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Jun 18 2026

SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Horry County
The Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

APPELLANT,

v.

ANIJAH YARNELL,

RESPONDENT.

Appellate Case No. 2023-000571

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Appellant, the State, petitions this Court for rehearing.¹ The ruling of this Court was essentially that the abuse of discretion standard and mere reference to credibility (itself a fact-finding requiring support) wholly insulated Judge Hayes' ruling from appellate reversal. Counsel respectfully submits that this Court has misapprehended certain factual and legal matters in arriving at its holding and erroneously endorsed the legal and factual findings of the trial court. Appellant would respectfully argue:

Fault in Bringing on the Difficulty

This Court erred in finding no abuse of discretion by Judge Hayes in his ruling that Respondent did not "provoke Pennington's attack." Such was a misstatement of the element, as

¹ A Petition for Rehearing is required before a party can seek a Writ of Certiorari from the South Carolina Supreme Court. Rule 242, SCACR.

the law asks whether the defendant “was without fault in bringing on the difficulty.” The distinction is a crucial one that seeks a factual proof of direct provocation rather than contributory fault, as it purposefully enabled the trial court to focus only upon the interaction between Pennington and Respondent and effectively ignore the substantial res gestae of events that created the dispute. It was legal error to characterize and decide the legal issue in such a way by Judge Hayes, and it is subsequent legal error by this Court to endorse and affirm the trial court’s finding of the first element of self-defense.

The first element also presents reversible error on the basis of factual conclusions not supported by the record. The trial court and now this Court have failed to properly consider the res gestae of the dispute that created turmoil between the individuals that night. Remi broke up with Respondent due to his behavior. His own texts demonstrated that reality and his anger about the situation. (State’s Ex. 51). His response was to insult Remi, harass her with 200 cell phone calls, and threaten to destroy her property unless she were to “come get her shit” from him immediately. (State’s Ex. 51). This was an obvious pretext for creating an opportunity to see and communicate with Remi, which she adamantly did not want, and such is a common fuse for domestic abuses. Moreover, and in contradiction to Judge Hayes’ and this Court’s affirmance, Respondent admitted that his ultimate decision to drive to Remi’s apartment and then wait for her for nearly an hour was *partly motivated by a desire to see and talk to Remi*. (R. 332). This is an explicit concession from the Respondent that negates the premise that he was “only” there to deliver her belongings. It therefore constituted error on the part of the trial court in the application of S.C. Code §§ 16-11-440(B) & (C), as it pertains to trespass. (*Infra*). And, in the context of the strained interpretation of the instructions Respondent claims he was given (“drop the stuff off and leave”), his decision

to stay at Maddington Place in order to see and talk to Remi was satisfying *his own desires* that harassment had not successfully satisfied.

Respondent does not dispute that he called Remi 200 times. There is no other description of such behavior than to call it what it is: harassment and unlawful use of cellphone. It is this undisputed harassment by Respondent that brought about the difficulty with Victim. Definitively, had Respondent not harassed Remi and threatened to destroy her property, Victim would not have had any basis for discord toward Respondent. In fact, Victim's presence that night was explicitly requested because of the fear Remi was feeling toward Respondent and his behaviors that day. (R. 92-93). Had Respondent not engaged in threats of destroying Remi's property, neither he nor Victim would have been present that night. After committing harassment and threats against property, had Respondent simply followed Remi's instruction to drop the stuff off and leave, he would not have been there upon Remi's arrival (contrary to his admitted intention), and the opportunity for confrontation would never have arisen. (R. 274; 277). Had Respondent simply (even by his own doubtful interpretation) dropped off her belongings and left the scene without attempting to engage in conversation or seek Remi's *personal* involvement, this confrontation would not have arisen. Lastly, had Respondent left when he was asked, thereby establishing ejectment, the opportunity for confrontation would not have occurred. (R. 83; 87). Judge Hayes ruled that "the facts established Remi had consented to Petitioner bringing her belongings to her at Maddington Place." (R. p. 552, n. 8). That finding is reached in disregard of record testimony to the contrary, in full adoption of the doubtful testimony offered the individual charged with murder, and is simply contrary to the extensive efforts Remi made to avoid or limit contact with Respondent due to his fear inducing behavior. As argued in brief, Respondent is very clearly "not

without fault” for bringing about the difficulty in question. Rehearing is warranted to correct both legal and factual error.

Imminent Danger

The Court erred in finding no abuse of discretion by Judge Hayes in his ruling that Respondent was in actual danger of death or great bodily injury, and that Respondent’s fear of imminent danger was real and that a reasonably prudent man of ordinary firmness and courage would have come to the same belief. (R. 560). This finding was an uncritical adoption of the testimony of Respondent, without consideration of the contradictory details presented in the record and without consideration of Respondent’s own contradictory testimony. This Court has erred in its refusal to critically review the factual findings of the trial court as to the second element of self-defense, where Respondent’s own testimony detracts from his establishment of reasonable fear, and where forensic evidence demonstrated the impossibility of Respondent’s story of the crime. *At minimum*, such discredited his testimony when tested against unbiased forensic and photographic evidence.

The court disregarded the physical limitations of how much danger a reasonably prudent man would feel from the possibility of having his gun taken from him through a minimally opened car window and locked door. (See Defense Ex. 43). The court inexplicably dismissed the possibility that the window was nearly up during Victim’s alleged attempt to grab the gun (R. 554, n. 11), despite the fact that photograph evidence of the position of the window was taken and the mechanic demonstrated that the window *was inoperable* once the window became shattered. (R. 491). The trial court likewise disregarded Respondent’s own testimony that the position of the window was such that it prevented “good punches” against him. (R. 348). Respondent likewise presented no testimony that he ever saw Victim or any other witness with a weapon of any kind.

Instead, he surmised the possibility that they *might* be armed (without a basis for such) and based his fear of danger on that presupposition.

The law permits a person acting in self-defense to act *on appearances*, and Judge Hayes relied on such law as his basis for finding imminent danger. (R. 549, citing *State v. Scott*, 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018)). Respondent's unsupported fear of imagined weapons in Victim's pockets and the unscrutinized single use of the doorhandle were used as the factual basis supporting the trial court's ruling. However, the law of appearances is intended to permit a defendant to use deadly force when he believes (even if mistaken) that an assailant is in the process of drawing or presenting a deadly weapon. No such testimony is provided by Respondent, and as such, it was legal error on the part of the trial court to rely on that facet of the law. This Court erred in affirming that legal conclusion. Rehearing and reversal is warranted.

S.C. Code §§ 16-11-440

In light of the legal and factual errors discussed above, the statutory provisions do not even require attention. Respondent cannot satisfy the elements of self-defense because he was not without fault in bringing on the difficulty and he was not under reasonable fear of imminent danger of life or limb. But even if you address the statute, additional errors on the part of the trial court arise and those errors were improperly affirmed by this Court.

This Court erred in finding no abuse of discretion by Judge Hayes in his ruling that Respondent did not lose his presumption of reasonable fear under S.C. Code §§ 16-11-440(B). This case is not as complex as Judge Hayes sought to make it. Respondent broke the law by harassing Remi, and that harassment is the direct cause for Respondent's presence at the crime scene and Victim's animus. Specifically, the unlawful conduct is established by his unlawful use of a telephone and his criminal harassment, and Respondent utilized his car to further the intent of

those acts: see and speak with Remi. See S.C. Code Ann. § 16-17-430; See S.C. Code Ann. § 16-3-1700-1710. Respondent likewise was acting unlawfully by trespassing on private property. As mentioned above, even considering the doubtful interpretation of Remi's instructions that Respondent now asserts while attempting to avoid a murder charge, he conceded that he was desirous of seeing and speaking with Remi and was at least partially there for that purpose. That exceeded the scope of any lawful presence he had on the property. Moreover, testimony demonstrated that he was asked to leave and thereby ejected from any rightful presence on the property. His return was an unlawful trespass and he used his vehicle to accomplish that action as well. Notwithstanding the additional argument that Respondent intended to harm Remi, there are three separate grounds for unlawful conduct on the part of Respondent that satisfy subsection (B).

This Court also erred in ruling that the trial court's alternative finding under subsection (C) is unpreserved. Respondent conceded at the hearing that subsection (C) was an underlying argument of the State and actively argued against its application. (R. 509-510; 517). Indeed, the State argued that Respondent could not satisfy subsection (C) in briefing. (R. 545). This Court suggests that its mention is limited to "a footnote in considering whether a proximate cause analysis was required under subsection 16-11-440(B) but did not address whether Respondent Yarnell was entitled to immunity under subsection 16-11-440(C)." This simply is not a fair or accurate assessment of the Order granting immunity. Extensive discussion of subsection (C) can be found in both the text and footnotes of pages 4, 5, 6 and 7 of the Order, and the trial court explicitly states: "Nevertheless, as will be explained herein, when applying McCarty's proximate cause test while examining subsections (A) and (B) to the present facts, the proximate cause test does not alter the present decision. (R. 550-553). As such, the argument was presented, argued

against, and ruled upon by the trial court. As argued in briefing, that ruling was in error. It was properly before this Court on appeal and this Court's finding to the contrary was in error.

The trial court erred in its legal application of statutory law, as well as its factual conclusions in support. This Court has erred in affirming the findings under subsection (B) and in declining to address subsection (C) as unpreserved. Rehearing is therefore warranted.

Egregious Factual Errors

This Court erred in finding Judge Hayes was within his discretion in ruling that Respondent had satisfied his burden of proof for each of the first three elements of self-defense. In addition to the arguments raised in brief (incorporated herein), this finding was reached in reliance upon erroneous application of law, as well factual findings not supported by the record. It is also controlled by a generalized finding of credibility for defendant that is wholly unwarranted under the record – such may be entitled to “great deference,” but not absolute deference. Here, deference was granted in error.

The most egregious factual error by Judge Hayes is the finding that “[t]he argument result[ed] in Petitioner wanting to end the relationship and bring Remi her belongings.” (R. 557, n. 19) (emphasis added). At no point in the record does Respondent indicate that he was independently desirous of wanting to end his relationship with Remi. By proof of Petitioner's own messages, the exact opposite is true; Remi sought to end the relationship with Respondent and he responded with apparent scorn, anger, and petty behavior. His texts include the following statements:

She's moving with Allie she said Bc we are “done” she's too weak to have a kid on her own we both know that she needs me or you bc she's weak Allie can't take care of her.

...

Today so since she wants to leave so bad I'll gladly throw her shit put (out).

...
She choosed allie over me today so I don't care along with her
photos and shit I'm getting every last thing out she will not succeed
as a single mother as of now because she's too weak.

...
So since she thinks she can do it we will see I'll send money as much
as she needs but she doesn't need me so tell her to remember that
because I'm the only guy that will ever but (put) up with the bs that
comes with her.

(State's Ex. 51).

These texts were stated *before the shooting*, before Petitioner had a substantial reason to portray himself or his actions in a way that is less provocative and less criminal, and they come *directly from the Petitioner*. Yet, immediately following Judge Hayes' glaring error as to who sought to end the relationship, he adds, "The messages also read as Petitioner expressing his affection for Remi." (R. p. 557, n. 19). There is no deference to this conclusion from the record; these texts are an unbiased demonstration of who wanted to end the relationship and how poorly Respondent reacted and behaved afterward.

This text message evidence was corroborated by evidentiary proof that after the argument/break-up, Petitioner called Remi over 200 times in a single evening. Respondent concedes this and concedes that often his calls were placed every minute or placed multiple times within the same minute. Judge Hayes' finding that it was Petitioner who wished to end the relationship is not a disputable question of fact, it is a blatant abuse of discretion as to the record evidence and it relates to the single fundamental dispute taking place that leads to the crime. "A circuit court abuses its discretion when its ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *The State, Appellant, v. Anijah Yarnell, Respondent.*, No. 2023-000571, 2026 WL 1587243, at *3 (S.C. Ct. App. June 3, 2026) (quoting

State v. Marshall, 428 S.C. 11, 18, 832 S.E.2d 618, 621-22 (Ct. App. 2019)). Such is reversible error, and this Court should grant rehearing and reverse.

Unfounded Credibility

The trial court reached a general finding that Respondent was a credible witness. However, he offered only the barest explanation in support of this finding. (R. 557, n. 19). When the review of the record is taken in comparison, that finding, both in general and specific to certain factual and legal matters, is not deserving of the deference the law usually affords.

Respondent conceded on the stand that he was not at Remi's apartment solely to satisfy his interpretation of "drop it off and leave." He conceded in testimony that he also wanted to see Remi and engage her in conversation (R. 332), something he had been unable to accomplish with his maniacal cellphone efforts. This was something that Remi clearly wished to avoid based not just upon testimony of friends and family, but her own efforts to avoid Respondent's communications. This is the first of many instances where Respondent's supposed "credibility" is unfounded. It is furthered by Respondent's repeated refusal to admit that Remi did not wish to see or speak with him and his refusal to consider his pre-argument invitation to her home revoked in light of his actions, her termination of communications, and the testimony that supports an explicit desire not to see him. (R. 382-398; 277).

Despite the fact that the other eyewitnesses who testified created numerous questions of disputed fact relevant to the dispute, the confrontation, and the ultimate use of force, the trial court failed to provide a finding *as to their credibility*. It instead used its broad finding of credibility for Respondent (R. 557, n. 19) to satisfy all of the factual disputes of the case, despite a lack of record support for numerous matters. These above facts, and others, demonstrate the abuse of discretion in finding Respondent credible *as to all matters* related to this crime. Respondent's 1) concession

that he called Remi a “piece of shit” and “dumb fuck” (R. 386), 2) his claim that he needed orthodontic repair but refused to read his own doctor’s reports to the contrary (R. 359), 3) his claim to have no knowledge as to why Victim would have displayed aggression toward him at that time, 4) his claim that he rolled the window up after the shooting which is contradicted by mechanic’s testimony that such was not possible (R. 489-491), and 5) his denial of anger despite clear texts and behavior to the contrary (R. 396; 399) all demonstrate that the carte blanche credibility assigned to Respondent was in direct conflict with the record.²

“Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved.” *S.C. Dep’t of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). Here, the Court of Appeals does not require an opportunity to review Respondent’s testimony at the hearing, because his testimony as to his state of mind and behavior while on the stand are objectively contradictory to his previous statements and behaviors displayed by admitted evidence. The shield of deference cannot guard a finding of credibility that is defeated by a witness’s own contradictions. This question of credibility even goes to assertions such as Petitioner testifying that he “had no idea” why Victim would be angry with him. (R. 347). He made this assertion despite having just hours before threatened to destroy Remi’s property, after persistently using *67 to harass her and force communications, and after calling Remi “a piece of shit” and a “dumb fuck.” Victim arrived *with* Remi and her friends; to accept Respondent’s claim of having no understanding of tensions for the situation is to rubberstamp a credibility finding without any legitimate critique.

² This list does not represent every contradiction and every basis for discreditable testimony. The whole of the record are replete with such weaknesses in testimony in contrast to the trial court’s ruling, and Appellant argues that all such are emblematic of the same reversible error.

The law exists to ensure that the trial court is granted deference, not infallibility. It was error by this Court not to find the credibility finding undeserving of deference generally, and it was error by this Court not to at least limit deference and deny such for specific matters where the record and Respondent's own testimony are so blatantly contradictory to the trial court's finding.³

The factual errors discussed ultimately result in legal errors as well. The finding that Respondent was not at fault for bringing on the difficulty renders the application of subsection B(3) one of legal error. Respondent's presence was a continuation of his harassment, which was unquestionably demonstrated by the texts messages, the 200 phone calls, and the threat of destruction of property if Remi did not create some means of an encounter between her and Respondent. Respondent's behavior was extortionist in nature, his use of his vehicle to camp out at her apartment was in furtherance of such unlawful activity, and the court erred in its dismissive interpretation of such evidence. Statutory immunity from prosecution cannot be stretched that far.

CONCLUSION

Based upon the above arguments, Appellant asserts that this Court has misapprehended certain facts and law that led to an improper result in this case. Appellant respectfully petitions for rehearing on this matter, and submits that for all the foregoing reasons, the ruling of the trial court be reversed.

Respectfully Submitted,

ALAN WILSON
Attorney General

³ Also, these holdings were reached after the Court needed to cancel scheduled oral arguments for emergency purposes, but then subsequently decided to forego oral argument entirely. (Email from Clerk, dated April 22, 2025).

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June 18, 2026

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Appellate Case No. 2023-000571

CERTIFICATE 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 Certificate of Service has been forwarded to Respondent's counsel, Wanda H. Carter, Esquire via email today, June 18, 2026 to Wcarter@sccid.sc.gov and to her assistant at sleverett@sccid.sc.gov.

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

This 18th day of June 2026.

s/ Angela Brown

Angela Brown
Administrative Coordinator

Angela Brown

From: Angela Brown
Sent: Thursday, June 18, 2026 3:15 PM
To: Carter, Wanda; Leverett, Scott
Cc: Joe Maye; Melody Brown; Brandy Rankin
Subject: The State v. Anijah Yarnell (2023-000571)
Attachments: Yarnell.Petition for Rehearing (002).pdf

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SC Court of Appeals

Ms. Carter, please find attached the State's Petition for Rehearing in reference to the above appeal. The petition will be electronically filed with the South Carolina Court of Appeals on today's date.

Thank you,

Angela Bennett Brown, Administrative Coordinator II

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