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Wanda H. Carter, Chief Appellate Defender

February 6, 2026

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

Re: The State v. William L. McKinney
Appellate Case No. 2023-001692

Dear Ms. Kitchings:

Enclosed please find one (1) additional copy of the Petition for Rehearing. For our records, please clock a copy of this letter and return the clocked copy to my office.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Daniel Bast
Administrative Assistant

/dwb

cc: J. Benjamin Aplin, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

Unpublished Opinion No. 2026-UP-017
Heard November 12, 2025-Filed January 21, 2026

THE STATE,

RESPONDENT,

V.

WILLIAM L. MCKINNEY,

APPELLANT

APPELLATE CASE NO. 2023-001692

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, William McKinney requests that this Court grant rehearing on both issues on appeal.

Issue One

This Court erred in declining to hold that the Rules of Evidence apply to immunity hearings. The Opinion seems to credit the trial judge with finding that Rule 104, SCRE allowed admission of unauthenticated hearsay. Nothing in that rule would allow admission of the Littles video. The Opinion offers no alternate theory of admissibility because none exists.

This Court also erred in relying on the notion of a bench trial in removing any prejudice if the Littles video was improperly admitted. The Littles video is the prime source for the trial judge's conclusion in the written order that appellant left the club without a gun and returned with a gun to settle a score. R. 187-188. This finding was a key component of the trial judge's finding that appellant was acting unlawfully and brought on the difficulty. Nothing in the trial judge's eager acceptance of the solicitor's urging that the Rules of Evidence do not apply or admission and consideration of blatantly inadmissible hearsay indicate that any presumption that trial judges ignore prejudicial or inadmissible evidence should apply or excuse this error.

Issue Two

This Court's Opinion never once mentions that a video of this shooting exists. It never once mentions that the video shows appellant walking away from the club and that he is shot in the back as he walks away. This Court's multiple errors in refusing to grant immunity or order a new immunity hearing begin with failing to engage with the incontrovertible video evidence.

The video shows McKinney standing peacefully with a group of people near the club and shows him walk away when Jenkins (holding a shotgun) and Green approach. They follow McKinney as he is leaving the parking lot. Jenkins shoots McKinney in the back. McKinney then returns fire. The guards then open fire at McKinney and he flees to keep from being shot. The video evidence alone is enough to overturn the trial judge's denial of immunity.

This Court also erred in accepting the deeply flawed legal reasoning of the trial court. The trial court failed to cite State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019) even though it was the centerpiece of defense counsel's argument for immunity and is the appellate decision most applicable to this case. This Court's Opinion erroneously interprets Glenn. Both the trial court and this Court erroneously concluded that the proximate cause analysis was satisfied

simply by McKinney coming to the club with a gun. Glenn and the self-defense cases it cites show this reasoning is error.

Glenn involved a shooting at an apartment complex in Greenville County. Glenn at 113-16, 838 S.E.2d at 493-95. Two female tenants at the apartment complex invited Glenn over to "chill." Id. Glenn went to the store and while he was gone, Kevin Bruster arrived even though he was on trespass notice at the complex for an incident involving one of the tenant's mother. Id. Bruster slashed Glenn's brother with a razor blade, hit one of the female tenants, and said he would kill the mother. Id.

Bruster ran from the girls' apartment to another apartment and got his nephew to go back with him to get his moped. Id. By this time, Glenn returned from the store. Id. Glenn spoke to police officers who responded to the altercation. Id. He noticed Bruster and his nephew "lurking in the shadows." Id. After finishing with the police, Glenn got his belongings from the apartment and was walking to his car. Id. Bruster and his nephew accosted him, blocked his way, and cursed at him. Id.

Bruster made threats that he was going to "get" Glenn and then punched Glenn in the neck. Id. As he fell back, he saw the nephew pulling something from his waistband and heard a woman yell "gun." Id. Glenn pulled a concealed handgun from his pants and fired, hitting the nephew. Id. The State charged Glenn with attempted murder. Id.

The trial judge denied immunity. Id. He found that Glenn had no right to be at the apartment complex because he was on the no-trespass list. Id. The Supreme Court noted that the trial judge "found Glenn was not involved in any unlawful activity, notwithstanding the fact he was carrying an illegal weapon at the time of the shooting, and that his possession of the weapon

was not the proximate cause of the incident." Id. at 115, 838 S.E.2d at 494. The trial judge made no findings of fact with respect to the elements of self-defense. Id.

The Supreme Court quoted section 16-11-450(A) of the immunity act and said, "We have acknowledged that 'another applicable provision of law' includes the common law of self-defense." Id. at 117-18, 838 S.E.2d at 496. Trial courts should first analyze the elements of self-defense and then, if the defendant has failed to meet the elements of reasonable fear or duty to retreat, determine whether the immunity act relieves the defendant of proving these elements. Id. at 118, 838 S.E.2d at 496.

Dealing with the trial judge's technical ruling on the no-trespass list, the Court said foreclosing immunity based on the location of the incident provoking self-defense was irrational. Id. at 119-20, 838 S.E.2d at 497. The "right to be" analysis must be considered using a proximate cause analysis, otherwise the statute's protections would be "up to happenstance." Id.

Most relevant to this case, the Glenn Court also specifically extended the proximate cause analysis to the "unlawful activity" language in the statute. Id. at 120-21, 838 S.E.2d at 497-98. "In addition, we find a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)." Id. To support this statement, the Court cited State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) and included the following quote from Burris: "A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Id. Another citation notes that the State has the burden of proving the unlawful act is the proximate cause of the incident. Id. citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994). A footnote found that the trial judge used the correct proximate cause analysis to find that Glenn's unlawful possession of a weapon was not the proximate cause of the shooting. Id. at n.4.

This Court's Opinion runs afoul of Glenn by ending its analysis with McKinney's status as a convicted felon carrying a firearm illegally. McKinney's firearm was not the proximate cause of this shooting. The video shows the proximate cause was Jenkins shooting McKinney in the back. Burris and Glenn make it abundantly clear that this kind of status does not defeat immunity. Furthermore, the security guards were also in illegal possession of firearms and this Court's Opinion makes no mention of that fact.

Glenn also shows McKinney was in a place where he had a right to be. The point of Glenn is that technical legal status alone does not control or defeat self-defense or immunity. The defendant in Glenn was on trespass notice. McKinney is in the parking lot of a business with multiple people. If this Court's analysis is correct that McKinney cannot assert self-defense because the club was closed, then the outcome of Glenn cannot also be correct. It would also mean that none of the other patrons of the club had a right to self-defense while they stood in the parking lot of a closed club.

This Court's concluding paragraph also contains a fact without evidentiary support. It states that McKinney is "walking toward people he had a 'beef' with." The people with whom McKinney was supposedly beefing were not identified. The video shows McKinney retreating from Jenkins and his shotgun. McKinney is retreating from danger and is not acting in a threatening manner towards any patron of the club. This Court also errs in finding McKinney brought on the difficulty if he flashed a gun at a security guard. Even assuming this fact is correct, it did not give Jenkins the right to shoot McKinney in the back with a shotgun as he was leaving the club. While McKinney had no duty to retreat, the video showed him **actually retreating**.

It appears clear from the arguments at the immunity hearing and in the findings in the Order that the trial court denied McKinney immunity because of his prior record and status as felon in possession of a firearm. This Court erred in accepting that rationale and affirming. But even felons are entitled to the right of self-defense. The video shows McKinney was entitled to immunity. At a minimum, McKinney is entitled to a new immunity hearing. This Court should grant rehearing and reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

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Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

This 5th day of February, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM L. MCKINNEY,

APPELLANT

APPELLATE CASE NO. 2023-001692

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on William McKinney, #281168, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 5th day of February, 2026.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT