in finding the trial court did not abuse its discretion in excluding Ballard's testimony. But the testimony would not have assisted the jury in assessing the facts in this case. As the Court of Appeals found, the testimony could have confused the issues before the jury and would not help the juror understand "something outside the realm of their own knowledge." (App. 62).

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, this 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. Petitioner's proposed 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. Petitioner 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 Petitioner or the situation he found himself in leading up to the fatal shots.

Like the trial court before it, the Court of Appeals observed a critical flaw in Petitioner's attempt to use the expert's testimony: The testimony largely concerned how people other than Petitioner 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.

To the extent that the expert would have testified to the reactions of trained law enforcement officers, the evidence was irrelevant. 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 Court of Appeals did not err in affirming the trial court's ruling on the testimony. The petition for writ of certiorari should be denied.

CONCLUSION

Petitioner has failed to demonstrate any way in which the Court of Appeals erred in affirming his conviction. The petition for writ of certiorari should be denied.

Respectfully submitted,

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