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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Alex Kinlaw, Circuit Court Judge

Unpublished Opinion No. 2026-UP-017
(S.C. Ct. App. Heard November 12, 2025-Filed January 21, 2026)

Lower Court Case No. 2020-GS-23-00524, 2021-GS-23-003551

THE STATE,

RESPONDENT,

V.

WILLIAM MCKINNEY,

PETITIONER

APPELLATE CASE NO. 2023-001692

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 26, 2026.

QUESTIONS PRESENTED

1.

Did the Court of Appeals err in affirming the trial court's admission of a videotaped interview of a jailhouse snitch after accepting the State's argument that the Rules of Evidence do not apply to immunity hearings?

2.

It was undisputed (and on video) that petitioner was shot first in the back as he was walking away. Did the Court of Appeals err in affirming the trial court's denial of petitioner's motion for immunity from prosecution because he was illegally carrying a handgun, lacked a concealed weapons permit, and failed to avoid the difficulty by coming to the nightclub where the security guards shot him?

STATEMENT OF THE CASE

A Greenville County jury indicted petitioner William McKinney for attempted murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a felon. On January 5, 2023, an immunity hearing was held before the Honorable Alex Kinlaw, Jr. R. 1. Derek Francis Polsinello represented the State. R. 1. Ashley Boatwright and William Hellams represented petitioner. R. 1. Judge Kinlaw denied immunity from the bench and on January 9, 2023, issued a written order. R. 182.

On October 16, 2023, petitioner was tried before Judge Kinlaw. R. 190. The jury convicted petiitoner. R. 760-761. Judge Kinlaw sentenced petitioner to life imprisonment without the possibility of parole pursuant to South Carolina's recidivist statute. R. 765-766. Petitioner appealed.

On November 12, 2025, a panel of the Court of Appeals consisting of Chief Judge Williams, Judge Thomas, and Judge Curtis heard oral argument. App. 81. On January 21, 2026, the Court affirmed in an unpublished opinion. App. 81. The Court of Appeals denied rehearing and McKinney now seeks certiorari at this Court.

ARGUMENT

1.

The Court of Appeals erred in affirming the trial court's admission of a videotaped interview of a jailhouse snitch after accepting the State's argument that the Rules of Evidence do not apply to immunity hearings.

Introduction

During petitioner's immunity hearing, the solicitor argued, "Your Honor, South Carolina Rules of Evidence 104, this is a pretrial hearing matter. The Rules of Evidence don't apply." R. 77. Judge Kinlaw accepted the solicitor's argument, stating, "I'm going to allow it. I'm going to allow it. I think Rule 104 permits it." R. 78. In affirming the trial judge's admission of an unauthenticated hearsay video of a jailhouse snitch during petitioner's testimony, the Court of Appeals wrote:

> The trial court stated it was admitting the video under Rule 104 of the South Carolina Rules of Evidence, which addresses "preliminary questions," thereby indicating the trial court relied on the rules of evidence. The State claimed at the hearing, 'the rules of evidence don't apply,' but there was no indication the trial court agreed or disregarded the rules of evidence.

App. 82. The court then cited the standard of review and the presumption that trial judges disregard inadmissible evidence during bench trials. App. 82-83. This Court should grant certiorari to clarify whether the Rules of Evidence apply during immunity hearings.

Discussion

Petitioner William McKinney acted in self-defense. At McKinney's immunity hearing, the State did not dispute that a security guard at Club Dolce in Greenville County shot first, hitting McKinney in the back with a nonlethal round from a real shotgun as McKinney was walking away from the club's parking lot. Surveillance video captured the shooting. None of

the three Club Dolce security guards were authorized by SLED to carry firearms. Two of them fired multiple lethal rounds from their handguns at McKinney.

Despite this undisputed evidence, the State did not take McKinney's immunity hearing seriously. It called no witnesses. At the outset, the solicitor told the court McKinney should not even get an immunity hearing for spurious legal reasons. For example, citing the 2005 case of State v. Gilchrist, 364 S.C. 173, 612 S.E.2d 702, the solicitor argued that this Court decided as a matter of public policy that no one can get immunity for a shooting at a nightclub. R. 22-23. Gilchrist says no such thing. The Protection of Persons and Property Act did not even go into effect until 2006, a year after Gilchrist was decided. See S.C. Code Ann. § 16-11-410.

But the most egregious argument made by the solicitor—and unfortunately accepted by the trial judge—was that South Carolina's Rules of Evidence do not apply during immunity hearings. R. 77-78. McKinney was the first witness called by the defense at his immunity hearing. During cross-examination of McKinney and with no prelude or even pretense of laying a foundation, the solicitor began playing a video, State's Exhibit Three. R. 77. The video is of jailhouse snitch Dwight Alonzo Littles talking with the police. State's Ex. 3.

Appellant objected, stating, "There's no witness here to testify as to this conversation. He's just putting in a video." R. 77. The solicitor responded, "It's no different than all the other videos we've played here. Your Honor, South Carolina Rules of Evidence 104, this is a pretrial hearing matter. **The Rules of Evidence don't apply.** Your Honor is certainly allowed to hear witness interviews." R. 77 (emphasis added). The solicitor interrupted defense counsel's response and said, "Even if the witness is not here." R. 77.

Defense counsel replied, incredulous, "But there's no witness here. And he's just putting this person up here." R. 78. Judge Kinlaw accepted the State's argument, stating, "I'm going to

allow it. I'm going to allow it. I think Rule 104 permits it." R. 78. The State continued to play the video of Littles' statement to the police. R. 78-80.

The Court of Appeals affirmed, stating that the trial court relied on Rule 104 which addresses preliminary questions, which indicated the judge used the Rules of Evidence. App. 82-83. Rule 104 contains zero support for the notion that the Rules of Evidence disappear during immunity hearings. Rule 104, titled, "Preliminary Questions," states in its entirety:

> (a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.
>
> (b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.
>
> (c) Hearing of Jury. Hearings on the admissibility of confessions or statements by an accused, and pretrial identifications of an accused shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.
>
> (d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.
>
> (e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 104, SCRE.

Perhaps the solicitor's bold error was based on the last sentence of Rule 104(a) that says a court is not bound by the rules of evidence when hearing preliminary questions about the admissibility of evidence. Rule 104(a), SCRE. This part of the rule prevents time-wasting

objections on relevance or otherwise when a party begins laying a foundation. For example, a lawyer seeking to admit a document into evidence might begin by showing the document to a witness and asking, "I'm showing you document X. Have you ever seen this document before?" Rule 104 prevents the opposing side from arguing that no relevance or foundation has been laid for the question. Questioning has to begin somewhere and that is the purpose of this rule, properly placed in the 100s section of the rules. See generally, Preliminary Questions of Admissibility, Generally, 30 S.C. Jur. Evidence § 46. The solicitor may also have confused "preliminary hearing" in Rule 1101(d)(3) with "pretrial hearing." See Rule 1101, SCRE. The Court of Appeals prudently did not address this possibility.

Imagine if the solicitor's argument were correct. At an immunity hearing, the defendant could put up any number of witnesses to testify that they heard from John who heard from Jane who heard from Jimmy that the victim was an evil person (Rule 404(a), bad character evidence), shot first at the defendant meaning to kill him (Triple Hearsay), and probably was the real killer of President John F. Kennedy, Jr. (take your pick). Under the Court of Appeals' reasoning, this kind of testimony would be admissible under Rule 104 and would ultimately be of no concern because judges are presumed to ignore inadmissible evidence (even when they affirmatively admit it).

Defense counsel's objection—that no witness was on the stand who could enter the video or talk about the conversation—implicates many rules that would bar the admission of this video. Admission certainly violates the hearsay rules. Littles' discussion with the police was an out-of-court statement offered for the truth of the matter asserted and the solicitor offered no exception.[1]

[1] During the trial, the solicitor made a hearsay objection when defense counsel was cross-examining a police officer. R. 332. When defense counsel explained he was not offering the statement for the truth of the matter asserted, both the judge and solicitor still demanded to know

Rule 801(c), SCRE. Admission of the video also violates the rule requiring authentication because McKinney (the witness on the stand) did not make the video and did not appear in the video. Rule 901, SCRE. Even assuming the solicitor was offering the video to impeach McKinney, none of the prerequisites for admission were satisfied. Rule 613, SCRE. Finally, admission of the video with no witness to cross-examine violated the Confrontation Clause. U.S. Const. amend. VI.

Littles tells the police he is known in the jail for his legal acumen and people will tell him details about their cases. (State's Ex. 3). He then tells the police that McKinney told him he got into an argument with someone at the club, left to get his gun, and came back intending to murder him. (State's Ex. 3). When the solicitor questioned McKinney about Littles, McKinney said Littles got all of his information from reading his discovery. R. 78-80.

In Question Two, appellant will argue the trial judge erred in denying him immunity from prosecution. In the written Order denying immunity, Judge Kinlaw does not mention the Littles video by name, but refers to "the State's evidence, theory, and witness statements" to find that appellant returned to Club Dolce with a gun to settle the argument. R. 183. The Littles video was improperly admitted and any findings in the Order based on the video are erroneous and must be stricken from consideration in Issue 2. In the event the Court does not reverse on Issue 2, it appears from the Order entered in the case that the judge credited the Littles video with finding appellant brought on the difficulty by coming to the club this Court should reverse on this issue alone. This Court should grant certiorari to affirmatively state that the Rules of Evidence apply to immunity hearings and ultimately reverse.

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what exception he was claiming. R. 332-339. The solicitor argued, "So what's the exception? He's failing to cite an exception, and he believes as an exception that this truth—I don't know how he spun it, but it's not the law. It's not in the rules of evidence, Your Honor." R. 339.

2.

It was undisputed (and on video) that petitioner was shot first in the back as he was walking away. The Court of Appeals erred in affirming the trial court's denial of petitioner's motion for immunity from prosecution because he was illegally carrying a handgun, lacked a concealed weapons permit, and failed to avoid the difficulty by coming to the nightclub where the security guards shot him.

Introduction

This shooting was captured on video by the nightclub's security camera. (State's Ex. 6).[2] The video shows the security guards shooting McKinney in the back as he is walking away. Incredibly, the Court of Appeals' Opinion never once mentions this extraordinary piece of evidence. Defense counsel cited the most applicable case from this Court to McKinney's immunity hearing because of the necessary proximate cause analysis—State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019)—but the trial court did not cite or analyze Glenn in its written Order. R. 12-13, 164-65 (defense counsel's arguments); R. 182-89 (Order denying immunity). The Court of Appeals' Opinion misinterprets Glenn and erred in its proximate cause analysis. This Court should grant certiorari, conduct the proper proximate cause analysis, and use the video to reverse the denial of immunity.

The Video

Club Dolce's surveillance video captured the shooting. (State's Ex. 6). The video of the shooting starts at 4:09:34 AM on July 4, 2020. It does not have sound. It is in color. The resolution, while far from high-definition, is better than many surveillance videos seen at criminal trials.

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[2] State's Exhibit Six contains many video files. The relevant file is conveniently named "shooting."

The view shows a street with cars parked and about a dozen people standing near the club. Cars are leaving. Pausing the video at 4:09:35 shows a small SUV facing the left side of the screen. Near the front of the SUV are two dark-clad men walking toward the crowd. These two men are security guards Carlos Jenkins (left) and Monieque Green (right). McKinney's head and shoulders are visible above where the SUV's windshield ends and the roof begins. He is wearing a sleeveless white t-shirt. (State's Ex. 6).

McKinney fully emerges from behind the SUV at 4:09:39. He is walking away from the crowd towards the parking lot at the upper right corner of the screen. He is wearing shorts and has his hands in his pockets. Jenkins emerges from behind the SUV following McKinney at 4:09:41. Jenkins is holding a shotgun pointed down and to the left. At 4:09:41, security guard Lamar James enters the screen from the left walking in the middle of the street. (State's Ex. 6).

Jenkins and Greene continue to follow McKinney as he walks away and passes a small grey sedan. At 4:09:46, McKinney slightly turns towards Jenkins and Jenkins points with his left arm in the same direction McKinney is already walking. McKinney turns back around and keeps walking away with his back to Jenkins. (State's Ex. 6).

At 4:09:49, McKinney's path away from the club leads him to walk in front of a car with its headlights facing the camera. At 4:09:51, McKinney passes the headlights and Jenkins is in front of the car. Greene is behind Jenkins walking at a slightly sideways angle. At 4:09:52, the flash from the muzzle of Jenkins' shotgun can be seen when Jenkins shoots McKinney in the back. McKinney is continuing to walk away and rounds the corner on the car. At 4:09:55, McKinney is behind the car and Greene runs towards the corner of the club to flank him.

At 4:09:56, a muzzle flash can be seen from McKinney's position behind the car. Jenkins moves behind a small blue sedan facing the right side of the screen and can be seen between its

red taillights. At 4:09:58, Greene fires multiple rounds at McKinney from his flanking position. Muzzle flashes can be seen from McKinney's position. At 4:10:01, Greene falls to the ground. At 4:10:03, Jenkins is near the front of the blue car and fires multiple rounds from a pistol at McKinney. McKinney keeps running away. He climbs a fence to get away from the club and disappears at 4:10:15. (State's Ex. 6).

The State's Arguments at the Beginning of the Immunity Hearing

Before McKinney could present any argument or evidence, the solicitor argued no need for an immunity hearing existed. R. 7-8. He told Judge Kinlaw that "there's undisputable facts in this case that the Defense must concede to in the beginning. They have to admit, because, Your Honor, this is a club shooting that occurred on video. So this is—this incident is on video." R. 7-8. The solicitor said that because the shooting was on video, this case was not a question of "what happened." R. 8. The State said appellant was "claiming self-defense. On video you see the Defendant, after he gets shot with a ballistic bullet by a security guard, you see the Defendant take a gun out of his pocket, turn around, and he shoots a security guard three times." R. 9-10.

The solicitor's point was that appellant would have to concede that he had a gun. R. 10. This concession seemed conclusive to the solicitor because McKinney had a prior felony conviction and was not allowed to possess a firearm. R. 10-11. "There's no need for an exhaustive hearing. He doesn't qualify. The Legislature and case law expressly says that this is for law-abiding citizens. And clearly he's acting unlawfully because he was a convicted violent felon in possession of a weapon arriving to a club." R. 11.

Defense counsel responded by handing up the most relevant case, State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019) and, based on Glenn, arguing that "a person can be acting lawfully even if he is in unlawful possession of the weapon if he was entitled to arm himself at

the time of the shooting." R. 12-13. The judge asked for a specific page and the solicitor asked for a headnote. R. 13-14. Defense counsel again responded with the correct case quoted in Glenn, State v. Burriss, 334 S.C. 108, 838 S.E.2d 491 (1999), which the Glenn Court cited for the principle that being in unlawful possession of a firearm does not automatically deprive a citizen of his right to self-defense. R. 14. Defense counsel explained that, under Glenn, the State needed to prove that McKinney's possession of a firearm was the "the proximate cause of the homicide." R. 14-15.

Defense counsel explained how the facts of the case fit into self-defense. R. 15-20. The solicitor responded that defense counsel admitted that McKinney concealed the firearm and because McKinney did not have a concealed weapons permit, that was another reason McKinney should not get an immunity hearing because he was acting unlawfully. R. 21. The solicitor then handed up Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005) and argued the Supreme Court decided as a matter of public policy that shootings at dance clubs do not qualify for immunity. R 21-23. Gilchrist's holding dealt only with the common law Castle Doctrine and not the Protection of Persons and Property Act which was passed a year after Gilchrist was decided. Defense counsel responded to the court's entertainment of the solicitor's Gilchrist argument by continuing to cite cases actually dealing with the modern immunity statute, including State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013); State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019); State v. Scott, 420 S.C. 108, 800 S.E.2d 793 (Ct. App. 2017); State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011); and State v. Manning, 418 S.C. 38, 791 S.E.2d 148 (2016). R. 29-31. The trial judge relented and said he would "listen to some witnesses." R. 32.

As also argued in Question 1, the point of this explanation of the arguments at the beginning of the hearing is the deeply flawed legal reasoning urged on the trial judge by the

solicitor. Had it not been for defense counsel's excellent preparation and knowledge of cases interpreting the immunity statute, McKinney might not have even gotten a hearing. While the trial court ultimately did not adopt the solicitor's public policy argument based on Gilchrist in its Order denying immunity, the legal reasoning used is not much better. After hearing testimony, watching the video, and hearing further argument, Judge Kinlaw ruled from the bench that McKinney was not entitled to immunity and directed the solicitor to prepare the Order that is the subject of this appeal. R. 179.

The Evidence and Testimony at the Immunity Hearing

The State called no witnesses at the immunity hearing. McKinney was the first witness and testified that he remembered July 4, 2020, because he was attacked by security guards at Club Dolce. R. 34-35. McKinney initially arrived on his motorcycle and sat in the parking lot of the restaurant next door to the club with a friend. R. 35. McKinney left to get his truck because he did not want to drive his motorcycle while he was drinking. R. 77.

McKinney's truck was a "450 dually." R. 36. The club's surveillance video shows McKinney circling the parking lot trying to find a parking place. (State's Ex. 6). His silver-grey Ford truck is larger than a full-size Ford F-150 and has expansive fenders around its rear wheels. (State's Ex. 6). The solicitor cross-examined McKinney with the videos showing his truck circling the parking lot in an attempt to make it seem like McKinney was looking for trouble. R. 46-53. McKinney had already explained on direct-examination that he was looking for a parking spot that was big enough or easy enough to accommodate his oversized truck. R. 36.

McKinney initially tried to park between Club Dolce and the restaurant next door. R. 36. A security guard told him he was blocking traffic and that he could not park in that spot. R. 36.

McKinney pulled off and parked in front of the restaurant. R. 36. He "didn't think it was a big deal." R 36.

As seen on the video, McKinney socialized with his friends at the back of the club. R. 36. He heard one of his friends say, "'I don't know what's going on, but everybody walk off . . . . don't look back.'" R. 37. McKinney looked over his shoulder and saw "guns pointing at us, coming at us." R. 37. He did not know the men were security guards. R. 37. When defense counsel asked where McKinney was heading, he said, "I was actually trying to get away from the gun." R. 37.

McKinney wanted to leave, but his truck was parked in the same direction from which the armed men were approaching so he made for a parked car in the hope of looking for cover to avoid getting shot. R. 37-38. "And as I was getting up to that car, I'm hit four times in my back." R. 38. He heard and felt the shots fired into his back by Jenkins. R. 38. "I'm feeling my back ripped apart." R. 38. Appellant entered two photographs taken after McKinney's arrest showing the bloody injuries to his back from the nonlethal shotgun rounds Jenkins fired. R. 39-40. (Def. Ex. 1 and 2 from immunity hearing). McKinney ducked behind the car, pulled his gun out of his pocket, and returned fire to make them stop shooting at him. R. 38. When asked what was going through his head, McKinney replied, "That I was being ambushed." R. 38. He knew that three armed men were behind him. R. 65.

McKinney said his gun was still in his pocket while he was walking away from Jenkins. R. 46. He did not have it "out and about," he never pointed it at anyone, and never told anyone he was going to shoot them. R. 46. McKinney denied hearing any commands from Jenkins while he was trying to leave the club. R. 62. "It was loud music playing. I didn't hear nothing." R. 62.

McKinney had been to the club "[q]uite a lot." R. 54. He did not know it was illegal for him to possess a firearm. R. 58. The solicitor asked McKinney if the incident would have happened if he did not have the gun in his pocket and McKinney replied that it would have "[b]ecause they just shot me for nothing." R. 75. He denied having a beef with anyone and denied bringing a gun because he was looking to settle a score. R. 76-77. The State's lead investigator confirmed that there "have been issues out there" at Club Dolce and that it was very common for the club's patrons to have guns. R. 125-26.

Jewell Simpson testified that he was at the club talking to McKinney when he heard someone say "don't turn around." R. 87. Simpson turned around and saw "the security guards coming with the guns, so I kind of backed up." R. 87. McKinney started walking away. R. 87-88. The music was loud and when he heard the first shot, he ducked behind a car. R. 88.

McKinney had not been arguing or fighting with anyone. R. 88-89. Simpson never saw McKinney's gun. R. 89. He did not see McKinney pull his gun out when the guards followed him as he was trying to leave. R. 89. Simpson did see Jenkins shoot first. R. 91.

Appellant called police officer Isaac McKenzie who responded to the club after the shooting. R. 97. Officer McKenzie said he talked to a man named Jarvis Barksdale at the scene who said the security guard told McKinney to get his hands out of his pocket. R. 97. Barksdale thought the guard fired two beanbag shots at McKinney before McKinney fired any shots. R. 97. He did not hear the guard ever say "drop the gun" or anything to that extent. R. 98.

Appellant called Officer Shawn Cutting who interviewed the security guards after the shooting. R. 100-01. Defense counsel had Officer Cutting read Jenkins' statement into the record. R. 102-03. Jenkins said that near closing, a young woman told him a man in a silver truck was beefing with someone in the parking lot. R. 102-03. Jenkins went behind McKinney

and "asked him to let me see his hands multiple times." R. 102-03. "At that time he removed a black handgun out of his right pocket." R. 102-03. Jenkins then fired two rubber rounds at McKinney and then McKinney returned fire. R. 102-03.

Jenkins said nothing about McKinney being in an altercation at the club earlier that night. R. 103. Jenkins did not say that they approached McKinney because he earlier flashed a gun to Monieque Green. R. 103.

Officer Cutting also interviewed security guard Lamar James. R. 104-05. James' version of events did not match the video. R. 106-07. In James' version he gave the police, a woman told Jenkins that McKinney was feuding with someone in the parking lot and that he was going to shoot somebody. R. 106-07. "Suspect [McKinney] was engaged by Jenkins just before . . . reaching the crowd." R. 106-07. On the video, McKinney is obviously in the crowd before Jenkins approaches him. (State's Ex. 6).

According to James' version, Jenkins told McKinney to take his hands out of his pockets and McKinney pulled out his gun. R. 106-07. Contradicting the video, James said, "[McKinney] pulled into a shooting position in front of him, meaning both hands together." R. 107. After being told several times to drop the gun, McKinney refused and then Jenkins shot him. R. 107. On the video, James is seen approaching well behind Jenkins and Green and when the shooting happens, he retreats behind a car also fleeing the scene. (State's Ex. 6).

Appellant called Officer Bryan Threlkeld who interviewed Jenkins. R. 112. Jenkins said nothing about any altercations involving McKinney earlier in the evening. R. 112. Jenkins told him about the warning from a girl and that he told McKinney to take his hands out of his pocket. R. 112-13. Contradicting the video, in this version, Jenkins said "after McKinney turned around" he fired the rubber round at McKinney from his shotgun. R. 113.

Appellant called police officer Alvin Tracy King who was the lead investigator for this case. R. 116. The police were not able to interview Green after the shooting because of his injuries. R. 154. When the police interviewed Green **two months later**, in September 2020, Green claimed that he approached McKinney in his truck and told him to not block the road. R. 117. McKinney supposedly flashed a gun and told Green that Green was not the only person with a gun. R. 117. Green said he called Jenkins on the radio and told him about McKinney flashing the gun. R. 118. Officer King confirmed that when they were interviewed immediately after the shooting, neither Jenkins nor James mentioned anything about McKinney flashing a gun at Green. R. 118-19; 120; 135; 162. The officer agreed that all three of the security guards contradicted each other. R. 139.

Officer King confirmed that Monieque Green was not licensed by SLED to be a security guard. R. 116. Even if security guards are licensed by SLED, they need written approval from SLED to carry rifles or shotguns. R. 160. No written approval for the shotgun Jenkins carried was provided to Officer King. R. 160. When Officer King was asked if it was illegal for Green to have a firearm if he was not licensed to be a security guard, he replied, "It could be construed as that, yes." R. 116-17. SLED's security guard policies say that guards should call the police before they do anything if they witness or suspect a crime and the Club Dolce guards did not call the police until after the shooting. R. 121. Officer King said what appellant should have done when he was walking away from the club was to stop, listen to the security guards, and then leave. R. 138. The lead investigator said McKinney's prior record and lack of a concealed weapons permit played a part in his decision to charge McKinney with attempted murder. R. 146. Appellant rested after Officer King's testimony and the State immediately also rested and told Judge Kinlaw it was not going to call any witnesses. R. 164.

The Arguments at the End of the Immunity Hearing

Appellant cited Glenn and Burriss again at the beginning of his argument after testimony concluded. R. 164-65. Defense counsel argued McKinney's status as a felon and lack of a concealed weapons permit did not mean he could not arm himself in self-defense. R. 164-65. He further argued that the State had to prove that the shooting only happened "simply because William McKinney was at this club" and that McKinney was not there for a drug deal or a robbery. R. 164-65. McKinney was leaving the club and only returned fire in self-defense. R. 165-70.

The solicitor began his argument by accusing appellant of wanting "a mini trial" and then argued that whether appellant qualified for self-defense was a jury issue, not one of immunity, because appellant was in illegal possession of a gun. R. 170-78. McKinney brought on the difficulty by coming back to the club after he initially left on his motorcycle. R. 170-78. "One, he could have stayed home where he was." R. 174. He again cited Gilchrist as guiding the court "to the proper ruling in this case." R. 177-78.

The Trial Court's Ruling and its Written Order

Judge Kinlaw read from the statute and then announced his ruling that appellant had not proven self-defense by a preponderance of the evidence. R. 178-79. The court made no oral findings about the elements of self-defense and instructed the solicitor to prepare an order. R. 179.

The written Order signed by the trial judge begins with a "FACTS" section that discusses the State's "theories" and allegations. R. 182-184. It lists some facts as undisputed. R. 182-184. The Order does not make conclusive factual findings in its recitation of the facts. R. 182-184. The beginning of the Order says the court weighed the witnesses' credibility, but never

makes any specific credibility as to any witness. The Order makes no finding that McKinney's testimony was not credible.

In its "ANALYSIS" section, the Order quotes the immunity statute and the law of self-defense from Curry. R. 186. It then concludes that appellant "was engaged in an unlawful activity" which barred immunity. R. 186. The Order gives two numbered reasons why appellant was engaged in an unlawful activity: (1) McKinney's status as a felon in possession of a firearm, and (2) McKinney's lack of a concealed weapons permit. R. 186-187. The Order makes no finding that these unlawful activities were the proximate causes of the altercation. R. 186-187.

The Order then addresses appellant's self-defense case and concludes he was at fault in bringing on the difficulty because he left the club and then "chose to get in his truck, and drive back to the club, with a gun in his possession." R. 187-188. It says "according to State witnesses," even though the State called no witnesses, that the security guards learned appellant came back to the club to "settle some type of score with someone." R. 188. The Order says that the same analysis applies to whether appellant had the ability to avoid the danger. Finally, without analysis, the Order also states in conclusory fashion that appellant did not show he reasonably believed deadly force was necessary. R. 188.

The Court of Appeals' Opinion

It would be imposible to know that a video existed of the shooting if one only reads the Court of Appeals' Opinion. The court's multiple errors begin with failing to engage with the incontrovertible video evidence. The court also accepted the the deeply flawed legal reasoning of the trial court. Both the trial court and the Court of Appeals 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. The court also found that

even though he was in a public place surrounded by other citizens, McKinney was not in a place where he had a right to be under the Immunity Act. The Opinion also wrongfully concludes that McKinney could not satisfy the elements of self-defense. App. 83-86.

This Court Should Grant Certiorari

After watching the video, this Court should see the need to grant certiorari in this important immunity case. Furthermore, the Court of Appeals misinterpreted Glenn and accepted the trial court's complete failure to conduct a proximate cause analysis. Under the Court of Appeals' analysis, proximate cause is satisfied by pushing the timeline further back. McKinney is saddled with bringing on the difficulty by coming to the club. If this were the law, then no citizen could get immunity in a public place because they should have just stayed home. The video shows the real proximate cause of this incident was Jenkins shooting McKinney in the back as he is walking away.

Under Glenn, McKinney's status as a convicted felon and lack of a concealed weapons permit do not satisfy a proximate cause analysis. The facts of the incident matter, not the status of the participants. The defendant in Glenn violated a no-trespass list and was carrying an illegal weapon, but the Court still unanimously found the trial judge erred in denying immunity.

Most relevant to this case, the Glenn Court 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.

Had the court applied Glenn and conducted a proximate cause analysis, it could not have found that McKinney was barred from immunity. The video shows McKinney peacefully standing in a group of people. When Jenkins approaches with his shotgun in front of him, McKinney starts to leave. Jenkins follows McKinney and shoots him in the back. McKinney's possession of a weapon is not the proximate cause of this incident. Without any unlawful activity, McKinney was in a place where he had a right to be under section 440(C) and had no duty to retreat—even though he was retreating at the time Jenkins shot him.

Judge Kinlaw's Order concludes McKinney was at fault in bringing on the difficulty because he left the club and then returned with a gun. R. 187-188. First, this holding makes no sense because nothing is wrong with leaving a place and then returning. McKinney was not at the club unlawfully. Second, no evidence in the record other than the improperly admitted Littles video supports a conclusion that appellant left the club without a gun and returned with a gun. McKinney said he left because he was on his motorcycle and did not want to be driving it if he was drinking. R. 77.

Because McKinney was not acting unlawfully, he had no duty to retreat. S.C. Code Ann. § 16-11-440(C). The trial court's Order says "The same analysis" regarding bringing on the difficulty meant that McKinney could have avoided the danger by not coming to the club. The trial court erred by even analyzing this prong of self-defense because section 440(C) eliminated

it for McKinney because he was where he had a right to be. The Order's "same analysis" is also wrong because of the reasons this analysis of bringing on the difficulty is wrong.

Furthermore, the court's reasoning is flawed because the video shows McKinney **actually retreating**. He is walking away when he is approached and he is walking away when he is shot. Had Jenkins not shot McKinney, he would have left. Even if McKinney were required to prove this prong, the video and his testimony satisfies it.

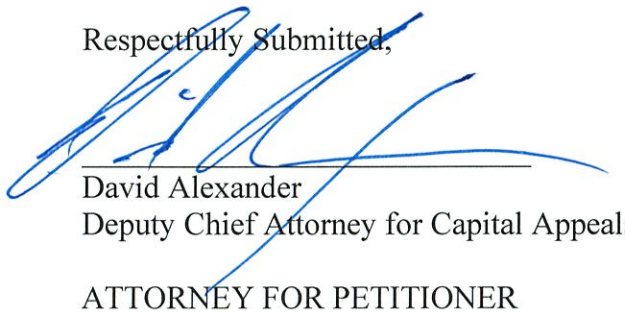
Without any analysis at all, the Order's last paragraph says McKinney failed to prove "he reasonably believed it was necessary to use deadly force to prevent great bodily injury to himself or to prevent the commission of a violent crime. . . ." R. 188. This conclusory throwaway line is an error. The court gives no reasons or facts for this conclusion.

Nor could it because of the video showing McKinney being shot in the back. McKinney testified that he felt his back being "ripped apart" and the photographs showed the bloody injuries he suffered from the shotgun round. McKinney's fear of death was reasonable from both a subjective and objective viewpoint. The Court of Appeals also said McKinney began walking toward people he was beefing with while Jenkins followed him with a shotgun. Nothing in the record or the video supports this assertion. McKinney was trying to escape the situation. This Court should grant certiorari to correct the multiple legal errors made by both the trial court and the Court of Appeals.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, order further briefing and reverse McKinney's convictions, finding him immune from prosecution. Alternatively, McKinney should be granted a new immunity hearing.

Respectfully Submitted,



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ATTORNEY FOR PETITIONER

This 16th day of April, 2026.