

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2024-001870

THE STATE,.....RESPONDENT

v.

CALVIN D. FORD.....APPELLANT

RESPONDENT’S PETITION FOR REHEARING

On June 3, 2026, this Court issued an unpublished opinion vacating and remanding the sentence of the Appellant’s 2019 conviction for murder. *State v. Ford*, Up. Op. no 2026-UP-273 (S.C. Ct. App. Filed June 3, 2025). In vacating and remanding the case for another immunity hearing this Court found that the trial judge erred in not allowing co-defendant Aliga Campbell (co-defendant) to testify in order to invoke his 5th Amendment right of non-incrimination.

Pursuant to Rule 221(a), SCACR, Respondent the State of South Carolina respectfully petitions for a rehearing because this Court appears to have misapprehended the trial court's decision not to force the co-defendant to testify when his counsel informed the Court, he instructed his client to invoke his fifth amendment rights. This co-defendant was going to be tried simultaneously with the Appellant; the court used their discretion to allow the co-defendant not to testify for the sole purpose to invoke his fifth amendment rights. So he would not possibly further incriminate himself in the upcoming trial. The Respondent further argues that any error shall be

considered harmless since the co-defendant's statement is identical to what the Appellant's cousin Everett Ford testified to during the immunity hearing.

Appellant was indicted by the Horry County Grand Jury for the murder of Jamal Burgess (victim) and Dameion Alston. Prior to trial the Appellant sought immunity through the Protection of Persons and Property Act pursuant to Section 16-11-450(A) of the South Carolina Code of Laws, which state:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force...

S.C. Code Ann. §16-11-450(A)(2006).

When an inmate is seeking immunity they are entitled to an immunity hearing. *State v. Dennis*, 447 S.C. 323, 327, 926 S.E.2d 250, 252 (2026). A claim of immunity under this act requires a pretrial determination using the preponderance of the evidence standard. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263 (2013).

During this immunity hearing Appellant's counsel called his co-defendant to testify. The co-defendant's attorney informed the trial court that he had advised him to exercise his fifth amendment rights not to testify. (R. p. 136 l. 7-13). Appellant's counsel wanted to call the co-defendant to the stand for the sole purpose of evoking his fifth amendment rights. The trial court decided to deny Appellant's counsel from calling him just for this purpose. The reasoning for the trial court was that since the co-defendant was also going to be a defendant in the trial, his rights should be protected as well. (R. p. 112, l. 8-9).

During the immunity hearing the Appellant's first cousin Everett Ford testified. During his testimony Mr. Ford stated that the victim was at the party that night and he appeared "aggressive" like "[s]omething was wrong with him." (R. p. 307 l. 1-17). Mr. Ford further testified

that the victim grabbed the Appellant “aggressively” placing his arm around him, and then they “had words.” (R. p. 308 l. 10-25; R. p. 310 l. 7-15). As Mr. Alston tried to break them up the victim pulled out a gun and fired at the Appellant. (R. p. 311 l. 1-14). Ford believed that the Appellant retrieved a gun off the ground because he did not see the Appellant with a gun after hearing the initial shot. (R. p. 314 l. 1-17).

During the hearing the State called two eyewitnesses, Sherika Gore and Felicia Williams. Ms. Gore testified that she was talking to people when she noticed the Appellant approach the victim. They then walked off and started talking. (R. p. 281 l. 16-25). Eventually she heard raised voices, and the next thing she saw was Appellant pulling out a gun and firing it. (R. p. 284 l. 15-17). Ms. Gore testified that she saw the Appellant take the gun from his waist, and she never saw the Appellant bend down to the ground. (R. p. 291 l. 1-6). Ms. Gore also testified that she did not see a gun on the victim that day. (R. p. 288 l. 21-25) Ms. Gore stated that she allowed the victim to hold her three-month-old baby earlier that evening, and she would never have allowed that if she saw a gun in the victim’s waistband. (R. p. 280 l. 1-6; R. p. 292 l. 17 – p. 293 l. 6).

Ms. Felicia Williams testified that when she got to the party, she saw the Appellant and the two victims in the street talking. (R. p. 289 l. 2-4). She heard a bottle breaking then saw the victim move Mr. Alston out of the way and then saw Appellant pull out a gun and shoot. (R. p. 290 l. 1-17). Ms. Williams did not see anyone else with a gun, and she never saw the Appellant bend down and retrieve a gun off the ground. (R. p. 291 l. 13-17).

On October 24, 2024, the trial judge issued an order denying Appellant immunity from prosecution. This follows an order from this Court for the trial judge to issue an order that makes specific findings of fact that support whether the Appellant is entitled immunity. *State v. Ford*, Opinion No. 5974 (S.C. App. 2023). Within this order the trial judge correctly stated that the

Appellant had the burden of proof by a preponderance of the evidence. Appellant is responsible for proving a valid claim of self-defense. *State v. Curry*, 406 S.C. at 371-72, 752 S.E.2d at 266. The burden of showing something by a preponderance of the evidence simply requires the trier of fact to believe that a fact is more probable than not before he may find in favor of party who has the burden to persuade the judge of the fact's existence. *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed.2d 327 (1997). With the evidence presented, the trial court made that right decision that the Appellant did not satisfy his burden of proof.

In order to obtain immunity, the Appellant must reveal that he had a valid claim of self-defense. South Carolina law requires that the Appellant prove by a preponderance of the evidence that his case met these criteria, (1) a defendant must be without fault in bringing on the difficulty; (2) 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; (3) if the defendant believed he was in imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief or, 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; 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. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013). The protection of person and property act removed the duty to retreat. South Carolina law now states, A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be ...has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself. S.C. Code Ann. §16-11-440(C)(2006).

The trial judge's reasons why the Appellant did not meet his burden of proof were stated within his order. The trial judge stated that the Respondent's and Appellant's evidence were in direct contrast with each other. "Therefore, the defendant failed to prove that it is more likely true than not true that he was not at fault in bringing on the difficulty, thus failing to prove that element of self-defense by a preponderance of the evidence." (order denying immunity pg. 4). The statement of the co-defendant was identical to the statement of Everette Ford who testified. Mr. Ford's statement clashed with the statement of the two eyewitnesses that testified for the State. If the co-defendant had testified he would have testified exactly as Mr. Ford did, therefore, there would have been an identical result. The trial judge would have ruled that the Appellant did not satisfy their burden of proof.

This Court is of the opinion that the testimony of the co-defendant possibly would have made a difference as to the final result of immunity. The trial court was clear that the Appellant failed to satisfy his burden of proof. The Appellant failed to prove more likely than not he was not at fault in bringing on the difficulty. This would not have changed with the testimony of the co-defendant because his statement would not have added any new information. The identical testimony would have revealed the identical failure of the Appellant to prove self-defense. The appellate court does not re-evaluate facts but simply determines whether the trial judge's ruling was supported by the evidence. *State v. Brannon*, 347 S.C. 85, 89, 552 S.E.2d 773, 775 (2001). It is clear by the trial judge's final order the facts of the case as presented by both sides were closely considered. The trial judge correctly determined that the Appellant failed to meet his burden of proof, so he was not entitled immunity.

The trial court ruled not to allow the co-defendant to testify due to the fact he was going to be tried for this offense along with the Appellant. It has been recognized that when a witness

intends to claim privilege as to essentially all questions, the court may, in its discretion, refuse to allow him to take the stand. *State v. Hughes*, 328 S.C. 146, 152, 493 S.E.2d 821, 824 (1997). In an immunity hearing the trial court sits as a factfinder and is not permitted to draw any negative inference from the co-defendant, who is not testifying. The trial court knew that any testimony delivered by the co-defendant at the immunity hearing would create a prior record regarding his statement that could possibly be used against him later at the actual jury trial or at least affect his ability to make the decision to testify or not at the upcoming trial. This would have obviously caused a disadvantage to the co-defendant.

The Respondent understands the reasoning of this Court as it relates to harmless error; however, the Respondent would reiterate that any error that could have occurred should be considered harmless. This is due to the fact it would not have changed the outcome of the immunity hearing. The information the co-defendant would have presented to the trial court was cumulative to what was already on the record.¹ The crux of the co-defendant's statement was that the victim began talking to the Appellant as soon as they arrived at the party. At some point, their discussion escalated and someone tried to intervene. Mr. Campbell stated that the victim shot first, then the Appellant fired back in self-defense. The co-defendant's testimony aligned with the statement the Appellant provided and was cumulative to what was delivered by his cousin Everette Ford. The co-defendant's testimony would have contradicted that of the State's eyewitnesses who did not see the victim with a gun and saw the Appellant shooting first. This contradiction was acknowledged by the trial judge within his order. But it was also his determination that this contradiction caused

¹ In *State v. Gaskins*, this Court recognized that an error under *State v. Perry* may be deemed harmless where the testimony would have been cumulative to other testimony admitted. *Hughes*, 328 S.C. at 153, 493 S.E.2d at 824. (citations omitted).

doubt the Appellant could prove his case beyond a preponderance of the evidence; thereby, causing his ruling to deny immunity.

The Respondent understands the logic this Court had regarding the cumulative testimony of the co-defendant, that maybe another witness would have swayed the court to grant immunity. However, it was clear by the order that the trial judge believed the State's witnesses were more credible and were the reason for the trial court's decision. It is the opinion of the Respondent that the testimony of the co-defendant even if he decided to waive his 5th amendment rights to self-incrimination would not have changed the outcome of this hearing, thereby, should be considered harmless. Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 574 (2018).

CONCLUSION

For the reasons stated above, the Respondent respectfully petitions this court for a rehearing pursuant to Rule 221(a), SCACR, and requests this Court to allow a rehearing to reconsider the decision made by this Court.

Respectfully Submitted,

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Columbia, South Carolina
June 17, 2026

ATTORNEYS FOR THE RESPONDENT

RECEIVED

Jun 17 2026

SC Court of Appeals

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PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Petition for Rehearing, along with the Proof of Service, have been forwarded to Appellant's counsel, Jessica Saxon via email today, June 17, 2026, to JSaxon@sccid.sc.gov and to Ms. Saxon's assistant, Kaylynn Warren, KWarren@sccid.sc.gov.

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

This is the 17th day of June 2026.

s/Tommy Evans, Jr.

Tommy Evans, Jr.

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Post Office Box 11549

Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

Brandy Rankin

RECEIVED

Jun 17 2026

From: Brandy Rankin
Sent: Wednesday, June 17, 2026 2:43 PM
To: Saxon, Jessica
Cc: Tommy Evans, Jr.; Warren, Kaylynn
Subject: The State v. Calvin D. Ford - Petition for Rehearing
Attachments: Ford.Calvin.D.Petition for rehearing.pdf; Proof of Service - Petition for Rehearing.pdf

SC Court of Appeals

Dear Ms. Saxon,

Please find attached the Respondent's Petition for Rehearing together with the Proof of Service. These documents will be filed today, June 17, 2026, along with a copy of this email. Thank you!

Sincerely,

Brandy Rankin

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