STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Unpublished Opinion No. 2026-UP-017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

THE STATE,

RESPONDENT,

V.

WILLIAM L. MCKINNEY,

APPELLANT

APPELLATE CASE NO. 2023-001692

APPENDIX

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FINAL BRIEF OF APPELLANT

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2.

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STATEMENT OF THE CASE

A Greenville County jury indicted appellant 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 appellant. R. 1. Judge Kinlaw denied immunity from the bench and on January 9, 2023, issued a written order. R. 182.

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

STANDARD OF REVIEW

While immunity rulings with disputed facts are reviewed under the abuse of discretion standard, errors of law are reviewed *de novo*. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (providing for abuse of discretion review of immunity decisions); State v. Adams, 409 S.C. 641, 646-47, 763 S.E.2d 341, 344 (2014) (stating first the deferential standard of review in suppression hearings, but noting that questions of law are reviewed *de novo*).

ARGUMENTS

1.

The trial court erred in admitting the videotaped interview of a jailhouse snitch and accepting the State's argument that the Rules of Evidence do not apply to immunity hearings.

Appellant 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 our Supreme 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.

While it seems beneath the dignity of this Court, unfortunately an Opinion stating that the Rules of Evidence do apply to immunity hearings appears necessary. The rule cited by the solicitor contains zero support for the notion that the Rules of Evidence disappear during such 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.

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). Appellate Counsel does not expect the Attorney General's Office to contest the application of the Rules of Evidence in immunity hearings to this Court.

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] 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 Issue 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

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[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 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.

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.

2.

It was undisputed (and on video) that appellant was shot first in the back as he was walking away. The trial court erred in denying appellant 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.

The urging of spurious legal reasoning by the State extended to the ultimate issue at the hearing: McKinney's entitlement to immunity. The solicitor argued that McKinney was not entitled to immunity because he illegally possessed a firearm. McKinney was shot in the back and shot at with lethal rounds by Club Dolce security guards who also illegally possessed firearms. Despite hearing the correct law from appellant on self-defense and immunity, the trial court uncritically accepted the State's deeply flawed reasoning that is inconsistent with South Carolina law. Appellant is entitled to a finding of immunity by this Court or, at a minimum, a new immunity hearing.

The Video

Club Dolce's surveillance video captured the shooting. (State's Ex. 6).[2] 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.

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 keep walking away with his back to Jenkins. (State's Ex. 6).

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

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 flashes 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. Judge Kinlaw wanted to know if Glenn overruled Gilchrist and later commented that "it was clear as a whistle" that Club Dolce was a nightclub. R. 23-29.

Gilchrist was a PCR case dealing with the ineffective assistance of appellate counsel. Gilchrist at 179-80, 612 S.E.2d at 705-06. Trial counsel requested a jury charge that the defendant did not have a duty to retreat based on a 1922 case dealing with a shooting at an Elk's Club, State v. Marlowe, 120 S.C. 205, 112 S.E.2d 921 (1922). Gilchrist argued appellate counsel was ineffective for not raising the trial judge's failure to give the retreat charge. Id. The Supreme Court held appellate counsel was not ineffective because there was no evidence that Gilchrist was a member of a club that charged $5 for admission. Id. The Court then stated it was overruling Marlowe "elevating a 'club' to the possessory status of a home or place of business. This expansion of the immunity-from-retreat doctrine is not good public policy, especially in the contemporary context of 'private clubs.'" Id. at 180, 612 S.E.2d at 706.

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 argued in Issue 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 ability to avoid the danger. Finally, without analysis, the Order also conclusory states appellant did not show he reasonably believed deadly force was necessary. R. 188.

DISCUSSION

The trial court's Order is riddled with legal errors. These legal errors normally would require a new immunity hearing. See Glenn at 123, 838 S.E.2d at 498-99. In Glenn, the defendant asked the Supreme Court to grant immunity based on the record and the Court declined. Id. The remedy in Glenn was a remand for a new trial. Id. But McKinney's case has something that Glenn did not: a video which shows the defendant being shot first in the back. On the record in this case, McKinney can be granted immunity on appeal. At a minimum, this case must be remanded for a new immunity hearing.

McKinney's Status as a Felon in Possession of a gun or Lack of a Concealed Weapons Permit Does Not Bar Immunity

The trial court's Order omits any discussion of Glenn even though it was the centerpiece of appellant's argument at the hearing. Glenn demonstrates that denying appellant immunity because of his felony status is a fatal legal error. 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.

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.

Even though defense counsel repeatedly argued Glenn at the immunity hearing, the trial judge performed no such analysis. It uncritically accepted the solicitor's wrong argument that just

because McKinney was a convicted felon and lacked a concealed weapons permit he could not qualify for immunity. Burris and Glenn make it abundantly clear that this kind of status does not defeat immunity. The court also failed to feed both sides from the same spoon and neglected the fact that the guards were in illegal possession of firearms.

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.

The Court's Conclusion on Bringing on the Difficulty is an Error of Law

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.

The following exchange between the solicitor and McKinney illustrates the absurdity of this conclusion in the Order:

> Q. Before you arrived at the club at 4 am it was your testimony that you were with your friend at some house in Greenville County, correct?
>
> A. Yes.

Q. If you stayed there, would this have ever happened?

A. If I stayed there?

Q. If you stayed where you were, at your friend's house, that you can't give us the name or the address, that's where you were, if you stayed there would this shooting have ever happened?

A. Clearly, no.

Q. Okay. Let's forget about that. Even if you went to the club and didn't have the gun in your pocket, would this have happened?

A. Yes, it still would have happened.

Q. Why would it have happened?

A. Because they just shot me for nothing.

R. 75. The solicitor's reasoning—adopted by the trial court—is that people who leave their houses are at fault if something bad happens. This faulty reasoning is an error of law.

Even if the court's conclusion can be read as McKinney was at fault for having a gun at the club, the same proximate cause analysis required by Glenn is required. The court conducted no such analysis and the same error was again made on this prong of self-defense because of the court's ignoring the self-defense precedent cited by defense counsel. Glenn contains a hypothetical example of a jogger in a park entitled to defend herself from an attack at 8:59, but if the park closed at 9:00, she would lose her right to self-defense. Glenn at 120, 838 S.E.2d at 497.

In State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019), the Court wrote, "But just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." See also State v. Dennis, ___ S.C. ___, ___ S.E.2d ___, Op. No. 6082 (S.C. Ct. App. Aug. 14, 2024) (holding the trial court improperly

deferred its duty as fact-finder to the jury). The Court reversed over the State's contention that evidence existed to support the trial judge's denial of immunity. Cervantes-Pavon at 452, 827 S.E.2d at 569. The Court wrote, "[W]e are unable to discern a legally correct basis on which the court relied." Id. Here, the court's flawed legal reasoning was that had McKinney never went to the club, the shooting would not have happened.

Again, the video shows McKinney was not at fault in bringing on the difficulty. He is standing in a crowd and begins to leave when Jenkins approaches him with a shotgun. Jenkins shoots him in the back. It was undisputed that McKinney only fired after being shot. McKinney satisfied this element of self-defense.

The Trial Court Erred in Saddling McKinney with a Duty to Retreat

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.

Getting Shot in the Back with a Shotgun Creates a Reasonable Belief in the Need to Use Deadly Force

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.

CONCLUSION

It appears clear from the arguments at the 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. But even felons are entitled to the right of self-defense. The trial court erred in accepting multiple wrong legal arguments from the solicitor in this case. The video shows McKinney was entitled to immunity. At a minimum, McKinney is entitled to a new immunity hearing. This Court must reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 10th day of March, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 10th day of March, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM 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 Final Brief of Appellant in the above-referenced case has been served upon Benjamin Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 10th day of March, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001692

The State, ...Respondent,

v.

William McKinney, ...Appellant.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant's argument that the trial court erred in admitting the videotaped interview of a jail inmate from Appellant's dorm [Dwight Littles] during which Littles recounted Appellant's alleged statement describing the shooting for which he was on trial, is preserved for appellate review where Appellant made no objection when the State introduced the Littles video into evidence at the immunity hearing? Further, whether the trial court properly allowed use of Appellant's statement to Littles where: (1) the decision to not strictly follow the rules of evidence was within the trial court's broad discretion under the circumstances of an immunity hearing; and (2) the statement was not hearsay because (a) it was not offered to prove the truth of the matter asserted and (b) it constituted a prior inconsistent statement under Rule 801(d)(1), SCRE? Finally, whether any possible error in allowing the State to use the Littles video to cross-examine Appellant was harmless in this case where Appellant suffered no prejudice because the interview could not have reasonably contributed to the trial court's denial of immunity?

2. Whether the trial court properly found Appellant was not entitled to immunity from criminal prosecution under the Protection of Persons and Property Act where *he failed to carry his burden of proving by a preponderance of the evidence that*: (1) he was not at fault in bringing on the difficulty; (2) he had no other means to avoid the danger than to act as he did; (3) his admitted engagement in an unlawful activity was not a proximate cause of the incident; and (4) he reasonably believed repeatedly shooting the victim was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime?

STATEMENT OF THE CASE

William McKinney (Appellant) was indicted at the July 2020 term of the grand jury for Greenville County for possession of a firearm by person convicted of a violent crime (2020-GS-23-005244A). He was subsequently indicted at the June 2021 term for attempted murder (count 1) and possession of a weapon during the commission of a violent crime (count 2) (2021-GS-23-003551). (R.p.768-769; p.772-773). Appellant was represented by Ashaley Boatwright, Esquire, and Respondent (the State) was represented by Assistant Solicitor Derek Polsinello of the Thirteenth Circuit Solicitor's Office. On January 5, 2023, before the commencement of trial, a hearing on Appellant's motion for immunity under the South Carolina Protection of Persons and Property Act (the Act)[1] was convened at the Greenville County Courthouse before the Honorable Alex Kinlaw, Jr. (R.p.1). At the close of that hearing, after taking testimony, reviewing the evidence submitted, and hearing arguments from both sides, the trial court found Appellant had failed to establish he was entitled to immunity under the Act by a preponderance of the evidence and denied his motion to dismiss the charges. (R.p.178, line 3-p.179, line 14).

On October 16-19, 2023, the case proceeded to trial before Judge Kinlaw and a jury. He was represented by Mr. Boatwright and William Robert Hellams, Esquire. After hearing the evidence and the trial court's charge on the law—which included a charge on self-defense—the jury found Appellant guilty beyond a reasonable doubt on all charges. (R.p.750-753; 760). He was sentenced by Judge Kinlaw to life imprisonment without the possibility of parole for attempted murder; five (5) years' concurrent imprisonment for possession of a weapon during the commission of a violent crime; and five (5) years' concurrent imprisonment for possession of a firearm by a person convicted of a violent crime. (R.p.760-765; 770-771; 774-778). Appellant

[1] (S.C. Code Ann. §§ 16-11-410 to -450) (2020) (the Act).

filed a notice of intent to appeal his conviction and sentence, and a brief in support of his appeal was filed by Deputy Chief Attorney for Capital Appeals David Alexander of the South Carolina Commission on Indigent Defense. This Brief of Respondent follows.

STATEMENT OF FACTS

At approximately 4 a.m. on July 4, 2020, Appellant was outside Club Dolce on White Horse Road in Greenville County, when he pulled a gun from the pocket of his pants and shot club security guard Monique Green (Victim) three times, which resulted in Victim needing emergency surgery. (R.p.153, lines 12-21). Immediately after the shooting, Appellant ran from the club, jumped a fence at the edge of the parking lot, got into a blue BMW, and was driven from the scene. He claimed he did not remember what happened to his gun after the shooting, but it was never recovered by the police. (R.p.70, line 15-p.75, line 4). Appellant was subsequently charged with possession of a firearm by a person convicted of a violent crime, attempted murder, and possession of a weapon during the commission of a violent crime. He moved for immunity from prosecution under the Act, but at the conclusion of a January 5, 2023, evidentiary hearing, the trial court denied his motion. (R.p.178, line 3-p.179, line 14). Appellant was subsequently taken to trial on October 16, 2023, and was ultimately found guilty of all charges. (R.p.760).

Pretrial Immunity Hearing: Preliminary Arguments

On January 5, 2023, prior to Appellant's case being called for trial, the trial court convened a "stand-your-ground" hearing to address Appellant's motion for immunity under the Act. (R.p.1; p.6). At the outset of the hearing, the solicitor moved for summary judgment and an immediate denial of immunity without the need for the court to take evidence, arguing Appellant should be "absolutely barred" under the "plain meaning" of the Act. He argued that where

Appellant was admittedly at a "club" rather than his dwelling, vehicle, or place of business, and was unlawfully in possession of a gun at the time of the shooting, immunity should simply be barred. The State noted the entire legislative intent of the Act was to protect law-abiding citizens—which Appellant was not. (R.p.6, line 21-p.11, line 14). Appellant responded by handing up a memorandum in support of his motion for immunity and arguing, primarily in reliance on *State v. Glenn*[2] and *State v. Burriss*,[3] that summary judgment was not appropriate where the court was required to conduct an analysis of the "proximate cause" or "causal connection" to the incident in regard to both the "unlawful activity" and "right to be" elements of Section 16-11-440(C) of the Code. (R.p.11, line 15-p.21, line 1). After hearing additional arguments from both sides, the trial court denied the State's motion for summary judgment and asked Appellant to begin presenting witnesses in support of his motion.[4] (R.p.21, line 2-p.33, line 23).

Pretrial Immunity Hearing: Appellant's Testimony

Pursuant to the procedures set forth in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), Appellant presented testimony and other evidence to the trial court in an effort to persuade the judge he should be granted immunity under the Act. First, Appellant took the stand to offer his own version of events in support of immunity. He claimed he shot Victim in response to an unprovoked attack outside of Club Dolce nightclub while talking to friends, when

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[2] *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019).

[3] *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999).

[4] Notably, Appellant improperly sought to shift the burden of proof at the immunity hearing by incorrectly asserting the State had the burden of proving proximate cause as an element of Section 16-11-440(C) "beyond a reasonable doubt." (R.p.27, line 24-p.28, line 25). *See State v. McCarty*, 437 S.C. 355, 373, 878 S.E.2d 902, 912 (2022) (noting the relevant inquiry is not merely whether there is a conflict in the evidence, but, rather, *whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence*) (emphasis added); *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."); *State v. Dennis*, 444 S.C. 353, 362-63, 907 S.E.2d 142, 147 (Ct. App. 2024) (recognizing circuit courts utilize a pretrial hearing to determine whether a defendant is entitled to immunity under the Act employing a preponderance of the evidence standard).

several security guards drew their weapons and shot him as he tried to walk away from them towards his vehicle. Appellant testified he first arrived at Club Dolce on his motorcycle sometime before 4 a.m. but left and later returned in his "450 dually truck" close to 4. He said when he first tried to park, a security guard told him he had to move because he was blocking traffic, so he moved to a different parking spot. Appellant claimed he got out and was standing in the parking lot talking to a group of friends for "maybe not even a minute" when one friend said, though he did not know what was going on, everyone should "walk off" and "don't look back." Appellant said he was scared so he looked over his shoulder as he walked away and "saw guns pointing at us, coming at us." Appellant testified he continued walking away intending to get behind a car when he suddenly got hit four times in the back. He described hearing gunshots and then his "back is being ripped apart." Appellant testified he then ducked down behind the car, turned around, pulled his gun from his pocket, and started shooting, hoping to get the attackers to stop shooting at him. He said he thought he was being ambushed and was "definitely scared." Appellant maintained he only shot back in hopes of stopping the attackers from shooting at him. He claimed that no one ever called him by his name or asked him to come to them before they started shooting. He also testified he never had his gun out and about, never pointed it at anybody, and never threatened to shoot anyone before he returned fire in response to the alleged attack. Appellant then authenticated photographs of his injuries and aerial representations of the scene and those photos were marked as Defendant's Exhibits 1-3 for identification. He next testified as to additional details regarding the incident while portions of the Club Dolce CCTV video from outside Club Dolce was played. (R.p.34-p.46; State's Exhibit 6). Defendant's Exhibits 1-3 were later admitted into evidence without objection. (R.p.123, lines 2-8).

On cross-examination, the solicitor continued playing portions of the CCTV video while questioning Appellant about the incident. Appellant denied knowing the club was closing when he arrived at 4 a.m. and that security was trying to get people out of the club at that time. He also denied flashing a gun at the security guard who asked him to move his truck. Appellant then admitted he was a convicted violent felon without a valid concealed weapons permit (CWP) at the time of the incident. He also admitted his gun was in his pocket and acknowledged his hands were in his pockets immediately before the exchange of gunfire. He denied, however, being told multiple times to get his hands out of his pockets—claiming there was loud music playing and he did not hear anything. (R.p.46-p.62).

Under further cross-examination, Appellant said he did not know exactly what he had been hit with before he returned fire, but acknowledged no bullet ever entered his flesh and that he did not need emergency surgery after the incident. He acknowledged shooting one of the security guards but did not know his name or how many times he shot him; however, Appellant admitted it was not the security guard he saw holding what he believed was a rifle. Appellant admitted running away after shooting Victim, but claimed it was to avoid getting shot again because people were still shooting at him. He also admitted this was the second time he had been involved in a club shooting. Appellant claimed that despite being convicted of assault and battery with intent to kill in 2006, he did not know that prior conviction prevented him from lawfully owning a gun the night he put it in his pocket and took it to Club Dolce. Returning to the video, Appellant described how he ran from the scene, jumped a fence behind the adjacent Chinese restaurant, and then went to the road seeking help. He said a blue BMW SUV stopped to pick him up and drove him away. Appellant said he did not know the driver, but was friends with the passenger, Kevin Dunham. He claimed he asked the driver to stop the car because he

wanted to talk to the police officers who began arriving at the scene, but the driver would not stop. Appellant testified he also wanted medical treatment, yet he continued to run because he was "delusional." He claimed he still does not know where the gun is and did not recall if he gave it to the driver, threw it in the woods later, or threw it out the window as they were driving. Appellant admitted that if he had stayed at his friend's house instead of returning to the club at 4 a.m., the shooting would not have happened; however, he insisted it still would have happened even if he did not illegally have a gun in his pocket. He said he would be surprised to hear the security guards were told he would be returning to the club with a gun in his possession. Appellant denied having a beef with anyone earlier that night, said he had not been in a fight, and said he was not looking to settle a score or seek out any particular individual when he returned to the club with his gun. (R.p.62-p.77; State's Exhibit 6).

Pretrial Immunity Hearing:
Videotaped Interview of Jail Dorm-mate Dwight Littles

As cross-examination of Appellant continued, the solicitor began playing a videotape of a law enforcement interview of Dwight Littles, a detainee who had spent time in the jail with Appellant prior to trial. Appellant initially objected to the State's use of the video, arguing "There's no witness here to testify as to this conversation. He's just putting in a video." (R.p.77, lines 13-18). The solicitor responded that it was no different from the previous questioning of Appellant based on other videos that had been played during the hearing. He argued that under Rule 104, SCRE, the rules of evidence do not apply because this was a pretrial hearing. The trial court agreed and allowed the cross-examination to proceed. (R.p.77, line 19-p.78, line 4). The State played the video for Appellant and briefly questioned him in regard to how Littles, who was not present, could possibly have known details about the incident unless Appellant had actually said what Littles claimed Appellant told him. (R.p.78, line 5-p.80, line 23). Towards

the end of the immunity hearing, after hearing from four additional defense witnesses, the State moved to admit State's Exhibit 3 into evidence. The trial court asked Appellant if there was any objection and Appellant responded: "No, Your Honor." The videotaped interview of Dwight Littles was then admitted into evidence. (R.p.151, lines 3-22).

As to the continued cross-examination, Appellant said he recognized the inmate in the orange jump suit as having been in jail with him, but did not know his name. Appellant said the man was not at the club the night of the shooting and the video was then played for Appellant in open court. It consisted of Littles recounting what he claimed was Appellant's statement to him, describing details about the shooting. When the video was done playing, Appellant confirmed Littles was not present at the incident scene. Appellant claimed Littles likely knew the details he knew simply from having seen Appellant's paperwork and not from anything Appellant said to him. Appellant claimed Littles must have read some of the details from the motion Appellant's attorney had prepared, and then must have tried to piece the rest together. He insisted you could tell Littles was lying. (R.p.76, line 5-p.80, line 23). At the end of his cross-examination, Appellant watched a videotape of his in-car interview with police during which he asked if they had caught the shooter yet. He claimed he was "out of it" and was not trying to throw law enforcement off the trail. (R.p.80, line 24-p.82, line 9; State's Exhibit 4).

On redirect examination, Appellant referred to the videotaped interview with Littles as "the jail house snitch video." He noted how the video evidence from the scene refuted one of Littles' primary claims—that Appellant said he shot first—which proved Littles lied. He noted it was common for a jail house snitch to try to come forward with evidence in an effort to get a better deal and testified Littles was clearly "not accurate in what he was saying." (R.p.83, line 18-p.84, line 17).

Pretrial Immunity Hearing: Additional Testimony

After completing his own testimony, Appellant called his friend Jewell Simpson to the stand. Simpson testified he was present in court while all the videos were played, and that he was at Club Dolce the night of the incident. He said he was in the small group of friends talking to Appellant in the parking lot on that night when he heard someone say: "don't turn around." Simpson said he did turn around and saw "the security guards coming with the guns," so he backed up. He testified Appellant started walking away and then the security guards shot at Appellant. Simpson testified the security guards said something to Appellant, like "hey," but he does not know exactly what they said because everyone was talking. He claimed they never said Appellant's name—only that they were yelling something at him. Simpson testified Appellant was not arguing with anyone or trying to fight anybody that night. He said he never saw Appellant with a gun in his hand or anywhere on him, and he did not see Appellant pull his gun out before the security guards shot him. (R.p.86-p.89). On cross-examination, Simpson admitted that despite claiming he saw the security guard shoot first, he never approached law enforcement to tell them he was there and what he saw. He also admitted having prior convictions for giving false information to police and carrying an unlawful weapon, and acknowledged doing federal prison time for conspiracy. (R.p.90-p.95).

Next, Appellant called Deputy Isaac McKenzie of the Greenville County Sheriff's Office (GCSO), to the stand. McKenzie testified he was involved in the investigation after the shooting and that he interviewed Javaris Barksdale, one of the Club Dolce security guards who was at the scene. He said Barksdale told him Victim and a second security guard who was carrying a bean-bag shotgun approached Appellant and gave loud verbal commands for him to get his hands out of his pocket and to quit reaching in his pocket, at which point the security officer fired two shots

from the shotgun before Appellant discharged his firearm. McKenzie testified he did not remember Barksdale saying he heard the guards tell Appellant to "put down the firearm," or "drop the gun," or use Appellant's name when ordering him to get his hands out of his pocket. (R.p.96-p.98).

Appellant then called GCSO Detective Shawn Cutting to the stand. Cutting was also involved in the investigation of the incident. He interviewed and took a written statement from Carlos Jenkins, the security guard with the bean-bag shotgun who fired at Appellant. Cutting read Jenkins' statement into the record, verbatim. In that statement, Jenkins said that close to closing time, a young lady told him to keep an eye on a guy in a silver pickup truck who was beefing with someone in the parking lot. Jenkins said he and "Green" [Victim] then approached Appellant and asked him multiple times to let them see his hands. At that point, Appellant removed a black handgun from his right pocket, which prompted Jenkins to fire two bean bag rounds at Appellant, followed by Appellant shooting at him and Victim. Cutting testified Jenkins did not say he and Victim approached Appellant because he had previously flashed a gun at Victim, rather, it was because the female patron warned them Appellant was beefing with somebody. (R.p.101-p.104).

Cutting testified he also interviewed Lamar James shortly after talking to Jenkins, but only had notes from that interview rather than a written statement. He said James told him the security guards initially approached Appellant because a female told Jenkins: "watch out for this guy," that "this guy was feuding with another guy that was at the club," and to "watch him because he was going to shoot somebody." James said Jenkins told Appellant to take his hands out of his pockets, at which point Appellant pulled a black semi-automatic pistol from his pocket

and got into a "shooting position." James said Appellant was told several times to drop the gun and when he refused, Jenkins fired his shotgun. (R.p.104-p.107).

Next, Appellant called GCSO Investigator Bryan Threlkeld to the stand. Threlkeld assisted Cutting with interviewing three people, including Jenkins. He testified Jenkins told them there had been minor altercations at the club that night, but not involving Appellant. Threlkeld testified Jenkins said he had been approached by a female who pointed out Appellant's vehicle, said he had a gun, and said Appellant "was here to do whatever." Jenkins said that when they approached Appellant, he had at least one hand in his pocket, so Jenkins ordered him to remove his hand. When Appellant did, he was holding a gun. Jenkins told him to drop the weapon, but Appellant refused and turned around, so Jenkins "fired a less than lethal rubber ball round from his shotgun." (R.p.111-p.114).

Finally, Appellant called GCSO Investigator Alvin Tracy King to the stand. King testified he was the lead investigator for the incident. He interviewed Victim and took a written statement, which he read verbatim into the record. In that statement, Victim said he was patrolling the parking lot at Club Dolce with James when a young lady approached them about a guy who had just pulled in, in a pickup truck. She told them he was a known troublemaker and to keep an eye on him. Victim said he watched Appellant circle the parking lot several times, and when Appellant parked in a spot blocking traffic, Victim approached the truck and told him he had to move. King testified Victim said Appellant then got mad, stated he was not blocking the road, and lifted a gun near his face and said Victim "was not the only one with a gun" before moving his truck. Victim said James claimed to have also seen the gun so Victim called Jenkins on the radio to tell him what had happened. Victim said Appellant was standing in the parking lot talking to a group of people when Appellant regrouped with Jenkins and they approached.

Victim said Jenkins began giving commands for Appellant to get on the ground and keep his hands out of his pockets, but when Appellant refused and started to reach in his pocket, Jenkins shot Appellant one time in the back with a bean-bag round. Victim said Appellant then began ducking behind cars and when Victim tried to cut him off, he saw Appellant with a gun in his hand, shooting in Victim's area. Victim pulled a gun and returned two shots before Victim was hit and ended up on the ground. (R.p.115-p.118). King acknowledged the stories provided by Victim, Jenkins, James, and Barksdale were a little different, but maintained it was entirely appropriate, under the circumstances they all described and the information they were given, for the security guards to approach Appellant in an attempt to get him to leave the club. King noted that, Appellant's actions in leaving the club, returning with a firearm, and circling the parking lot were consistent with him having had a beef with someone earlier and looking for them when he returned. Appellant attempted to get King to offer an opinion on whether Appellant's actions were reasonable after he had been shot in the back with the bean-bag gun; however, the State objected, arguing this was a determination that had to be made by the trial court in ruling on immunity. (R.p.118-p.141). On cross-examination, King identified each of the six State's Exhibits, and they were introduced into evidence without objection. (R.p.147-p.152).

After Appellant completed presenting evidence and rested, the State rested without calling any additional witnesses. (R.p.63-p.164).

Pretrial Immunity Hearing: Post-Evidentiary Arguments

At the conclusion of the pretrial immunity hearing, the trial court heard a closing argument from Appellant as to why he believed he was immune from prosecution under the Act. He argued immunity really boiled down to two things: the location of the incident [was he in a place he had a right to be] and his unlawful activity in carrying a firearm, and whether either or

both of those things were the proximate cause of the shooting. Appellant initially acknowledged he had the burden to prove all the necessary elements for immunity by a preponderance of the evidence. However, he then confused his immunity burden of proof with the burden of proof at trial, incorrectly arguing that once he merely asserted self-defense, the burden shifted to the State to disprove the elements of self-defense beyond a reasonable doubt. Appellant proceeded to challenge the notion that his unlawfully carrying a handgun was a proximate cause of the shooting, claiming Jenkins shot him in the back simply because he had his hands in his pockets and wasn't listening to Jenkins' commands. Ignoring the law enforcement testimony relaying accounts from multiple eyewitnesses who saw Appellant draw his gun before Jenkins fired his non-lethal shotgun, Appellant argued Jenkins gave inconsistent accounts to different people and appeared to be "scrambling, trying to figure out what he can say so that he doesn't get arrested, which is what should have happened in this case." (R.p.164, line 4-p.166, line 17). Appellant next argued he had proven the elements of self-defense by a preponderance of the evidence by showing he was not at fault for bringing on the difficulty, that he had a reasonable fear he was in imminent danger of death or great bodily injury, and that he had no other probable means of escape or avoiding the danger than to return fire. Finally, Appellant argued that even if the trial court found he had flashed his gun at Victim in a threatening way prior to the shooting, he effectively withdrew from the confrontation in good faith when he then moved his truck to another parking space. For all of these reasons, he argued he was entitled to a grant of immunity under the Act. (R.p.166, line 18-p.170, line 13).

In response, the State argued Appellant was not entitled to immunity under the terms of the Act because he failed to prove all of the necessary elements for each provision. The solicitor noted the language in the Act setting forth the intent and findings of the General Assembly that:

". . . it is proper for *law-abiding citizens* to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action in the defense of themselves and others." S.C. Code Ann. § 16-11-420(B) (emphasis added). He argued Appellant was simply not acting as a "law-abiding citizen" when he shot Victim. The State then addressed the two possible avenues Appellant was pursuing in his attempt to prove immunity: (1) common law self-defense as "another applicable provision law" under subsection (A); or (2) responding when "attacked in another place where he has a right to be" under subsection (C). In regard to self-defense and subsection (A), the State primarily argued Appellant failed to show: (1) he was without fault in bringing on the difficulty and (2) he had no other possible means of avoiding the danger. In regard to subsection (C), the State continued to focus on Appellant's unlawful activity of being in possession of a firearm, a firearm he: (1) brought to a crowded nightclub at 4 a.m. (either back to the club or to the club for the first time after he retrieved it from a friend's house) in order to settle a beef and possibly "shoot somebody;" (2) showed to a club security guard in the parking lot when he got mad after returning and being asked to move his truck; (3) concealed in his pocket where his hands stayed despite multiple commands from security guards to show his hands when he was approached; and (4) ultimately pulled from his pocket before Jenkins shot Appellant with bean-bag rounds from a shotgun. The State neither relied upon nor even referenced the videotaped interview with Littles during its closing argument in opposition to a grant of immunity. (R.p.170-p.178).

Pretrial Immunity Hearing: Trial Court's Ruling

After hearing from the parties, the trial court quoted language from subsection (C) of the statute describing the elements needed to prove immunity, and then orally ruled as follows:

> After listening to the testimony of both sides, the Court is inclined to make the following finding; The Court finds that the Defendant

> has not proven self-defense by a preponderance of the evidence. The Court would, therefore, deny him immunity and would not dismiss the current charge pending against him. That'll be the ruling of the Court.

(R.p.179, lines 9-14). The trial court then asked the State to prepare a proposed order. (R.p.179, lines 15-25).

Four days later, on January 9, 2023, the trial court issued an eight-page "Order Denying Immunity." The first paragraph of the Order concludes: "Based on the testimony and evidence presented by both sides during the hearing, and *after weighing the credibility of all witnesses*, the Court *finds that the facts as set forth herein* have been established by a preponderance of the evidence." (R.p.182) (emphasis added). The trial court then proceeded to find a litany of facts, mostly supporting the State's theory of the incident, before conducting a detailed written analysis of how those facts supported or failed to support the elements of immunity described in subsection (C) of the Act and/or the common-law elements of self-defense implicated by subsection (A) of the Act. The trial court ultimately concluded Appellant had failed to carry his burden of proof under either subsection (C) or subsection (A) of the Act by finding as follows:

> Based on the factual findings and legal analysis set forth herein, the Court finds that the Defendant failed to prove the fourth element of self-defense by a preponderance of the evidence. Moreover, under S.C. Code § 16-11-440(C), the Defendant failed to establish by a preponderance of the evidence that he reasonably believed it was necessary to use deadly force to prevent death or great bodily injury to himself or to prevent the commission of a violent crime as defined in S.C. Code § 16-1-60.

(R.p.188). Although the Order ended with these broad conclusions, the trial court's overall analysis concluded Appellant failed to carry his burden of proof in four particular respects. finding: (1) "the defendant was engaged in an unlawful activity, thus barring the defendant from immunity;" (2) "the defendant was at fault in brin[g]ing on the difficulty upon himself;" (3) "the

defendant did have other probable or alternative means of avoiding the danger; and (4) "the defendant failed to establish by a preponderance of the evidence that he reasonably believed it was necessary to use deadly force to prevent death or great bodily injury to himself or to prevent the commission of a violent crime." (R.p.186-p.188). Similarly, the trial court effectively concluded Appellant's decision to unlawfully possess a firearm was indeed a *proximate cause* of the shooting when it found:

> Reasonably, had the defendant chose to stay at his friend's residence, or, had the defendant even chose to come back to the club, without the gun in his pocket, this shooting arguably likely would have never happened, and thereby could have been prevented by the defendant. According to State witnesses, *the defendant flashed a gun at club security personnel* around 4:05 AM, and club security personnel received information that *this defendant was coming back to the club, with a gun*, looking to settle some type of score with someone. Therefore, *it is reasonable to conclude that the defendant's own decisions and actions that early morning were a direct consequence of the events unfolding*, and that the defendant was at fault in brin[g]ing on the difficulty upon himself.

(R.p.188) (emphasis added).

Trial

On October 16-19, 2023, the case proceeded to trial before Judge Kinlaw and a jury. After hearing the evidence and the trial court's charge on the law—which included a charge on self-defense—the jury found Appellant guilty of all charges. (R.p.750-p.753; p.760). He was sentenced by Judge Kinlaw to life imprisonment without the possibility of parole for attempted murder; five (5) years' concurrent imprisonment for possession of a weapon during the commission of a violent crime; and five (5) years' concurrent imprisonment for possession of a firearm by a person convicted of a violent crime. (R.p.760-p.765; p.770-p.771; p.774-p.778).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard. *State v. McCarty*, 437 S.C. 355, 365, 878 S.E.2d 902, 908 (2022); *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019). The appellate court, in turn, reviews an immunity determination for an abuse of discretion. *Id.*; *State v. Curry*, 406 S.C. 364, 370,752 S.E.2d 263, 266 (2013). "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." *McCarty*, 437 at 365, 878 S.E.2d at 908 (2022) (quoting *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)); *see also Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.'" (quoting *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); *see also State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) ("The trial court will only be reversed when there is no evidence to support the ruling below.").

ARGUMENT

I.

Appellant's argument that the trial court erred in admitting the videotaped interview of a jail inmate from Appellant's dorm [Dwight Littles] during which Littles recounted Appellant's alleged statement describing the shooting for which he was on trial, is not preserved for appellate review because Appellant made no objection when the State introduced the Littles video into evidence at the immunity hearing. In any event, the trial court properly allowed use of Appellant's statement to Littles because: (1) the decision to not strictly follow the rules of evidence was within the trial court's broad discretion under the circumstances of an immunity hearing; and (2) the statement was not hearsay because (a) it was not offered to prove the truth of the matter asserted and (b) it constituted a prior inconsistent statement under Rule 801(d)(1), SCRE. Finally, any possible error in allowing the State to use the Littles video to cross-examine Appellant was harmless in this case because Appellant suffered no prejudice where the interview could not have reasonably contributed to the trial court's denial of immunity.

Appellant argues the trial court erred in admitting the videotaped interview of a jail inmate [Dwight Littles] who shared his dorm, an interview during which Littles recounted what he claimed was Appellant's statement to him, wherein Appellant described details about the shooting for which Appellant was now on trial. He particularly complains about the trial court's ruling that the South Carolina Rules of Evidence do not apply to immunity hearings, arguing this was the improper basis on which the court allowed the State to cross-examine Appellant about his alleged statement to Littles. Appellant acknowledges "Judge Kinlaw does not mention the Littles video by name," but argues the trial court's reference to "the State's evidence" suggests the "the judge credited the Littles video with finding Appellant brought upon the difficulty by coming to the club." (Brief of Appellant, p.7-p.11). The State disagrees and submits this argument should be denied and dismissed for several reasons.

First and foremost, the State submits this argument is not preserved for appellate review because Appellant affirmatively stated he had no objection when the Littles video was moved

into evidence. In any event, even if somehow preserved, the trial court's discretionary decision to allow use of the Littles video did not constitute reversible error because: (1) an immunity hearing could reasonably be construed as a proceeding in the nature of a preliminary hearing—a hearing during which the rules of evidence explicitly do not apply under Rule 1101(d)(3), SCRE; (2) the statement was not hearsay because (a) it was not offered to prove the truth of the matter asserted and (b) it constituted a prior inconsistent statement under Rule 801(d)(1), SCRE; (3) Appellant suffered no prejudice where the trial court rather than a jury was reviewing the evidence, acting as the fact-finder, and ruling on immunity under the appropriate burden of proof; and (4) Appellant suffered no prejudice where (a) the video evidence from the scene conclusively contradicted the only damaging claims recounted by Littles and (b) the State did not reference or mention the Littles video in arguing immunity should be denied. For all of these reasons, this argument should be rejected and the denial of immunity as well as Appellant's convictions should be affirmed.

Issue Preservation

In order to preserve a trial error for appellate review, the appellant's objection at [the hearing] must be contemporaneous to the introduction of the objectionable evidence. *State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999). If no evidence is offered between a preliminary ruling and the admission of the evidence ruled upon, then "the decision is final" and there is no need for an additional objection. *State v. Morales*, 439 S.C. 600, 606–07, 889 S.E.2d 551, 555 (2023) (quoting *State v. Jones*, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021)). When additional evidence is offered in the meantime, however, an additional, contemporaneous objection is usually required "because 'the evidence developed during [the interim] may warrant a change in the ruling.'" *Morales*, 439 S.C. at 607,

889 S.E.2d at 555 (quoting *Jones* at 144, 866 S.E.2d at 561 which in turn was quoting *State v. Mueller*, 319 S.C. 266, 268, 460 S.E.2d 409, 410 (Ct. App. 1995)).

Here, the trial court's ruling—to permit the State to play the Littles video before questioning Appellant about the statement he allegedly made to Littles—was made during the State's cross-examination of Appellant. It was entirely consistent with other actions permitted by the trial court that did not strictly comply with the rules of evidence, like allowing Appellant to play portions of the security camera video during direct examination of defense witness and having law enforcement officers read witness statements into the record. Although Appellant initially objected to the State's use of the video (R.p.77, lines 13-18), the State did not move to admit the video into evidence at that time. Indeed, it was not until *after* Appellant's quite effective testimony regarding the Littles video during redirect examination and *after* four intervening witnesses had testified for the defense that the State moved to admit the Littles video [State's Exhibit 3] into evidence. The trial court asked Appellant if there was any objection and Appellant responded: "No, Your Honor." He made no reference to his prior objection or the State's previous use of the Littles video. The Littles video was then admitted into evidence. (R.p.151, lines 3-22). Because Appellant failed to make a contemporaneous objection to the trial court's decision to admit the Littles video into evidence when the State moved that it be admitted, the argument was waived and this issue is unpreserved for appellate review. *Morales*; *Byers*; *Aldret*.

Rules of Evidence - Applicability

Despite trial counsel's clear decision to abandon any objection to the admission of the Littles video, on appeal Appellant complains that: "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." (Brief of Appellant, p.4). He challenges the solicitor's and trial court's references to Rule 104, SCRE, and asks this Court to imagine a parade of horribles were the rules of evidence not applicable to immunity hearings. (Brief of Appellant, p.6-p.7). Appellant acknowledges the solicitor "may have also confused 'preliminary hearing' in Rule 1101(d)(3) with 'pretrial hearing" (Brief of Appellant, p.6); however, he fails to address why Rule 1101 might not render the rules of evidence inapplicable to a miscellaneous proceeding like a pretrial immunity hearing. And while Appellant "does not expect the [State] to contest the application of the Rules of Evidence in immunity hearings," (Brief of Appellant, p.7), there are parallel circumstances and considerations of judicial economy which suggest the trial court may have acted well within its wide discretion in determining the rules need not strictly apply, particularly where Appellant was given a full and fair immunity hearing where both parties relied on other evidence that would otherwise not have been admissible under those very same rules.

The rules of evidence provide in relevant part:

> (d) **Rules Inapplicable.** The rules (other than with respect to privileges) do not apply to the following situations.
>
> . . . .
>
> (3) *Miscellaneous Proceedings.* Proceedings for extradition; preliminary hearings in criminal cases; sentencing (except in the penalty phase of capital trials as required by statute); dispositional hearings in juvenile delinquency matters, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

Rule 1101(d), SCRE (emphasis added). Preliminary hearings in criminal cases are held before a magistrate, who must determine if there is probable cause to support the arrest. *See State v. Ramsey*, 381 S.C. 375, 376–77, 673 S.E.2d 428, 429 (2009) (noting the purpose of a preliminary

examination is to determine whether probable cause exists to believe that the defendant committed the crime and to warrant the defendant's subsequent trial). The South Carolina Rules of Criminal Procedure provide: "If probable cause be found by the magistrate, the defendant shall be bound over to the Court of General Sessions. If there be a lack of probable cause, the defendant shall be discharged . . . ." Rule 2(c), SCRCrimP. Thus, the magistrate court functions in a similar fashion to a judge of the court of general sessions in an immunity hearing, such that a denial of immunity means the case is bound over for trial and a grant of immunity means the defendant's charges are discharged from prosecution. Where the South Carolina Rules of Evidence explicitly do not apply to preliminary hearings, it is an entirely reasonable extension of the non-exhaustive list of examples of "miscellaneous proceedings" in Rule 1101(d)(3) to conclude they also should not apply to immunity hearings before the court of general sessions. *Cf. Hollis v. Lynch,* 827 F.3d 436, 443 (5th Cir. 2016) ("The statutory use of a non-exhaustive list of illustrative examples does not exclude items not expressly specified."); *United States v. Hawley*, 919 F.3d 252, 256 (4th Cir. 2019) (noting the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle).

Additionally, where the trial court is the sole finder of fact, it is well-suited to weigh whatever evidence is presented and to make relevant inferences in regard to the comparative weight to assign to such evidence in determining whether a defendant has carried his or her burden of proving entitlement to immunity. Finally, dispensing with a strict application of the rules of evidence would allow for an immunity hearing to proceed more quickly and efficiently so the trial court could move more directly to its analysis under the preponderance of evidence standard without getting bogged down with, as Appellant describes in another context, "time-wasting objections."

The State acknowledges this is a novel proposition and that this Court has recently suggested the Rules of Evidence *do* apply to immunity hearings. *See State v. Dennis*, 444 S.C. 353, 368, 907 S.E.2d 142, 150 (Ct. App. 2024), *petition for certiorari* filed December 9, 2024, ("While the use of contemporaneous, live testimony is the proper mode of evidence on the remand of this case, neither party is precluded from requesting to use prior sworn testimony if it can prove under the Rules of Evidence that doing so is necessary."). Nevertheless, the issue of whether a circuit court judge, acting as the finder of fact in a pretrial matter that will result in either dismissal of the prosecution or the case proceeding to trial, should be shackled by strict adherence to the rules of evidence where its decision is akin, at least in result, to the decision of a magistrate in a preliminary hearing, is effectively an unresolved issue of interest this Court may wish to address.

Rules of Evidence – If Applied

"'Hearsay'" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Here, the Littles video was clearly not offered to prove the truth of what Littles or Appellant asserted—the details of the offense provided by Appellant—particularly where both parties to the hearing knew the video evidence from the scene was inconsistent with those assertions. Instead, it was offered in hopes of impeaching Appellant's testimony by showing inconsistencies in the stories he told different people at different times regarding the details of the offense. As such, the Littles video was not hearsay. Alternatively, even if the statement technically meets the definition of hearsay in subsection (c), the Littles video was not hearsay because it was used as a prior statement by Appellant that was inconsistent with Appellant's testimony at the immunity hearing. See Rule 801(d)(1)(A), SCRE ("A statement is not hearsay if

. . . The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony . . ."). Again, under such circumstances, Appellant's alleged statement to Littles was not hearsay and was admissible. Whatever the case, as argued below, if the Littles video is considered excludable hearsay, its admission was nonetheless non-prejudicial such that the trial court's ruling does not constitute reversible error.

No General Prejudice – No Jury

The overarching purpose of the South Carolina Rules of Evidence is described in Rule 102, which provides: "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." Rule 102, SCRE. The rules then focus on preventing *jurors* from hearing evidence which might suggest a decision on an improper basis. *See, e.g.,* Rule 103(c), SCRE. ("In jury cases, proceedings shall be conducted, to the extent practicable, so as *to prevent inadmissible evidence from being suggested to the jury by any means*, such as making statements or offers of proof or asking questions in the hearing of the jury.") (emphasis added); *see also State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (explaining that relevant evidence may be kept from the jury due to unfair prejudice, and that 'unfair prejudice' means an undue tendency to suggest a decision on an improper basis).

As argued above, where the trial court is acting as the sole fact-finder, it is well-suited to weigh whatever evidence is presented and to make relevant inferences in regard to the comparative weight to assign to such evidence in determining whether a defendant has carried his or her burden of proving entitlement to immunity. Since a primary goal of the rules of

evidence is to shield the jury from hearing evidence which might lead them to determine a case on an improper basis, that goal is not served by shielding a learned trial judge in the same fashion. Such concerns about prejudice have very little application to a circuit court judge acting alone, particularly where any objectionable evidence, proffers, etc., would be made in front of the same person who is rendering the ultimate decision. This is presumably the very reason the rules of evidence do not apply to probation revocation proceedings and other miscellaneous proceedings where a jury is not present. Rule 1101(d)(3), SCRE. As a general proposition, it is simply hard to imagine how either a criminal defendant or the State would suffer measurable prejudice from a trial court's failure to strictly adhere to the rules of evidence at an immunity hearing.

No Specific Prejudice – Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Only errors so substantial that they result in a [decision] which would not otherwise have been rendered require reversal. *State v. Jolly,* 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991). "A harmless error analysis is contextual and specific to the circumstances of the case." *State v. Byers*, 392 S.C. 438, 447, 447–48, 710 S.E.2d 55, 60 (2011). "No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the [proceeding]." *Id.* at 447–48, 710 S.E.2d at 60 (quoting *State v. Reeves*, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990)). A defendant seeking reversal based on error in admission of evidence has the burden of showing that evidence was prejudicial. *State v. McElveen,* 280 S.C. 325, 327, 313 S.E.2d 298, 299 (1984).

The State submits any error in the admission or use of the Littles video for cross-examination was harmless, first, because Appellant effectively nullified any possible prejudice during his redirect examination and, second, because Littles' comments on the video were insubstantial in view of the evidence presented of Appellant's failure to prove entitlement to immunity, such that it could not reasonably have affected the result of the immunity hearing. *See State v. Watts*, 321 S.C. 158, 467 S.E.2d 272 (Ct. App. 1996) (stating that error is harmless beyond a reasonable doubt if it does not contribute to the [decision]). On redirect examination, Appellant referred to the videotaped interview with Littles as "the jail house snitch video." He noted how the video evidence from the scene directly refuted one of Littles' primary claims—that Appellant said he shot first—which proved Littles lied. He noted it was common for a jail house snitch to try to come forward with evidence in an effort to get a better deal and testified Littles was clearly "not accurate in what he was saying." (R.p.83, line 18-p.84, line 17). In regard to prejudice, these efforts effectively rendered the Littles video either meaningless or even detrimental to the State's case in response to the claim of immunity.

Furthermore, the State did not highlight or even mention the Littles video in its closing argument, and the trial court did not reference it in its ruling denying immunity. Thus, any error in admitting the Littles video was non-prejudicial and harmless. Even if the Littles video was improperly admitted, Appellant has not shown the requisite prejudice to support reversal of the denial of immunity. *State v. Price*, 368 S.C. at 499, 629 S.E.2d at 366. For all of these reasons, this argument should be denied and dismissed, and the denial of immunity under the Act as well as Appellant's convictions should be affirmed.

II.

The trial court properly found Appellant was *not* entitled to immunity from criminal prosecution under the Protection of Persons and Property Act because *he failed to carry his burden of proving by a preponderance of the evidence that*: (1) he was not at fault in bringing on the difficulty; (2) he had no other means to avoid the danger than to act as he did; (3) his admitted engagement in an unlawful activity was not a proximate cause of the incident; and (4) he reasonably believed repeatedly shooting the victim was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime.

Appellant argues the trial court erred in denying him immunity from prosecution on grounds that he was illegally carrying a handgun and that he failed to avoid the difficulty, and that as a result he is entitled to a finding of immunity or, at a minimum, a new immunity hearing. (Brief of Appellant, p.8). He claims the trial court's order "is riddled with legal errors" that "normally would require a new immunity hearing." (Brief of Appellant, p.20). First, Appellant argues the trial court did not conduct the required *proximate cause* analysis before concluding his unlawful activity precluded immunity under the Act. He contends the trial court instead "uncritically accepted the solicitor's wrong argument that just because [Appellant] was a convicted felon and lacked a concealed weapons permit he could not qualify for immunity." (Brief of Appellant, p.20-p.22). Appellant argues that "had the Court applied *Glenn* and conducted a proximate cause analysis, it could not have found [he] was barred from immunity." (Brief of Appellant, p.23). Next, Appellant argues the trial court holding that he was at fault for bringing on the difficulty: (1) "makes no sense because nothing is wrong with leaving a place and then returning;" and (2) is unfounded where "no evidence in the record . . . supports the conclusion [he] left the club without a gun and returned with a gun." (Brief of Appellant, p.23). Appellant then complains the trial court erred in "saddling [him] with a duty to retreat," arguing that because "he was not acting unlawfully" and was "actually retreating" when he was shot.

(Brief of Appellant, p.25). Finally, Appellant argues the trial court's finding that he failed to prove he reasonably believed it was necessary to use deadly force under the circumstances constituted error because the court gave no reasons or facts for this conclusion. (Brief of Appellant, p.25-p.26).

The State disagrees and respectfully submits each of Appellant's arguments is either misplaced or fails to adequately recognize the evidence and findings of fact that support the trial court's conclusions that he failed to carry his burden by proving entitlement to immunity by a preponderance of the evidence. The State submits Appellant's arguments should be rejected under this Court's standard of review. In this case, the trial court followed the appropriate procedure under rulings from this Court and our supreme court: holding a pretrial hearing, evaluating the credibility of the witnesses, weighing the evidence, and ultimately finding Appellant did not carry his burden of proving he was entitled to immunity under the Act. It then issued a detailed written order addressing Appellant's failure to establish entitlement to immunity under any provisions of the Act. The trial court's findings that Appellant failed to carry his burden of proving two elements of self-defense under subsection 16-11-440(A) and two elements of subsection 16-11-440(C) have evidentiary support and are not controlled by errors of law. The case was properly submitted to the jury, with the claim of self-defense being fully presented and considered, and the State having to disprove at least one element of self-defense beyond a reasonable doubt. The trial judge's pretrial immunity ruling should be affirmed and Appellant's convictions should stand. If this court disagrees and concludes the ruling was not detailed enough to enable adequate appellate review, then the matter should be remanded to the trial court for further proceedings. *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022).

Law

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act (the Act) to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. *Glenn*, 429 S.C. at 117, 838 S.E.2d at 495; S.C. Code Ann. § 16-11-450 (2020). The Act codified the common law Castle Doctrine and extended its reach. *Id.*; S.C. Code Ann. § 16-11-420(A) (2020). Under the Castle Doctrine, one attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense. *Glenn*, 429 S.C. at 117, 838 S.E.2d at 495-96 (citing *State v. Jones*, 416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016)). The Legislature adopted the Act based on its finding that "no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." *Id.*; S.C. Code Ann. § 16-11-420(E) (2020).

A claim of immunity under the Act must be determined pretrial and the defendant has the burden of proving entitlement to immunity by a preponderance of the evidence. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496; *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). Specifically, the immunity section of the Act provides:

> A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2020) (emphasis added). Our supreme court has acknowledged that "another applicable provision of law" includes the common law of self-defense. *Glenn*, 429 S.C. at 117, 838 S.E.2d at 496; *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). This means a defendant may seek immunity from prosecution under the Act by demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496. For immunity claims under this theory, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. *Id.* Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. *Id.* There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Glenn, 429 S.C. at 116, 838 S.E.2d at 495; *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person's fear was reasonable under certain circumstances. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496; S.C. Code Ann. § 16-11-440(A) (2020). The presumption of subsection (A) does not apply, however, if the victim has an equal right to be in the dwelling or residence. *Id.*; *Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266). Similarly, in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because that provision was enacted to extend the protections of the Castle Doctrine to " '[ ]other place[s] where he has a right to be.' " *Glenn*, 429 S.C. at 118-19, 838 S.E.2d at 496; *Scott*, 424 S.C. at 475, 819 S.E.2d at 121 (quoting S.C. Code Ann. § 16-11-440(C)). The section provides:

> A person who is not engaged in an unlawful activity and *who is attacked in another place where he has a right to be*, including, but not limited to, his place of business, 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 or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C) (2020) (emphasis added). Where the section is applicable, it replaces the duty to retreat element required to establish self-defense. *Glenn*, 429 S.C. at 119, 838 S.E.2d at 497; *Curry*, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4.

Generally, a defendant will be defaulted into satisfying subsection (C) when the Castle Doctrine does not apply, or he cannot otherwise show he was excused from the duty to retreat. *Glenn*, 429 S.C. at 119, 838 S.E.2d at 497. In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged

in an unlawful activity and was attacked in another place where he had a right to be. *Id.*; S.C. Code Ann. § 16-11-440(C) (Supp. 2020).

Our supreme court recognized in *Glenn* and *Jones* the irrationality of foreclosing immunity based on the location of the incident provoking the use of self-defense. *Glenn*, 429 S.C. at 119, 838 S.E.2d at 497; *Jones*, 416 S.C. at 297, 786 S.E.2d at 139 ("[W]e find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction."). Similarly, analyzing a defendant's "right to be" in a place where he is attacked under section 16-11-440(C) without considering *proximate cause* or a *causal connection* to the incident leaves an innocent person's ability to seek the Act's protection up to happenstance, which the supreme court concluded was not the intent of the Legislature. *Glenn*, 429 S.C. at 119-20, 838 S.E.2d at 497 (emphasis added). Indeed, to bar a victim of crime from claiming immunity based on a hyper-technical reading of the statute would lead to absurd results when his presence in the place he was attacked had no relation to the incident itself. *Glenn*, 429 S.C. at 120, 838 S.E.2d at 497. In addition, the supreme court found a proximate cause analysis must also be applied to the unlawful activity element of subsection (C). *Id.*

Analysis / Discussion

As an undergirding principle, the legislative intent to significantly restrict when a court may grant pretrial immunity for the use of deadly force is evident when considered in the context of the principles of self-defense upon which the Act is founded. Prosecutors are already imbued with broad discretion to decline to prosecute where they determine the circumstances of the case do not merit pursuit of criminal charges. *Ex parte Littlefield*, 343 S.C. 212, 218-19, 540 S.E.2d 81, 84 (2000). Also, individuals may avail themselves of the common law Castle Doctrine and

the common law defenses of habitation, of others, and self-defense in the event of a trial. Granting an individual immunity from prosecution rather than letting a jury determine whether the State has disproven self-defense beyond a reasonable doubt is an extreme result and should occur only in circumstances where a defendant has adequately carried his burden of proof as to each and every aspect of the Act as determined by the trial court. Any other result would be absurd and would lead to a society akin to the wild-wild-west, where an individual in an altercation can shoot first, and if he kills another person, attempt to justify his actions by giving self-serving facts which cannot be contested by the person who has been killed. Even where a person fails to convince the trial judge of his entitlement to immunity under the Act, he may still be able to rely on self-defense before the jury where the State has the burden of proof. Thus, a pretrial denial of immunity does not eliminate the presumption of innocence or the State's high burden of proof for a criminal conviction. Here, the trial court properly considered whether Appellant carried his burden of proving, by a preponderance of the evidence, his entitlement to immunity when ruling on his request, and that ruling should be affirmed. It did so with specific findings which enable this Court to undertake its appellate review. *Compare State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022) (remanding for further proceedings where the circuit court improperly abdicated its role as fact-finder to determine defendant's entitlement to immunity under the Act because there were no specific findings to enable the appellate court to undertake its appellate review).

In this case, the trial court followed the appropriate procedure under rulings from this Court and our supreme court—holding a pretrial hearing, evaluating the credibility of the witnesses and weighing the evidence, and ultimately finding Appellant did not carry his burden of proving he was entitled to immunity under the Act. The trial court issued a detailed written

order, ultimately concluding Appellant: (1) failed to carry his burden of proving the four necessary elements of self-defense under section 16-11-450(A) as "another applicable provision of law" and also (2) failed to carry his burden of proving the necessary statutory elements under section 16-11-450(C). In addition to: "weighing the credibility of all witnesses" the trial court detailed findings of fact which supported the denial of immunity for multiple reasons. Appellant's arguments to the contrary simply cannot prevail under this Court's standard of review. The trial court's findings that Appellant failed to carry his burden of proving two elements of self-defense under section 16-11-440(A) and failed to carry his burden of proving two elements needed for immunity under section 16-11-440(C) have evidentiary support and are not controlled by errors of law. They should be affirmed.

In its Order denying immunity, the trial court found the following salient "**FACTS**:"

> (1) "the defendant got into a verbal argument with an unknown patron earlier that night at the club, left the club on his motorcycle, came back to the club in his truck with a gun in his possession, looking to settle a "beef" with someone;" (2) "around 4:05 AM while circling the club in his pickup truck, the defendant flashed a gun at security officer/victim Monique Green, and stated '*you are not the only one with a gun*;'" (3) "prior to this July 4, 2020 shooting, this defendant was a convicted violent felon pursuant to South Carolina and Federal Law;" (4) "defendant was a convicted violent felon, unlawfully in possession of a weapon when he arrived at the club around 4AM;" (5) "the defendant is seen walking to a group of individuals around 4:07 AM, with his hands in and/or near his short pockets;" (6) "having been tipped off by other club patrons . . . club security intended to approach this defendant, escort him away from the individuals and to his truck, as the club was closing at 4:00 AM, know this defendant had a handgun in his pocket and was looking to settle [a] "beef" with someone;" (7) "while club security was escorting the defendant away from the group, this defendant had his hands in his short pockets;" (8) "Carlos Jenkins and club security personnel . . . gave multiple orders for the defendant to take his hands out of his pocket, knowing that the defendant had a gun in his pockets and . . . was looking to settle "beef" with someone;" (9)

> "multiple commands were given to the defendant to take his hands out of his pockets. The defendant did not comply;" (10) "Carolos Jenkins and/or other club personal [sic] thought that this defendant was clutching his gun in his shorts pocket, and was going to take it out;" (11) "after the shooting, the defendant is seeing [sic] running away from the scene . . . jumping a barbed wire fence, and then getting into a blue BMW SUV, in which the Blue BMW SUV let police on a high speed chase/pursuit, which lasted several minutes, and ultimately ended in a dead end of a trailer park, in which this defendant is seen on in-car camera getting out of the Blue BMW SUV, and running/continuing to flee/evade law enforcement."

(R.p.182-p.184; State's Exhibits 2 and 4). These factual findings were supported by evidence presented at the hearing, including the testimony of witnesses, security camera video footage from the club, and in-car videos of the car chase and arrest. Thus, there was ample evidence to support each of the dispositive findings described below.

Self-Defense: At Fault for Bringing on the Difficulty

The trial court concluded Appellant did not prove he was "not without fault in bringing on the difficulty." This was based on factual findings that: (1) Appellant, after initially having left the club, returned with a gun in his possession, (2) security guards had been told Appellant was coming back to the club, with a gun, looking to settle a beef with someone, and (3) Appellant did in fact return to the club where he flashed his gun at a security guard. This certainly constitutes ample evidence to support the finding "that the defendant was at fault in brin[g]ing on the difficulty upon himself," especially where the trial court also found Appellant refused to take his hands out of his pockets, where the gun was concealed, despite multiple commands to do so.

Appellant repeatedly takes issue with what he claims was the trial court's finding he "left the club without a gun and returned with a gun," arguing that finding was based in part on the

"improperly admitted Littles video." (Brief of Appellant, p.23). Yet, the trial court made no specific finding he had no gun when he initially left—likely because whether he had the gun before he left is of little import. Instead, the trial court properly focused on Appellant's act of returning to the club to settle a beef, while carrying an unlawfully possessed and concealed gun which he flashed at a security guard and taunted with the statement that he was not the only one with a gun. Whether he had the gun before did not seem to significantly inform the trial court's analysis—an analysis that appropriately concluded Appellant was at fault in brining on the difficulty.

Self-Defense: Duty to Retreat

The trial court concluded Appellant did not prove he had no other probable or alternative means of avoiding the danger—a duty to retreat. This was based on similar findings about bringing on the difficulty as well as the findings that Appellant: (1) could have chosen to stay home after initially leaving the club or (2) could have returned to the club without bringing a gun which he unlawfully concealed in his pocket. This certainly constitutes ample evidence to support the finding "the defendant could have avoided the danger." As noted by the trial court, Appellant could have avoided the danger merely by choosing to do one of these two things.

Appellant claims "because he was not acting unlawfully, he had no duty to retreat." (Brief of Appellant, p.25). Yet, the duty to retreat is an element a defendant would need to establish to justify self-defense under subsection (A). It is a separate inquiry from the "not engaged in an unlawful activity" element for establishing immunity under subsection (C). Indeed, the trial court arrived at its consideration of the elements of subsection (C) in part because Appellant failed to prove the duty to retreat element of self-defense. Rejecting self-defense as "another applicable provision of law" that could justify immunity because Appellant

failed to meet the duty to retreat was an entirely appropriate and necessary step of the analysis by the trial court. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496. That analysis appropriately concluded Appellant had a duty to retreat under a standard self-defense case.

Section 16-11-440(C): Unlawful Activity

The trial court concluded Appellant failed to prove he was *not* engaged in an unlawful activity which was a proximate cause of the shooting, which barred him from immunity under section 16-11-440(C). This was based on findings that: (1) Appellant was a convicted felon barred from lawfully possessing a firearm; (2) Appellant did not have a valid concealed weapons permit; (3) Appellant, after initially having left the club, returned with a gun in his possession, (4) security guards had been told Appellant was coming back to the club, with a gun, looking to settle a beef with someone, and (5) Appellant did in fact return to the club where he flashed his gun at a security guard. Although the trial court did not explicitly use the term "proximate cause," the enumerated findings certainly constitute ample evidence to support the causal connection when finding "the defendant was engaged in an unlawful activity, thus barring [him] from immunity under this section," especially where the trial court also found Appellant refused to take his hands out of his pockets, where the gun was concealed, despite multiple commands to do so.

In arguing to the contrary, Appellant relies on a citation in *Glenn* and contends "the State has the burden of proving the unlawful act is the proximate cause of the incident." (Brief of Appellant, p.22). However, that citation references the State's burden of proof at trial, in a case that predated the Act. *See State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994) ("[T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide."). In

contrast, the burden of proof at an immunity hearing rests squarely and solely on the defendant. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496. Where, as it stated in *Glenn*, the supreme court applied "the foregoing legal principles to the facts of this case," it was reviewing whether the trial court conducted a proximate cause analysis at all—not shifting the burden of proof in regard to that analysis. Indeed, the State submits that where a defendant commits a violent act, using deadly force, while unlawfully possessing a firearm, the burden must rest on him to prove, by a preponderance of the evidence, that it was *not* a proximate cause of the underlying incident.

The touchstone of proximate cause in South Carolina is foreseeability. *Hurd v. Williamsburg County*, 353 S.C. 596, 612, 579 S.E.2d 136, 144 (Ct. App. 2005), *aff'd*, 363 S.C. 421, 611 S.E.2d 488 (2005). The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act. *Id.* One is not charged with foreseeing that which is unpredictable, or which would not be expected to happen as a natural and probable consequence of one's act. *Hurd*, 363 S.C. at 612-13, 579 S.E.2d at 144-45. It is not necessary that the defendant should have foreseen the particular event which occurred, but merely that the defendant should have foreseen his or her [unlawful behavior] would probably cause an incident leading to the injury of someone. *Hurd*, 363 S.C. at 613; 579 S.E.2d at 145. Proximate cause does not mean the sole cause. *Id.* The defendant's conduct can be a proximate cause if it was at least one of the direct, concurring causes of the incident. *Id.* Ordinarily, the question of proximate cause is one of fact for the fact-finder, and the appellate court's sole function regarding the issue should be to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence. *Id.* Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law. *Hurd*, 353 S.C. at 613-14, 579 S.E.2d at 145.

Here, based on the evidence presented, the trial court appropriately concluded Appellant's unlawful activity was indeed a proximate cause of the incident. This conclusion was a reasonable inference to be drawn from the evidence. Indeed, Appellant's act to unlawfully possess and conceal a handgun was at least one of the direct, concurring causes of the incident where: he had an earlier argument at the club, he returned to the club to settle a beef, he flashed his gun at a security guard, and he refused repeated commands to remove his hands from his pockets when security guards were trying to get him to leave the club. A violent exchange of gunfire was a natural and probable consequence of Appellant's unlawful act. Because the incident was foreseeable, Appellant's unlawful activity was a proximate cause of the shooting, and the trial court's finding in this regard should be affirmed.

Section 16-11-440(C): No Reasonable Belief Actions were Necessary

The trial court concluded Appellant failed to prove he reasonably believed his actions were necessary to use deadly force to prevent death or great bodily injury to himself or to prevent the commission of a violent crime. This was based on findings that: (1) Appellant got into a verbal argument with an unknown patron earlier that night at the club, left the club on his motorcycle, and came back to the club in his truck with a gun in his possession, looking to settle a "beef" with someone;" (2) Appellant flashed a gun at Victim and stated "you are not the only one with a gun;" (3) Appellant walked to a group of individuals with his hands in or near his pockets; (4) club security, after being tipped off by a club patron that Appellant had a handgun in his pocket and was looking to settle a "beef" with someone, attempted to approach Appellant and escort him to his truck as the club was closing; (5) while club security was escorting the defendant away from the group, Appellant kept his hands in his pockets and refused commands from the guards to take his hands out of his pockets, despite their multiple orders; and (6) club

security guards reasonably believed Appellant was clutching his gun in his pocket and was going to take it out when Jenkins fired a less-than-lethal bean bag round at Appellant. This certainly constitutes ample evidence to support the finding "the defendant failed to establish by a preponderance of the evidence that he reasonably believed it was necessary to use deadly force to prevent death or great bodily injury to himself or to prevent the commission of a violent crime as defined in S.C. Code § 16-1-60."

Evidence at the hearing was uncontradicted that Appellant was initially hit with less-than-lethal bean bag rounds fired by Jenkins before he returned fire. Appellant himself admitted he did not know what hit him, but acknowledged no bullet ever entered his flesh and he did not need emergency surgery after the incident. (R.p.63, line 16-p.63, line 1). Even though Appellant claimed he felt his back being "ripped apart," the evidence showed he somehow managed to subsequently duck behind a car, aim his gun and shoot Victim multiple times, run across the parking lot, jump a fence, get in a car with a friend, and flee. Under these circumstances, there was ample evidence to support the trial court's conclusion. The trial court appropriately concluded Appellant did not have a reasonable belief his use of deadly force was necessary.

Conclusion

Where each of the four dispositive conclusions reached by the trial court was supported by evidence in the record, and where the factual findings made by the trial court were supported in part by the trial court weighing the credibility of the witnesses, each conclusion and the denial of immunity that followed should be affirmed under this Court's standard of review.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the trial court's denial of immunity under the Protection of Persons and Property Act be affirmed, and that Appellant's convictions and sentence likewise be affirmed. If this Court concludes the trial court's denial of immunity was not sufficiently fleshed-out by the trial court, the State alternatively requests a remand for more specific findings consistent with this Court's decision.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
February 24, 2025

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Feb 26 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001692

The State, ...Respondent,

v.

William McKinney, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Final Brief of Respondent*, dated February 24, 2025, on Appellant by sending an electronic copy via email to David Alexander, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 24th day of February, 2025.

Susan Spencer

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

William L. McKinney, Appellant.

Appellate Case No. 2023-001692

Appeal From Greenville County
Alex Kinlaw, Jr., Circuit Court Judge

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

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia; and Solicitor Cynthia S. Crick, of Greenville; all for Respondent.

PER CURIAM: William McKinney appeals his convictions for attempted murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a felon, arguing the trial court erred in denying his

motion for immunity and dismissal pursuant to the Protection of Persons and Property Act (the Act).[1] We affirm.

STANDARD OF REVIEW

"Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard." *State v. Dennis*, 444 S.C. 353, 362–63, 907 S.E.2d 142, 147 (Ct. App. 2024), *cert. granted* (April 22, 2025) (quoting *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019)). "An appellate court 'reviews an immunity determination for an abuse of discretion.'" *Id.* at 363, 907 S.E.2d at 147 (quoting *State v. McCarty*, 437 S.C. 355, 365, 878 S.E.2d 902, 908 (2022)). "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." *Id.* (alteration in original) (quoting *McCarty*, 437 S.C. at 365, 878 S.E.2d at 908). "[T]he circuit court is in the best position to assess witness credibility and make the necessary findings of fact." *McCarty*, 437 S.C. at 375, 878 S.E.2d at 913. "Further, 'the General Assembly did not intend' to require the circuit court 'to accept the accused's version of the underlying facts' in determining a motion for immunity under the Act." *Oates*, 421 S.C. at 13, 803 S.E.2d at 918 (quoting *State v. Curry*, 406 S.C. at 364, 371, 752 S.E.2d 263, 266 (2013)).

LAW/ANALYSIS

I. Video

McKinney argues the trial court erred in admitting a video of his jailmate and by declining to follow the rules of evidence at the immunity hearing. We disagree. 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.

Regardless of whether the video was properly admitted, we find its admission was not prejudicial to McKinney.

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

> The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. Further, to warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice. Moreover . . . this court's assessment of prejudice must be viewed from the posture of a bench trial as opposed to a jury trial. It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence. Consequently, we presume that a trial judge disregards prejudicial or inadmissible evidence. Finally, this presumption will control in the absence of clear evidence to the contrary.

State v. White, 446 S.C. 276, 284–85, 919 S.E.2d 37, 41–42 (Ct. App. 2025) (citations omitted). McKinney argues the trial court's references in its order to "the State's evidence, theory, and witness statements" show that it relied on the video in denying him immunity. We disagree. Multiple witness statements asserted that McKinney had a gun and he was there to settle a "beef" with someone. Indeed, according to the victim's statement, McKinney showed him the gun and stated the victim was "not the only one with a gun." Accordingly, even if the video was erroneously admitted, McKinney has not overcome the presumption that the trial court disregarded it, and he has not shown prejudice.

II. Immunity

Section 16-11-420(A) states "[i]t is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business." The pertinent subsection of the Act states:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, 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 or to

> prevent the commission of a violent crime as defined in Section 16-1-60.

§ 16-11-440(C). "In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be." *State v. Glenn*, 429 S.C. 108, 119, 838 S.E.2d 491, 497 (2019).

The Act further states:

> A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

§ 16-11-450(A). "The Act provides immunity from prosecution for a person who has used deadly force after a trial court determines the person was justified in using such force." *Dennis*, 444 S.C. at 369, 907 S.E.2d at 151. "'[A]nother applicable provision of law' includes the common law of self-defense." *Glenn*, 429 S.C. at 117, 838 S.E.2d at 496. "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *Curry*, 406 S.C. at 371, 752 S.E.2d at 266.

In *Glenn*, the court found "the traditional Castle Doctrine" did not apply because the appellant was not attacked on his own premises. 429 S.C. at 122, 838 S.E.2d at 498. Likewise, here, the Castle Doctrine does not apply because McKinney was not at his residence or business. The *Glenn* court noted section 16-11-440(A) did not apply because there, as here, the assailant was not "in the process of unlawfully or forcefully entering a dwelling or residence." *Id.* Therefore, as in *Glenn*, to obtain immunity, McKinney must satisfy the elements of self-defense.

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness[,] and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Dennis, 444 S.C. at 369–70, 838 S.E.2d at 151 (alteration in original) (quoting *Glenn*, 429 S.C. at 116, 838 S.E.2d at 495). "[T]he last element, i.e., the duty to retreat, need not be shown when seeking immunity under the Act." *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 239 (Ct. App. 2014).

McKinney argues the trial court's "flawed legal reasoning was that had McKinney never went to the club, the shooting would not have happened." He argues the trial court failed to conduct a proximate cause analysis to the "unlawful activity" portion of the Act as instructed by *Glenn*. *See Glenn*, 429 S.C. at 120–21, 838 S.E.2d at 497 ("[W]e find a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)."). We disagree and find the trial court conducted the proper analysis.

The evidence shows McKinney was engaged in unlawful activity by carrying a weapon as a convicted felon. The trial court considered whether this led to the shooting and concluded McKinney's "own decisions and actions . . . were a direct consequence" of his flashing a gun to the security guard and being at Club Dolce to settle a "beef." This satisfies the requisite proximate cause analysis. Further, we find McKinney was not in "another place where he [had] a right to be, including, but not limited to, his place of business." § 16-11-440(C). McKinney cites *Glenn*, in which our supreme court, in dicta, stated a jogger would be entitled to immunity when arming herself against an attack in a public park past opening hours. *Glenn*, 429 S.C. at 120, 838 S.E.2d at 497. However, the *Glenn* court discussed the

hypothetical in relation to the concept of barring a victim of crime "from claiming immunity based on a hyper-technical reading of the statute . . . when his presence in the place he was attacked had no relation to the incident itself." *Id.* Here, the record shows McKinney was in the parking lot of a private business past opening hours. The trial court noted the security guards were attempting to remove him from the parking lot before he could use his gun, which McKinney had shown them, to settle the "beef." The facts of this case are distinguishable from other cases discussing the "right to be" portion of the Act. *See Dennis*, 444 S.C. at 371, 907 S.E.2d at 152 ("Here, Dennis was in his vehicle at the time of the incident, which is included in the presumption of reasonable fear in the Act."); *Glenn*, 429 S.C. at 113, 838 S.E.2d at 493 ("Glenn was invited to the . . . apartment complex); *Curry*, 406 S.C. at 368, 752 S.E.2d at 265 (noting the appellant was in his mother's apartment). Therefore, we agree with the trial court that McKinney failed to satisfy section 16-11-440(C) because at the time of the incident, he was engaged in an unlawful activity and was not attacked in another place where he had a right to be. *See Glenn*, 429 S.C. at 119, 838 S.E.2d at 497 ("In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be.").

Further, the trial court did not err in finding McKinney failed to prove the elements of self-defense by a preponderance of the evidence. The evidence shows McKinney was not without fault in bringing on the difficulty. He displayed his gun to the security guard in a threatening manner, showing his intent to use the gun. He began walking toward people he had a "beef" with while refusing the security guard's command to keep his hands out of his pockets. Because McKinney failed to show by a preponderance of the evidence that he was without fault in bringing on the difficulty, he is not entitled to immunity under the Act.

AFFIRMED.

WILLIAMS, C.J., and THOMAS and CURTIS, JJ., concur.

RECEIVED
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SC Court of Appeals

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.

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ATTORNEY FOR APPELLANT

This 5th day of February, 2026.

RECEIVED
Feb 05 2026
SC Court of Appeals

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
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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

William L. McKinney, Appellant.

Appellate Case No. 2023-001692

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams C.J.

Paula C. Thomas J.

Kristi Curtis J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
David Alexander, Esquire
John Benjamin Aplin, Esquire
Cynthia Smith Crick, Esquire

FILED
Feb 26 2026