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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Florence County
The Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIE JAMES SMITH,

Petitioner.

Appellate Case No. 2026-001428

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In this murder trial where there was evidence that Petitioner acted in self-defense, did the Court of Appeals err in affirming the trial judge's refusal to charge self-defense to the jury?

RESPONDENT'S RESTATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals properly affirmed the lower court for not instructing the jury on self-defense when no evidence of self-defense was placed into the record during the trial?

STATEMENT OF THE CASE

During its March 2023 term,¹ the Florence County Grand Jury indicted Petitioner Willie James Smith for one count of murder (2023-GS-21-00480). Petitioner was represented by William Foster “Josh” Edgeworth, III. J. Ryan White prosecuted the case. The case was called to trial on May 13, 2024, with the Honorable H. Steven DeBerry, IV, presiding. The jury found Petitioner guilty of murder, and Judge DeBerry imposed a life sentence. R. 314-326. Petitioner timely appealed.

After briefing, but without oral argument, the Court of Appeals affirmed the lower court by unpublished decision issued on May 6, 2026. *State v. Smith*, Unpublished Opinion No. 2026-UP-204 (S.C.Ct.App. filed May 6, 2026). A timely petition for rehearing was denied on June 10, 2026, and Petitioner sought review in this Court by his petition for writ of certiorari filed on June 26, 2026. This return follows.

¹ Respondent notes the date on the indictment appears to be incorrect in listing the year as 2022 instead of 2023.

STATEMENT OF FACTS

The morning of June 9, 2022, Petitioner stabbed his coworker, James McNamara ("McNamara"), to death. The testimony at trial established Petitioner and McNamara worked for an asphalt paving business owned by Charles Preece ("Preece"). R. 174-177. Petitioner was hired a month or so prior to the murder, although Preece considered firing him after Petitioner walked off a job in Walterboro. R. 177-178. McNamara was a supervisor at the company for five or six years. R. 175-176. McNamara was a "calming influence" for Preece and was described by witnesses as easy going, very laid back, and somewhat shy and quiet. R. 168, 176-177.

In June of 2022, McNamara and Petitioner were placed in a motel room together at the Florence Express Inn for a job in the area. R. 86, 182. The two had been roommates at another job before, and Petitioner had gone drinking with McNamara once or twice. R. 182; State's Ex. # 50 (Interview Recording at 8:26). The room had two beds, and McNamara's bed was closest to the door. R. 105.

The night of June 8, Petitioner walked up to the front desk and asked the manager for extra towels and washcloths because McNamara "always used them all." R. 170. The manager could tell he was irritated. R. 170. Petitioner alleged he and McNamara were both in their own beds around eight o'clock in the evening, but then around four o'clock in the morning, he was sleeping when McNamara seemingly re-entered the room. State's Ex. # 50 (Interview Recording at 8:19:52, 8:25:30). Petitioner claimed McNamara was making noise and swearing, so Petitioner got up, at which point McNamara supposedly said, "Nah, nah, you a'ight, pet n***er. You my pet n***er." State's Ex. # 50 (Interview Recording at 8:20:00). According to Petitioner, he told McNamara he couldn't keep saying that, and McNamara responded, "You gon' always be my pet n***er." State's

4 Ex. # 50 (Interview Recording at 8:20:23).² Petitioner said at that point he “jumped up and hit [McNamara] in the throat” with a knife. State’s Ex. # 50 (Interview Recording at 8:20:30). Petitioner stabbed at McNamara four times, three times in the throat and once into the mattress McNamara was laying on, before pulling out the knife and washing the blood off his hands. R. 211, 243; State’s Ex. # 50 (Interview Recording at 8:20:40). Petitioner then sat on the corner of the bed, smoked a blunt, and drank two Mike’s Hard Lemonades as McNamara died. R. 249; State’s Ex. # 50 (Interview Recording at 8:21 – 8:25). Petitioner waited until McNamara had stopped moving forty-five minutes later before finally calling 911. R. 243. Petitioner admitted on the 911 call that he stabbed McNamara in the neck. R. 261. The 911 operator attempted to provide instructions for Petitioner to render aid to McNamara, but Petitioner seemed unwilling to participate. R. 49, 59.

When officers and EMS arrived on the scene, McNamara was deceased on his bed, with wounds on each side of his neck and a third wound near the front of his throat. R. 69, 95. There was also a knife puncture in the mattress underneath McNamara’s head area with some of his hair inside. R. 196-197. McNamara was lying across the bed, with his head diagonally toward the headboard, his shoes off, and no part of his body touching the floor. R. 87, 98, 244-245. Blood covered the mattress, ceiling, and walls, and had sprayed across the lampshade. R. 95. The “majority of the blood” was on the victim’s bed, over his head, and to the side. R. 244. Officers found empty containers of Mike’s Hard Lemonade, a bag of blunts and cigars, and the murder

² Petitioner claimed McNamara had used the slur before and that he had reported McNamara for that. State’s Ex.# 50 (Interview Recording at 8:22:52). Petitioner added that McNamara had said, “Yeah don’t take it the wrong way,” and Petitioner explained that he believed McNamara was saying it because Petitioner “work[s] real good” so the “boss man” was proud of the way he works. State’s Ex.# 50 (Interview Recording at 8:22:59). Petitioner chuckled at the recollection. State’s Ex.# 50 (Interview Recording at 8:22 -8:23).

weapon in the motel room. R. 94. No other weapons were in the room, and Petitioner had no injuries. R. 100, 243, 256. Petitioner was taken into custody and subsequently interviewed by Investigator Ben Price ("Investigator Price") at the Sheriff's Office several hours later. R. 233-234.

During Petitioner's interview, Petitioner stated that he stabbed McNamara when McNamara used the slur the second time. State's Ex. # 50 (Interview Recording at 8:20:30). Although he indicated he stabbed McNamara in an upward direction, the pathologist's testimony confirmed the stabbing occurred in a downward direction. R. 242. When Investigator Price asked Petitioner if McNamara ever came at him physically, Petitioner answered, "Yeah, he came off the bed, I came off the bed, know what I'm saying?" State's Ex.# 50 (Interview Recording at 8:23:43). Investigator Price then asked if it was "kind of like a jump," to which Petitioner responded, "Yeah it was something like that, he jumped up toward me I jumped toward him, guess he didn't see me with the knife," while laughing. State's Ex. # 50 (Interview Recording at 08:23:40). Petitioner claimed his knife had been inside the table next to him when he originally grabbed it. State's Ex. # 50 (Interview Recording at 8:32:21). Investigator Price asked Petitioner if he saw whether McNamara had any weapons or anything, and Petitioner said, "I didn't have time to check, all I know ... what he said, then he jumped up I jumped up. So ... If he did have one, I can't say he did or didn't. All I know ... be held accountable for what I did." State's Ex.# 50 (Interview Recording at 8:23:57).

When questioned about why it took so long to call 911, Petitioner stated, "I was pissed off. That's the honest answer. That's all I can give you. I was pissed off, I was upset, I sat on the corner of the bed, I gotta tell you, before I called 911, I smoked a blunt, and I drunk two of them Mike's Lemonades ... then I dialed 911." State's Ex.# 50 (Interview Recording at 8:24:36). Investigator

Price asked if Petitioner knew McNamara to ever carry a gun, and Petitioner said, "I ain't never seen nobody with a gun on the job ... All I've seen, you know, we have a bunch of knives, and stuff like that, but never any gun ... He might keep a boxcutter, I know he keep a boxcutter, he keep some weapons ... know what I'm saying, everybody always keeps something, like I said, blade or something like that." State's Ex.# 50 (Interview Recording at 8:28:08).

Petitioner also said in the interview that he thought he stabbed McNamara twice, stating, "When I hit him, he fell back, I fell back on him, that's why I said I was on him, and when I fell back on him, that was the second time." State's Ex. # 50 (Interview Recording at 8:28:52). Petitioner added at the end of his interview, "I mean I know it's all bad for me, but, you know, it's what happened. So I know it's all bad, but it's what happened. This time, this is my fault. So I can't, you know, I can't justify it." State's Ex.# 50 (Interview Recording at 8:29:51). Investigator Price asked if there was anything else he could think of to go over, and Petitioner said, "That's what happened ... I can't add or subtract anything, you know, cause it's not there." State's Ex.#50 (Interview Recording at 8:31:56). Petitioner reiterated multiple times throughout his interview that all he knew was McNamara came in making noise and swearing, then called him a slur, and "that's what happened." State's Ex.# 50 (Interview Recording at 8:22:30, 8:23:25).

McNamara's blood tested negative for drugs or alcohol. R. 146. Petitioner's knife was recovered from the scene and tested for DNA, and it was determined that the DNA profile from the knife was likely a combination of DNA from McNamara and Petitioner. R. 89-93, 137. The forensic pathologist testified that the first stab wound on the left side of the neck and the third stab wound on the right side of the neck would have both been fatal on their own, but the second wound would not have independently posed an immediate threat to McNamara's life. R. 213-214. He testified it likely took at least several minutes for McNamara to die, but he could not be precise

about how long it took McNamara to bleed out. R. 215. Investigator Price testified he saw Petitioner laughing multiple times during the recorded interview, which was shown to the jury at trial. R. 245-246. As stated above, the jury convicted Petitioner of murder.

STANDARD OF REVIEW

Certiorari Review

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR.

Jury Instructions

“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). An appellate court will not reverse the trial court’s decision regarding a jury charge absent an abuse of discretion. *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011). “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.” *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). To support relief on appeal, the lower court’s “refusal to give a requested charge must be both erroneous and prejudicial to the defendant.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing *State v. Burkhardt*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002)).

ARGUMENT

Review of the Court of Appeal's opinion affirming the trial judge's decision not to charge self-defense is not warranted where the affirmance resulted from plain and ordinary application of clear law to the facts of the case. Simply, there could be no abuse of discretion on this record since there was no evidence to support the instruction.

Relevant Facts from Trial:

The trial judge heard arguments on what charges would be appropriate based on the evidence. The solicitor argued for a charge on voluntary manslaughter and, though the defense objected, voluntary manslaughter was charged. R. 270-277. When defense counsel inquired about the evidence of sufficient provocation for the voluntary manslaughter charge, Judge DeBerry stated, "[I]n this matter, we also have evidence that the victim may have - or came at the defendant. So I think, certainly, that, coupled with what he says he said, you know, certainly, a jury could find that he's guilty of voluntary manslaughter." R. 376. At that point, defense counsel brought up self-defense for the first time, asking, "And remind me, Your Honor, then is there then a self-defense charge?" R. 277. Judge DeBerry responded:

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. 277.

Defense counsel could point to no evidence and made no argument for the charge; rather, counsel concluded, “Well, Your Honor, I mean, I just take it, as you know, motion denied, I mean, and I just ... want to make sure for the purposes of the record that ... is made clear because I know I didn’t raise it earlier, but of course, I was waiting to see what Your Honor’s final decision would be” on voluntary manslaughter, given “words aren’t enough” for sufficient provocation. R. 277-278. He continued, however, to argue against the manslaughter charge, citing “there’s no evidence of a weapon,” so “coming at him” would not support sufficient provocation. R. 278.

The Court of Appeals Opinion:

Petitioner argued to the Court of Appeals that Judge DeBerry erred by refusing to charge the jury on self-defense because the record contained “some evidence from which it could reasonably be inferred that [Petitioner] acted in self-defense.” (FBOA at 6, Appx. at 9). Specifically, relying on *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989), Petitioner argued that “[t]he highly offensive words used accompanied by the deceased coming at [Petitioner] support[ed] a belief that [Petitioner] was in imminent danger of losing his life or sustaining serious bodily injury.” (FBOA at 7, Appx. at 10). Respondent argued the trial judge did not abuse his discretion because there was no evidence submitted to support the necessary first three prongs of self-defense. Further, Respondent argued Petitioner could not show prejudice as there was no evidence presented to support self-defense had the charge been given.

In its unpublished, summary Rule 220(b), SCACR opinion, the Court of Appeals affirmed finding, “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. (Opinion, p. 2, Appx. at 36).

Discussion:

Where there is no evidence to support a requested instruction, there can be no error in declining to the instruction. Here, because there was no evidence supporting the necessary prongs of self-defense, the instruction was not warranted. Thus, as the Court of Appeals found, Judge DeBerry's ruling reflects no error of law or fact; there simply is no basis for finding error in this case. No further review is warranted.

"There are four elements required by law to establish a case of self-defense," which have been set out as follows:

First, the defendant must be without fault in bringing on the difficulty. 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. Fourth, 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. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Bixby, 388 S.C. 528, 553–54, 698 S.E.2d 572, 585–86 (2010) (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

The Court of Appeals concentrated on the second and third prongs.³ As to those prongs, the record confirms that there is no evidence that McNamara jumped *and* engaged in any hostile act to bring about either *actual danger* or that a reasonable person would believe there was

³ "It is an axiomatic principle of law that the defense has not been established if any one element is disproven." *Bixby*, 388 S.C. at 554, 698 S.E.2d at 586.

imminent danger of serious bodily harm or loss of life. No evidence of a threat of harm was presented. And no evidence was presented that Petitioner was protecting himself or acting in fear. While evidence was offered that offensive words were spoken, other evidence from Petitioner's own statement indicated that McNamara had previously used the slur to Petitioner before and that did not cause fear, or even uneasiness, and most certainly did not cause the violent, ultimately deadly confrontation that resulted here. State's Ex. # 50 (Interview Recording at 8:22:59). This rebuts any argument that the words, paired with standing up, could be enough to support actual or reasonable belief of imminent death or serious bodily injury. There was no evidence that the words included any physical threat, or even that McNamara said the words at the same time he "jumped up." Thus, contrary to his argument, but consistent with the trial court's ruling, Petitioner was not entitled to the self-defense charge. Given the facts of record, Petitioner's reliance on *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989), was, and continues to be, misplaced.

In *Fuller*, this Court considered the sufficiency of the self-defense charge given at trial. 297 S.C. at 442, 377 S.E.2d at 330. Here, Petitioner is not arguing that additional language was required, but the charge should be given. Even so, the *Fuller* Court reasoned that an additional explanation should have been given with the charge on the elements that "words accompanied by hostile acts, may, depending on the circumstances" support self-defense. *Id.* The "depending on the circumstances" phrase is critical. The evidence in that case did show use of a racial slur but also verbal threats, grabbing Fuller's throat, the victim being momentarily scared off by a warning shot, going to the trunk with his companion, then entering the car and chasing Fuller who was attempting to leave in his car, ramming Fuller's car with their truck, and one of the two men yelling toward Fuller, "we're going to take care of you" while approaching him. *Id.* at 442, 377 S.E.2d at 330. After seeing "something shiny" in victim's hand and thinking "it was a gun[]" Fuller fired four

shots at the men's car and killed both men." *Id.* It was in that context that the Court agreed Fuller was entitled to the charge that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." *Id.* Petitioner's circumstances as recited above are vastly different and did not warrant such a charge as the record shows no verbal threat, or any chase or hostile act, or any suggestion of a weapon.

Further, and in great contrast, the evidence included Petitioner's candid admission that the situation was his fault, and he could not "justify it." State's Ex. # 50 (Interview Recording at 8:29:51). When Investigator Price asked if there was anything else he could think of to go over, Petitioner said, "That's what happened ... I can't add or subtract anything, you know, cause it's not there." State's Ex.# 50 (Interview Recording at 8:31:56). Petitioner reiterated multiple times throughout his interview that all he knew was McNamara came in making noise and swearing, then called him a slur, and "that's what happened." State's Ex. # 50 (Interview Recording at 8:22:30, 8:23:25). Moreover, Petitioner waited until McNamara had stopped moving- forty-five minutes later - before finally calling 911. R. 243. Petitioner stated plainly that he never saw McNamara or anyone at their work with a gun, though he stated McNamara had a boxcutter like "everyone" who has something. State's Ex.# 50 (Interview Recording at 8:28:08). The omission is important: Petitioner never testified that McNamara threatened him with a boxcutter on that night or at any time.

Additionally, the forensic evidence supports Petitioner's repeated confession of fault and provides even more. Particularly, the stab mark in the mattress which shows that Petitioner at some point attempted to stab McNamara while he was laying down, unarmed, on his mattress, R. 196-197; McNamara was lying across the bed, with his head diagonally toward the headboard, his shoes off, and no part of his body touching the floor, R. 87, 98, 244-245; blood covered the

mattress, ceiling, and walls, and had sprayed across the lampshade. R. 95; the “majority of the blood” was on the victim’s bed, over his head, and to the side, R. 244; and officers found empty containers of Mike’s Hard Lemonade, a bag of blunts and cigars, and the murder weapon in the motel room where Petitioner had waited for McNamara to die, R. 94. No other weapons were in the room, and Petitioner had no injuries. R. 100, 243, 256. Petitioner, merely relying on a portion of *Fuller* with its different circumstances in fact and law, considering whether a further explanation of a self-defense charge already given was necessary, has shown no basis in law or fact for finding an abuse of discretion in the trial court’s decision not to charge self-defense in this case. Notably, this case does not turn on a question of credibility created by differing stories,⁴ but simply the total lack of evidence to support the necessary prongs of self-defense.⁵

And there are additional reasons not reached by the Court of Appeals that further support that no relief is due. Defense counsel’s argument in the trial court appears to have been that if evidence existed for a charge on voluntary manslaughter, then he was entitled to self-defense. That is incorrect as a matter of law. While both could exist, both have individual requirements that must be supported. As the judge correctly noted, an “overt threatening act” was his “threshold” consideration; he said nothing about fault or “imminent danger” of losing his life or sustaining serious bodily injury. The considerations differ. *Compare State v. Pittman*, 373 S.C. 527, 573, 647

⁴ See generally *State v. Williams*, 400 S.C. 308, 316, 733 S.E.2d 605, 609 (Ct. App. 2012) (acknowledging the defendant’s testimony that the victim had “cursed at him” and displayed a “‘demented’ look” toward him, pulled a pistol and had a history of shooting people, would support a self-defense instruction even where “both eyewitnesses’ testimonies support a very different theory of fault”).

⁵ The trial judge did not consider the duty to retreat given the shared premises, R. 277, and that is likewise not discussed here. “Under the law of self-defense, one who is attacked on his own premises is immune from the duty to retreat.” *State v. Brown*, 321 S.C. 184, 187, 467 S.E.2d 922, 924 (1996).

S.E.2d 144, 168 (2007) (recognizing precedent that a “threatening act or a physical encounter may constitute sufficient legal provocation”) with *State v. Dickey*, 394 S.C. 491, 502, 716 S.E.2d 97, 102 (2011) (finding self-defense as a matter of law where the defendant “testified that, under the circumstances and appearances, he believed he was in actual danger of death or serious bodily harm ... find[ing] it reasonable that [he] made such an assumption and that a person of [his] stature and limited agility would entertain the same fear when faced with an attack by a belligerent, intoxicated, more agile, and younger male, who appeared to be reaching for a weapon.”). Further, the mental state differs. See *State v. Starnes*, 388 S.C. 590, 599, 698 S.E.2d 604, 609 (2010) (“Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter-it will not justify it. This is the distinction between voluntary manslaughter and self-defense.”). Evidence of both contrasting requirements may be present and require a jury determination to resolve competing stories, but the presence of evidence of each requirement is essential for the charge. *Id.* Thus, even McNamara allegedly “jumping up” toward Petitioner, if considered potentially a “physical encounter,” when coupled with harsh words such as the racial slur used here, could not support the necessary elements of self-defense. Further, the record shows Petitioner also fails on the first prong for self-defense; Petitioner was not without fault in bringing on the difficulty.

Taking Petitioner’s version of events as true,⁶ he admitted he armed himself with a deadly weapon, but there is no evidence that he armed himself to defend against aggression. Further, Petitioner claimed that he and McNamara jumped at each other, not that McNamara jumped and

⁶ “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.” *Williams*, 400 S.C. at 314, 733 S.E.2d at 608-09 (citing *Cole*, 338 S.C. at 101, 525 S.E.2d at 512-13).

he reacted. Petitioner even asserted in his statement to investigators “guess he didn’t see me with the knife” which again supports he grabbed the knife (out of the nightstand) before McNamara jumped at him State’s Ex.# 50 (Interview Recording at 08:23:40). Essentially, because there was no evidence of any of the first three factors of self-defense presented to the jury at trial, Judge DeBerry was well-within his discretion to refuse to give a charge of self-defense.

Even so, as the Court of Appeals concluded, there was no evidence that Petitioner “was or believed he was, in actual imminent danger of losing his life or sustaining serious bodily injury.” (Opinion, at 2, Appx. at 36). That alone means the charge was not warranted. *See State v. Bixby, supra*. Again, there is no cause for further review when the record so plainly reveals Petitioner is not entitled to any relief on this issue.

CONCLUSION

For the above stated reasons, Petitioner has shown no “special or important” reasons to review the Court of Appeals decision affirming the trial court and the petition should be denied.

Respectfully Submitted,

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⁷ Respondent acknowledges the prior work of former Assistant Attorney General MacKinnon G. Westraad in this appeal and that portions of her work are incorporated herein.