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Jul 21 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2020-001122
S.C. Court of Appeals Order dated June 21, 2023

State of South Carolina……..Respondent,

vs.

Marquez D. Glenn……Petitioner.

APPENDIX

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INDEX

APPELLATE MATTERS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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February 1, 2023

Mr. William M. Blitch, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia SC 29211

Mr. Christopher Todd Brumback, Esquire
531 South Main Street, Suite 307
Greenville SC 29601

Mr. Spencer Davis Langley, Esquire
531 South Main Street Suite 307
Greenville SC 29601

Re: The State v. Marquez D. Glenn
Appellate Case No. 2020-001122

Dear Counsel:

After careful consideration by the Court, this case will be submitted on the record on appeal and briefs during the February 2023 term without oral argument.

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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March 01 2023

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Mr. Spencer Davis Langley, Esquire
531 South Main Street Suite 307
Greenville SC 29601

Re: The State v. Marquez D. Glenn
Appellate Case No. 2020-001122

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

cc: The Honorable Letitia H. Verdin

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Marquez Devon Glenn, Appellant.

Appellate Case No. 2020-001122

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2023-UP-078
Submitted January 31, 2023 – Filed March 1, 2023

AFFIRMED

Christopher Todd Brumback and Spencer Davis Langley, both of Brumback & Langley, LLC, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, for Respondent.

PER CURIAM: Marquez Devon Glenn appeals an order of the circuit court denying him immunity from prosecution under the Protection of Persons and

Property Act[1] (the Act). On appeal, Glenn argues the circuit court erred because he established all of the elements of self-defense, particularly that he was in imminent danger of losing his life or sustaining serious bodily injury as he was the victim of an unprovoked attack.

We hold there is evidence in the record to support the circuit court's determination that Glenn failed to prove he was actually in imminent danger or that a reasonably prudent man of ordinary firmness and courage would have held the same belief and acted in kind in shooting the victim. Multiple independent eyewitnesses testified the victim was calm when he approached Glenn and did not appear to have a gun; the victim did not did not physically attack Glenn and instead was merely a bystander to the altercation between Glenn and the victim's uncle; and although law enforcement was on the scene within moments of the shooting, Glenn told officers only that a man had been shot but did not admit to being the shooter or say he had fired in self-defense, then left the scene and threw his gun into a river. We therefore affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate] court reviews under an abuse of discretion standard of review."); *State v. Oakes*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) ("An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *State v. Mitchell*, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009) (explaining that under this standard of review, this court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit] court's ruling is supported by any evidence"); S.C. Code Ann. § 16-11-450(A) (2015) ("A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law . . . is immune from criminal prosecution . . . ."); S.C. Code Ann. § 16-11-440(C) (2015) ("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 or another person . . . ."); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("[T]he [circuit] court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity [under subsection C]. This includes all elements of self-defense, save the duty to retreat."); *id.* at 371 n.4, 752 S.E.2d at 266 n.4 (explaining that the remaining

[1] S.C. Code Ann. §§ 16-11-410 to -450 (2015).

elements of self-defense are (1) "the 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 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" or "[i]f 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."); *id.* at 372, 752 S.E.2d at 267 ("Appellant's claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.").

AFFIRMED.[2]

WILLIAMS, C.J., THOMAS, J., and LOCKEMY, A.J., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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March 20, 2023

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Marquez D. Glenn
Lower Court Case No. 2013GS2306789
Appellate Case No. 2020-001122

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Catherine Harrison, deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire

Christopher Todd Brumback, Esquire
Spencer Davis Langley, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Marquez Devon Glenn, Appellant.

Appellate Case No. 2020-001122

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2023-UP-078
Submitted January 31, 2023 – Filed March 1, 2023

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Christopher Todd Brumback and Spencer Davis Langley, both of Brumback & Langley, LLC, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, for Respondent.

PER CURIAM: Marquez Devon Glenn appeals an order of the circuit court denying him immunity from prosecution under the Protection of Persons and

Property Act[1] (the Act). On appeal, Glenn argues the circuit court erred because he established all of the elements of self-defense, particularly that he was in imminent danger of losing his life or sustaining serious bodily injury as he was the victim of an unprovoked attack.

We hold there is evidence in the record to support the circuit court's determination that Glenn failed to prove he was actually in imminent danger or that a reasonably prudent man of ordinary firmness and courage would have held the same belief and acted in kind in shooting the victim. Multiple independent eyewitnesses testified the victim was calm when he approached Glenn and did not appear to have a gun; the victim did not did not physically attack Glenn and instead was merely a bystander to the altercation between Glenn and the victim's uncle; and although law enforcement was on the scene within moments of the shooting, Glenn told officers only that a man had been shot but did not admit to being the shooter or say he had fired in self-defense, then left the scene and threw his gun into a river. We therefore affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate] court reviews under an abuse of discretion standard of review."); *State v. Oakes*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) ("An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *State v. Mitchell*, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009) (explaining that under this standard of review, this court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit] court's ruling is supported by any evidence"); S.C. Code Ann. § 16-11-450(A) (2015) ("A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law . . . is immune from criminal prosecution . . . ."); S.C. Code Ann. § 16-11-440(C) (2015) ("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 or another person . . . ."); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("[T]he [circuit] court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity [under subsection C]. This includes all elements of self-defense, save the duty to retreat."); *id.* at 371 n.4, 752 S.E.2d at 266 n.4 (explaining that the remaining

[1] S.C. Code Ann. §§ 16-11-410 to -450 (2015).

elements of self-defense are (1) "the 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 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" or "[i]f 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."); *id.* at 372, 752 S.E.2d at 267 ("Appellant's claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.").

AFFIRMED.[2]

WILLIAMS, C.J., THOMAS, J., and LOCKEMY, A.J., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Apr 05 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
General Sessions Court
Letitia Verdin, Circuit Court Judge

Appellate Case No. 2020-001122

State of South Carolina……Respondent,

vs.

Marquez D. Glenn……Appellant.

MOTION FOR REHEARING
PURSUANT TO RULES 221, SCACR

Appellant hereby moves the Court for rehearing pursuant to Rules 221, SCACR. This Motion is being made in good faith and for good cause as the Court has overlooked several of Appellant's main arguments, the resolution of which in the favor of Appellant would result in a decision in favor of Appellant. Specifically, and despite briefing and extensive argumentation, the Court's opinion denying Appellant immunity because Elfonso "did not did not physically attack Glenn and instead was merely a bystander to the altercation between Glenn and the victim's uncle" is directly and irreconcilably in opposition to the South Carolina Supreme Court's Opinion in State v. Scott, 424 S.C. 463, 469, 819 S.E.2d 116, 118 (2018) in which the Supreme

Court affirmed a grant of immunity under the PPPA to a defendant, who in the exercise of self-defense shot an unassociated third party in a separate car from the individuals threatening the defendant. In Scott the Supreme Court expressly rejected the State's argument that "even if [the defendant] was entitled to use deadly force against [an aggressor] under the law of self-defense, he was not entitled to use deadly force against [an 'innocent bystander']." Where, as in the Scott case, an "innocent bystander" appears to be acting with another party who is an aggressor, a party engaging in self-defense "would be entitled to use deadly force against both [parties]." Scott, 424 S.C. at 471, 819 S.E.2d 120; id. at 472, 819 S.E.2d at 120 ("At oral argument, Justice James asked the State, 'Does [Scott] have to interview, I'm not being facetious, does he have to interview the perpetrators and ask 'which one of you fired that shot so I can fire my shot accordingly?'' The answer is, 'No,' because, 'A person has the right to act on appearances, even if the person's belief is ultimately mistaken.'"). Moreover, as the Supreme Court noted in Scott with regard to the dissenting opinion, this Court's opinion "confuses what we know from reading the record of the immunity hearing with what [the defendant] knew in the heat of the moment." Id. at 472, 819 S.E.2d at 120.

Beyond the Court's opinion being completely contrary to and inconsistent with the Supreme Court's holdings in Scott, this Court's opinion abuses its discretion as a matter of law by denying Appellant immunity based on a post hoc rationalization supported by events occurring well outside the moments immediately following Appellant's act of self-defense. State v. Oates, 421 S.C. 1, 28 n.12, 803 S.E.2d 911, 926 n.12 (Ct. App. 2017) ("The language and behavior of the defendant at the time of the shooting, or immediately afterwards, showing his attitude of aggression or of regret, clearly tended to enlighten the jury on the issue as to whether

the shooting was done with malice, or in heat and passion, or in self-defense.") (quoting State v. Martin, 94 S.C. 92, 94, 77 S.E. 721, 721 (1913)) (emphasis added). Based on the evidence examined by the Court in Oates, it is clear that "immediately after" is a brief and narrow window that does not extend beyond the heat of the moment. Id. at 28-29, 803 S.E.2d at 926 ; see also State v. McDaniel, 68 S.C. 304, 310, 47 S.E. 384, 386 (1904) (holding that declarations in a self-defense case that "were made probably within two or three minutes after the shooting, and within two or three hundred feet of the place of the shooting" were not admissible where the "circumstances tended to indicate a mind which was not then being actively influenced by the transaction to make explanation thereof, but rather a mind adverting to means of future safety"). Accordingly, and regardless of the fact that the Court's statement that law enforcement was on the scene within moments is not supported by the Record given that Appellant met law enforcement at the entrance to Spring Grove after retreating from the zone of danger, both Appellant's interaction with law enforcement and Appellant later disposing of the gun fall outside the moments "immediately after" the act of self-defense such that they are too remote to be probative of of whether Appellant was not in imminent danger or did not reasonably believe he was in imminent danger. To deny Appellant immunity based on Appellant's interactions and actions occurring outside the moments immediately after his act of self-defense is an error of law.

Finally, this Court's opinion and focus on Appellant's interaction with law enforcement completely ignores both Appellant's right to remain silent as well as well founded concerns raised by Justice Beatty in his dissent in State v. Spears, 429 S.C. 422, 839 S.E.2d 450 (2020) in which he noted that:

> Scholars have examined ad nauseam the dynamics between marginalized groups — particularly African-Americans—and law enforcement.[1] African-Americans generally experience police misconduct and brutality at higher levels than other demographics.[2] Consequently, it is no surprise that scholars have also found African-Americans often perceive their interactions with law enforcement differently than other demographics. "For many members of minority communities, however, the sight of an officer in uniform evokes a sense of fear and trepidation, rather than security." Robert V. Ward, Consenting to a Search and Seizure in Poor and Minority Neighborhoods: No Place for a "Reasonable Person", 36 How. L.J. 239, 247 (1993). Moreover, "[g]iven the mistrust by certain racial, ethnic, and socioeconomic groups, an individual who has observed or experienced police brutality and disrespect will react differently to inquiries from law enforcement officers ...."). Id. at 253.

Unfortunately, as in Appellant's case, "fail[ure] to meaningfully consider the ways in which a person's race can influence their experience with law enforcement" can mean that "minority groups are not always afforded the full protections" of their fundamental constitutional right to self-defense under the Second Amendment. Id. 429 S.C. at 449, 839 S.E.2d at 464. To deny Appellant immunity simply because he may not have acted and reacted to law enforcement in the

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[1] See, e.g., Charles R. Epp et al., Beyond Profiling: The Institutional Sources of Racial Disparities in Policing, 77 Pub. Admin. Rev. 168 (2017); Emily Ekins, The Cato Inst., Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey (2016)

[2] See, e.g., Epp, supra , at 174 ("Simply put, investigatory stops of vehicles especially target minority communities and people of color."); Ekins, supra , at 30 ("African Americans are about twice as likely as whites to report profanity or knowing someone physically mistreated by the police."); Scottie Andrew, Police Are Three Times More Likely to Kill Black Men, Study Finds: 'Not a Problem Confined to a Single Region', Newsweek (July 23, 2018, 1:41 PM), https://www.newsweek.com/black-men-three-times-likely-be-killed-police-1037922 ("Across the country, black men are over three times more likely to be killed by police than white men, according to a study ...."); Maggie Fox, Police Killings Hit People of Color Hardest, Study Finds, NBC News (May 8, 2018, 8:00 AM), https://www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086 ("While just over half of people killed by police are white, Hispanics and African-Americans are on average younger, the researchers found. And people of black, Hispanic and Native American background are disproportionately killed by police, they reported.").

same manner as a white person is a clear violation of the principles of blind justice and the equal protection of law.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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Attorneys for Appellant Marquez D. Glenn

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
General Sessions Court
Letitia Verdin, Circuit Court Judge

Appellate Case No. 2020-001122

State of South Carolina……Respondent,

vs.

Marquez D. Glenn……Appellant.

Proof of Service

I certify that I have served Appellant's Request for Extension of Time to File on Respondent State of South Carolina by emailing a copy of it on Wednesday, April 5, 2023 to attorney of record William M. Blitch, Jr. at wblitch@scag.gov.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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Attorneys for Appellant Marquez D. Glenn

The South Carolina Court of Appeals

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April 13, 2023

Mr. Christopher Todd Brumback, Esquire
531 South Main Street, Suite 307
Greenville SC 29601

Re: The State v. Marquez D. Glenn
Appellate Case No. 2020-001122

Dear Counsel:

The Court has received your petition for rehearing dated April 5, 2023. Our records reflect that the remittitur in this case was issued March 20, 2023, and no petition for rehearing had been received at that time. Therefore, this Court no longer has jurisdiction over this matter, and will not take any further consideration of this petition.

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Spencer Davis Langley, Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2020-001122

State of South Carolina……Respondent,

vs.

Marquez D. Glenn……Appellant.

REQUEST TO RECALL REMITTITUR/FILE OUT OF TIME

Appellant hereby moves the Court to recall the remittitur and for the Court to accept Appellant's Request for Rehearing that was filed on April 5, 2023 out of time. This Motion is being made in good faith, for good cause, and in the interest of justice. Jordan v. Hartford Fin. Grp., 435 S.C. 501, 505, 868 S.E.2d 400, 402 ("The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances."). Undersigned counsel has been fighting pro bono on Appellant's behalf since the original trial of this case in August 2015, having taken Appellant's case to the Supreme Court once already and prevailed in December 2019, thereafter returning to the trial court where rehearing and decision of Appellant's Immunity Motion was delayed by COVID-19 until August

2020, at which time a timely Notice of Appeal was filed to this Court after which Appellant's Final Brief was filed in June 2021. Unfortunately due to the impact that the pandemic had on the judicial system and community throughout South Carolina, this honorable Court was not able to consider Appellant's case until the February 2023 term after which the Court issued an unpublished opinion affirming the trial court on March 1, 2023. Regrettably, Undersigned Counsel did not receive the email that the Court sent out on March 1, 2023 serving the Court's unpublished opinion, and as such was unaware of the Court's decision until March 20, 2023.[1] [2] Accordingly, upon receiving correspondence on March 20, 2023 and seeing in the attachment for the first time the opinion of the Court affirming the decision of the trial court, Undersigned Counsel dove into analysis of the opinion and crafting with particularity the meritorious points that I believe have been overlooked and misapprehended. In my haste to dig into the substance of the Request for Rehearing, Undersigned Counsel did not calendar the deadline for filing of the Request for Rehearing correctly and thus wrongly believed the due date for the Request for Rehearing was April 5, 2023—which is in fact the date Appellant's Request for Rehearing was

---

[1] Upon realizing the situation when correspondence was received from the Court on April 13, 2023, Undersigned Counsel immediately called the Clerk of Court's Office for the Court of Appeals and spoke with Ms. Jacklyn Orr about the situation. Ms. Orr confirmed an email was sent to Undersigned Counsel on March 1, 2023 and Undersigned Counsel does not dispute the accuracy of Ms. Orr's records. However, through an overzealous email filter or computer operator, i.e., Undersigned Counsel, error, I did not see or receive and, as such, was not aware of the March 1, 2023 email until my conversation with Ms. Orr on April 13, 2023.

[2] Undersigned counsel also acknowledges that had I not been working from my home office, these oversights likely would have been realized sooner, however, due to my wife and I currently going through IVF again after the recent loss of a pregnancy during the month of February, both my wife and I have been exercising caution and working from home to avoid jeopardizing our current round of implantation through exposure of my wife to COVID-19 or other illness. Though my family's personal matters do not excuse my oversight, Undersigned Counsel wanted to provide the Court the full context in which my error occurred.

filed and served. Undersigned Counsel is deeply respectful of this Court, had no intention not to comply with the requirements of the Appellate Court Rules or to "thwart the judicial system," and is sincerely apologetic for the delay caused. Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) ("[W]here there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief."); see also Morris v. BB&T Corp., Op. No. 28131 (S.C. Sup. Ct. filed Jan. 25, 2023) (Howard Adv. Sh. No. 4 at 13, 15) (holding that "[t]he failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance…however…we find [appellant's counsel] demonstrated good cause" where counsel quickly brought his mistake to the commission's attention, admitted his good faith mistake, apologized for the delay and no party was prejudiced thereby); Mictronics, Inc. v. S.C. Dep't of Rev., 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) ("We find no evidence in the record that the mistake was anything but a good faith error, as shown by [counsel's] explanation coupled with his speed in asking the ALJ for rehearing."). Given the almost decade worth of pro bono work that has been dedicated to pursuing on behalf of Appellant what have been and what I believe still are meritorious arguments of exceptional importance to the right of every South Carolinian to exercise their right to protect themselves, their families, and others from attackers without fear of prosecution, I humbly and with the greatest respect request for this Court to recall the Remittiur issued on March 20, 2023 and to accept Appellant's Request for Rehearing that was filed on April 5, 2023 out of time. Jordan, 435 S.C. at 506, 868 S.E.2d at 403 (citing Mictronics, 345 S.C. at 511, 548 S.E.2d at 226 and Columbia Pools, Inc., 288 S.C. at 61, 339 S.E.2d at 525 and noting that "[t]hese cases recognize, as we do again today, that the practice of law is challenging enough without having to endure the

overbearing enforcement of technicalities when prejudice is absent from the scene;" further noting that although some decisions have refused to find good cause to set aside a default due to a party lawyer's neglect concerning "time-triggering paperwork," "those cases dealt with degrees of carelessness and periods of inattention far greater than we have here, and none tossed a party out of court for not timely filing a brief at a later stage of a perfected case.") (emphasis added).

Counsel for Appellant has spoken with Assistant Deputy Attorney General William Blitch who has indicated that the State will file a Response to this Motion consistent with the State's standard position in connection with such a request.

I SO MOVE:

s/Christopher T. Brumback
Christopher T. Brumback
Brumback & Langley, LLC
531 South Main Street, Suite 307
Greenville, SC 29601
(864) 414-9097
(866) 728-1205 (Fax)
chris@brumbacklangley.com

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2020-001122

State of South Carolina……Respondent,

vs.

Marquez D. Glenn……Appellant.

PROOF OF SERVICE

I certify that I have filed with the Court of Appeals and served Appellant's Motion for Request to File Out of Time/Extension of Time to File on Respondent's attorney, William Blitch, by email, wblitch@scag.gov, on April 14, 2023.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar No. 75410
531 South Main Street, Suite 307
Greenville, SC 29601
(864) 414-9097
(866) 728-1205 (Fax)

ALAN WILSON
ATTORNEY GENERAL

April 24, 2023

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Marquez D. Glenn
Appellate Case No: 2020-001122

Dear Ms. Kitchings,

The State is in receipt of Appellant's Request to Recall Remittitur/File out of Time. Please accept this letter in lieu of a formal return. The State notes it received a copy of the Opinion via email on March 1, 2023, and counsel of record Christopher Brumback as well as Spencer Langley are both copied at their AIS provided email addresses. The State submits the proper standard for consideration of the motion was set forth in Wise v. S.C. Dep't of Corr., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court."); State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893) ("In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer. . . ."); see also, State v. Barnes, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) (finding recall of the remittitur only permissible "because of an error or inadvertence on the part of the Supreme Court").

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General
S.C. Bar: 15608

cc: Christopher T. Brumback, Esquire
Spencer D. Langley, Esquire

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The South Carolina Court of Appeals

The State, Respondent,

v.

Marquez Devon Glenn, Appellant.

Appellate Case No. 2020-001122

ORDER

On March 1, 2023, this court issued an opinion affirming the circuit court. The remittitur was properly sent on March 20, 2023. Upon receipt of notice that this court would not act upon his belated petition for rehearing, filed April 5, 2023, Appellant filed a motion to recall the remittitur. A remittitur cannot be recalled except upon "a very strong showing . . . that the remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer." *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). Appellant has failed to make such a showing. Accordingly, Appellant's motion is denied. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter." (internal citations omitted)).

C.J.

J.

A.J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Christopher Todd Brumback, Esquire
Spencer Davis Langley, Esquire
Paul B. Wickensimer