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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court
Honorable Robert J. Bonds

Appellate Case No. 2023-000288

State of South Carolina.....Respondent

v.

Justin Granet..... Appellant

APPELLANT'S PETITION FOR REHEARING

APPELLANT JUSTIN GRANET respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in its unpublished *per curiam* opinion affirming the denial of his motion for a new trial. *State v Granet*, No. 2026-UP-414 (SC Ct App. August 19, 2026).

Appellant is requesting that this Court rehear this matter because the opinion does not address the errors of law raised in his brief and instead misconstrues the requirements for South Carolina Rule of Evidence 803(21) and Rule 801(d)(2)(A) and other legal principles as discussed below. Further, rehearing is requested because material facts were overlooked.

BRIEF FACTUAL CONTEXT

Granet was charged, along with a co-defendant, with the commission of various felonies related to a physical altercation that occurred in his home. Specifically, he was charged with

assault and battery first degree, two counts of kidnaping, and possession of a deadly weapon during the commission of a violent crime. ROA 1056. Appellant was tried separately from his co-defendant and convicted as charged. ROA 1048.

Appellant received a 14 year active sentence for each kidnaping count, a ten active sentence for assault and battery first, and a five year active sentence for possession of a deadly weapon during the commission of a violent crime. ROA 1048-1049. The court ordered that these sentence were to run concurrently with each other.

At trial, the theory of defense was that the male victim was the primary aggressor and Appellant's actions were justified under the law. As to the female victim, it is undisputed that Appellant never touched her. However, the state argued that Appellant was liable under a theory of accomplice liability.

At trial, an issue arose regarding Appellant's attempt to present information to the jury that law enforcement considered the male victim to be "armed and dangerous." The trial court excluded this information on the basis of hearsay.

Appellant framed the issue on appeal as two issues, each providing a basis for admission of the excluded evidence over the State's hearsay objection. Appellant's first issue argued that admission was proper because the evidence either met a hearsay exception or met the definition of "not hearsay." Appellant's Brief, pg. 27. Appellant's second issue argued that admission was proper because the evidence was not offered for the truth of the matter asserted and, thus, did not meet the hearsay definition contained in the rules. Appellant's Brief, pg. 34. This petition for rehearing follows.

I.

The first reason this Court should rehear Appellant's argument is because the opinion

fails to analyze the primary issue raised in the appeal concerning the trial court's exclusion of the contested evidence; namely, whether the evidence satisfied the hearsay exception located at South Carolina Rule of Evidence Rule 803(21).

This Court affirmed the exclusion of opinion evidence that the male victim had a reputation of violence documented by an "armed and dangerous" designation on his criminal history report finding that the criminal history report was not testimony.¹ However, trial counsel never tried to offer the sheet of paper into evidence, but rather attempted to offer the opinion.² This is no different than a discussion with a trial court about what information is properly subject to introduction or exclusion in a doctor's report or police report memorialized in writing. Appellant agrees that someone would need to testify about the existence of this opinion and the context of the discussion in the trial court makes clear that no one even suggested the piece of paper would just be entered.

Trial counsel could have sought to introduce this information various ways. Trial counsel could have questioned the person who compiled the criminal history report for the state and provided it to the defense. In this case, this was the prosecutor whose name appears on the two exhibits and who argued the evidentiary matter. While not a preferred occurrence, the rules do not categorically prohibit a prosecuting attorney from testifying if necessary. To avoid this, the parties could have stipulated to the information or the trial judge could have taken judicial notice of the fact.

¹To the extent trial counsel failed to proffer the opinion through testimony, this would be a preservation issue which would then provide Appellant another avenue to seek relief. Neither the State nor this Court has found preservation to be a concern.

²The defense never attempted to offer any specific instance of conduct at trial; never argued on appeal that such evidence was admissible and undersigned is now unsure why this Court even discusses the rule regarding admission of specific instances of conduct in its' opinion.

It is also clear from the other ground offered for admission below, that the evidence would impeach the caliber of the law enforcement investigation, that examination into the armed and dangerous opinion could have been made through cross examination of the detectives. Neither had taken the stand at the time of the ruling by the trial court.

The Court of Appeals' opinion misapprehends Appellant's argument when it suggests Appellant wanted to cross examine the male victim about this opinion. Experienced and able trial counsel did not argue for this opportunity below and Appellant does not argue this on appeal. To the extent the opinion implies an accused must question the victim about his own reputation, this rule would never be applicable to a murder case.

In theory, trial counsel could have sought to elicit this information through testimony after the trial judge's ruling. However, trial counsel might face contempt or sanctions pursuant to Rule 18 (a) of South Carolina Rules of Criminal Procedure since the trial court had already ruled upon the issue.

Whether presented through examination of the prosecutor or the detectives, presenting the opinion contained in the NCIC report in this way would be the very "testimony" envisioned by the rules. Other than the fact trial counsel did not proffer the opinion through the testimony of a witness after obtaining the ruling, the opinion certainly suggests that Appellant is correct on the merits. *State v Granet*, No. 2026-UP-414 (SC Ct App. August 19, 2026)("... the victim's reputation for violence would be relevant to Granet's self defense claim and thus potentially admissible under Rule 803(21) and Rule 404(a)(2)...").³

³Confusingly, a footnote in this Court's opinion later suggests the evidence is inadmissible hearsay not that the opinion was not offered through testimony. See ("These cases support the admission of evidence of a victim's reputation for violence, but they do not alter our analysis of the reports as inadmissible hearsay.")

Further, the Court of Appeals' analysis misapprehends the nature of the exception and the nature of opinion evidence. The analysis appears to inject an extra showing that the one who testifies about the opinion evidence of a reputation for violence be the one who initially formed the opinion. The nature of opinion evidence shows such a requirement would be unworkable and improperly narrow the evidence intended to be admitted. The Court's opinion, in this regard, overlooks the very substance of the argument: *that opinion is by its nature hearsay*. See *Barrett v. State of Georgia*, 231 SE2d 116, 117 (GA 1976) ("Reputation of a person is the kind of person other people say he is."). Opinions based upon out of court statements have been found admissible under the common law for more than 100 years. *State v Boyd*, 119 SE2d 839 (SC 1923).

No case regarding such opinion evidence indicates that there is a limit to the degrees of hearsay to which the opinion exception applies. If community opinion holds that Leroy Brown is really the "baddest man in the whole damn town," this is the very type of opinion admissible under the rule and common law even though this surely is a community consensus opinion. The rules and case law do not require testimony from the person who originally formed the opinion. To the extent this Court's opinion requires this extra showing, the opinion misapprehends this principle of law and improperly narrows the evidence which the rule and law was intended to allow.

To the extent the Court of Appeals' opinion suggests that the adoption of the rules of evidence narrows the admissibility of character evidence, this misconstrues the purpose this evidence serves in a justification defense. There are no cases analyzing Rule 803(21). However, Appellant in his brief argues that the common law concerning the substantive elements of a justification defense finds the alleged victim's reputation for violence to be an appropriate

concern for the jury.⁴ The adoption of the rules of evidence merely provides a mechanism for this admission of this opinion evidence even though it might constitute hearsay but for an exception. Obviously, the courts prior to the adoption of the evidence rules at least implicitly believed this was an exception.

Further, in a case in which the accused asserts justification as a defense, the trial judge is required to craft jury instructions to meet the specific facts of the case being tried. *State v. Fuller*, 377 S.E.2d 328, 330 (SC 1989). One of the traditional and well accepted factors that a jury can consider is the alleged victim's reputation for violence. See *State v. Hawkins*, 425 S.E.2d 50, 56 (SC Ct. App. 1992). This is a factor developed through substantive law and not merely through an evidentiary framework.⁵

The adoption of the rules acknowledge that reputation for violence is an appropriate issue because this appears in both the character evidence rules and the hearsay exceptions. See *State v. Fuller*, 330 ("We did not, however, intend for the trial courts to eradicate the body of common law self-defense by accepting *Davis* as an exclusive charge. In charging self-defense, we instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.")(internal citation omitted). Even though *Fuller* pre-dated the adoption of the Rules of Evidence, the appellate courts' continued citation to that case for this holding is a clear and unambiguous indication that this common law rule survived the adoption of the evidence rules. See e.g. *State v. Marin*, 783 S.E.2d 808, 813 (SC 2016).

Thus, this first issue is a simple one made complex by this Court. The opinion evidence

⁴See *State v. Hawkins*, 310 S.C. 50, 425 S.E.2d 50 (Ct. App. 1992); *State v. Miller*, 73 S.C. 277, 53 S.E. 426 (1906); *State v. Dean*, 72 S.C. 74, 51 S.E. 524 (1905); *State v. McDaniel*, 68 S.C. 304, 47 S.E. 384 (1904); *State v. Turner*, 29 S.C. 34, 6 S.E. 891 (1888).

⁵ *Supra* note 4.

is an out of court statement of another and Appellant desired to admit this opinion for the truth of the matter asserted: that the male victim had a reputation for violence because he was considered “armed and dangerous.” The trial court agreed this was powerful character evidence but was hearsay. The trial court was wrong because there is a hearsay exception in addition to a century of common law which provides for the admission of this opinion. Appellant asks that the Court of Appeals either find the issue not properly preserved by proffer or rule on the merits of the admissibility of the opinion itself and not the piece of paper on which the opinion is memorialized.

II.

Additionally, the Court of Appeals’ opinion misapprehends and overlooks Appellant’s argument concerning the admissibility of the statements contained in the NCIC reports as statements by a party opponent and to impugn the caliber of the investigation.

First, the appellate opinion overlooks Appellant’s argument that the statement was admissible pursuant to each of the subsections cited as SCRE Rule 801(d)(2)(A); (B); (C); and (D). The Court’s analysis only discusses one of these four independent grounds to establish that the out of court statements constitute “not hearsay” under the evidence rule. The Court’s analysis only discusses subpart B.

The Court then dismisses Appellant’s argument by finding that the State never manifested a belief in the truth of the “armed and dangerous” statement. This truthfulness component of subsection B does not apply to the other subsections so the Court’s opinion overlooks the other subsections in whole. Appellant expressly desires to preserve his argument in full and asks that this Court issue a ruling regarding these arguments.

Further, as to the argument that the reputation evidence is “not hearsay,” this Court’s

opinion dismisses this through a non-sequitur. The appellate opinion says that the State did not adopt a belief in the truth because of its legal duty to provide these rap sheets. Even though the State had to turn over the documents, it does not necessarily follow that the State did not manifest a belief in the truth of the statements.

First, the male victim's rap sheet was long and detailed specific instances of dangerousness and violence such that the opinion that he was "armed and dangerous" on its face appears to be true. Further, the State never indicated during the charge conference that it doubted this designation. In contrast, the State indicated that the rap sheets had been reviewed by the prosecutors and led to stipulations concerning those convictions proper for examination under Rule 609(a). No where did anyone express doubt about the truthfulness of the information contained on the letterhead but instead the hearing settled any objections. Questions about the truthfulness of the designation were never raised.

Also, the fact the statements were contained on letterhead from SLED and the Solicitor's Office does in fact suggest an adoption into the truth of the documents. NCIC is a federal information gathering division. SLED and the Solicitor's Office clearly copy and pasted this data onto documents containing their seals. These statements are now the statements of those agencies.

Thus, the Court should grant rehearing because its opinion overlooks the foregoing facts.

Next, the Court misapprehended the rules of evidence relating to the admissibility of the statements contained in the NCIC report and the facts of the case concerning the purpose for introduction of such statements.

In its opinion this Court ruled that "the trial court did not err in excluding the NCIC reports" because "Granet already discredited the caliber of the investigation and the decision to

charge Granet.” However, the definition of hearsay does not incorporate into it a limitation concerning how many statements can be offered for non-truth related purposes. Therefore, the fact that he already discredited the investigation through other means has no bearing on whether the statement contained in the NCIC was offered for its truth related purpose.

If anything, this shows that Appellant sought to introduce such statement in order to further discredit the investigation. Furthermore, any rule that would prevent a criminal defendant from introducing evidence tending to discredit law enforcement’s investigation because they have discredited it through other means would potentially be unconstitutional. *See Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“...where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.”); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.”) (internal citations omitted).

It is a difference in kind and not degree that Appellant’s party opponent considered the male victim was armed and dangerous. A jury would certainly notice the difference and trial counsel would have surely highlighted this point in his closing had this evidence been introduced.

Thus, the Court of Appeal’s misapprehended and overlooked multiple critical points of law and facts.

III.

Lastly, this Court should grant this petition because its opinion overlooks facts concerning the prejudice resulting from the trial court’s erroneous evidentiary ruling.

First, the evidence disproving his justification defense was not overwhelming in the legal sense. See *Smith v State*, 689 SE2d 629, 633.

Further, the trial court's ruling prevented Appellant from impeaching the investigators concerning the male victim's reputation for violence. This information tended to show that the male victim was the primary aggressor, which would have bolstered Appellant's justification defense. Additionally, this information tended to show that Appellant was actually in danger, which is a relevant element to a prima facie defense of self-defense.

Also, this issue is compounded because the State was the source of the excluded information. The statement that the male victim was considered "armed and dangerous" by law enforcement, which was subsequently adopted by the State on its letterhead, differs in kind from other statements used in impeachment. This is due to the fact that the statement is made by an adversary.

Simply put, the harm from the erroneous ruling not only prevented impeachment of the investigation but prevented such impeachment by statements made by the State itself. A statement conceded to by a party whose interest the statement bears against carries more weight than most statements made by a party in furtherance of its own interest. Thus, compounding the harm caused by the erroneous ruling.

In sum, this court should grant this petition to address the misapprehension and overlooking of this harmful and erroneous ruling.

CONCLUSION

Thus, undersigned asks this Court to reconsider his appeal and grant him relief by vacating his convictions and sentences.

Respectfully submitted by,

/s/ James A. Brown, Jr.

Attorney for Appellant

SC Bar Number: 12213

September 3, 2026

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court
Robert J. Bonds, Circuit Court Judge

Indictment Numbers: 2019GS0700478-479, 2019GS0700561 , 2022GS0701822

State of South Carolina, Respondent

v.

Justin Granet, Appellant

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Ambree Muller, Office of the SC Attorney General's Office, by emailing a copy to ambreeMuller@scag.gov and by depositing a copy of this item in the United States Mail, postage prepaid, on **September 3, 2026**, addressed as indicated below.

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September 3, 2026

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September 3, 2026

VIA US Mail & EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings

Clerk, South Carolina Court of Appeals

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Sep 03 2026

SC Court of Appeals

Re: State of South Carolina v. Justin Granet
Petition for Rehearing
Case No.: 2023-00288

Dear Ms. Kitchings:

Under cover of this letter, I have enclosed a Petition for Rehearing and Proof of Service in the above-referenced case.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/James A. Brown, Jr.

James A. Brown, Jr.

Law Offices of Jim Brown, P.A.

Enclosures (noted)

cc: Ambree Muller, Office of the SC Attorney General's Office, via US Mail & Email
Justin Granet, via US Mail