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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions

Alex Kinlaw, Jr., Circuit Court Judge

Opinion No. 2026-UP-017 (S.C. Ct. App. filed January 21, 2026)  
Appellate Case No. 2026-000770

The State, .....Respondent,

v.

William McKinney, .....Petitioner.

**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether Petitioner's argument that the trial court erred in admitting the videotaped interview of jail inmate Dwight Littles at the immunity hearing was unpreserved where McKinney made no objection when the State introduced the Littles video into evidence. Furthermore, whether the Court of Appeals properly affirmed the trial court's decision to admit the video where: (1) it was well within the trial court's broad discretion to allow the video's use because: (a) admitting it as a preliminary question under Rule 104, SCRE, showed the trial court did *not* blindly accept the solicitor's argument and (b) admitting it in the context of an immunity hearing, at which the trial court was the sole fact-finder and was well-suited to weigh the evidence presented in determining whether McKinney had carried his burden of proof, insulated McKinney from any possible prejudice from a failure to strictly follow the rules of evidence; and (2) the statement was not hearsay where (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. In addition, whether the Court of Appeals properly affirmed where any possible error in allowing the State to use the Littles video to cross-examine McKinney was harmless and non-prejudicial because the video could not have reasonably contributed to the trial court's denial of immunity.
  
2. Whether the Court of Appeals properly affirmed the trial court's finding that McKinney 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

Petitioner, William McKinney (McKinney), 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). McKinney 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 McKinney's motion for immunity under the South Carolina Protection of Persons and Property Act (the Act)<sup>1</sup> 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 McKinney 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. McKinney 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 McKinney 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

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<sup>1</sup> (S.C. Code Ann. §§ 16-11-410 to -450) (2020) (the Act).

possession of a firearm by a person convicted of a violent crime. (R.p.760-765; 770-771; 774-778). McKinney timely filed a notice of intent to appeal his convictions and sentences and a Brief in support of his appeal was submitted by Deputy Chief Attorney for Capital Appeals David Alexander of the South Carolina Commission on Indigent Defense. The State filed a Brief in response.

Oral arguments were heard on November 12, 2025, and on January 21, 2026, the Court of Appeals affirmed McKinney’s convictions and sentences in an unpublished opinion. *State v. McKinney*, Op. No. 2026-UP-017 (S.C. Ct. App. filed January 21, 2026). On February 5, 2026, McKinney filed a petition for rehearing. The State did not file a return. In an order filed February 26, 2026, the Court of Appeals denied McKinney’s petition for rehearing. On April 16, 2026, McKinney filed a petition for a writ of certiorari to the Court of Appeals. This Return to Petition for a Writ of Certiorari, submitted on behalf of the State, now follows.

### **CERTIORARI**

McKinney raises two arguments in his petition for a writ of certiorari, both of which essentially restate the arguments that were raised to and ruled upon by the Court of Appeals—arguments that were addressed in a well-reasoned, unpublished opinion. *State v. McKinney*, Op. No. 2026-UP-017 (S.C. Ct. App. filed January 21, 2026). First, McKinney contends the Court of Appeals erred in affirming the trial court’s admission of a videotape of a law enforcement interview of Dwight Littles—a detainee who had spent time in the jail with McKinney prior to trial—which he alleges was only admitted because the trial court improperly accepted the solicitor’s argument that the Rules of Evidence do not apply to immunity hearings. Despite the Court of Appeals concluding “there was no indication the trial court agreed [with the State’s

claim] or disregarded the rules of evidence,” McKinney argues this Court should nevertheless grant certiorari simply to clarify whether the Rules of Evidence apply during immunity hearings. (Pet.p.4). He goes on to rehash his contention that, despite the trial court’s failure to even mention the Littles video in denying immunity, that video was somehow the lynchpin of that denial, and its admission should lead this Court to “ultimately reverse.” (Petition, p.8). But this ground, which, as explained below, was not even preserved for appellate review, carries little weight given the Court of Appeals additional conclusion that: “even if the video was erroneously admitted . . . [McKinney] has not shown prejudice.” (App.p.83).

Second, McKinney argues the Court of Appeals misinterpreted *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019), and erred in applying its proximate cause analysis. He contends this Court should grant certiorari to “conduct the proper proximate cause analysis” and “reverse the denial of immunity.” (Petition, p.9). However, the Court of Appeals extensively referenced *Glenn* and its mandates, concluding the trial court’s finding that “McKinney’s ‘own decisions and actions . . . were a direct consequence’ of his flashing a gun to the security guards and being at Club Dolce to settle a ‘beef,’” satisfied “the requisite proximate cause analysis.” (App.p.85). For the reasons addressed in more detail below, this conclusion by the Court of Appeals was entirely appropriate where the trial court’s denial of immunity was not controlled by an error of law and was supported by ample evidence in the record.

The Court of Appeals employed the proper standard of review for each of the issues raised and properly addressed those issues in its opinion. Neither appellate review of evidentiary issues in immunity hearings nor appellate review of a denial of immunity under the Act are matters of first impression in South Carolina. Here, the decision of the Court of Appeals on each issue is consistent with precedent, there was no dissent in the Court of Appeals, no conflict with

prior decisions of this Court, and no substantial constitutional issues are directly involved. Thus, pursuant to Rule 242(b), SCACR, there are no “special and important reasons” for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. McKinney’s petition for a writ of certiorari should be denied and dismissed.

### 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.”).

### **STATEMENT OF FACTS**

At approximately 4 a.m. on July 4, 2020, McKinney 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, McKinney 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). McKinney 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 and was found guilty of all charges. (R.p.760). The remainder of the Statement of Facts set forth in the Final Brief of Respondent, which was filed by the State in the Court of Appeals, is hereby incorporated by reference.

## ARGUMENT

### I.

**Petitioner's argument that the trial erred in admitting the videotaped interview of jail inmate Dwight Littles at the immunity hearing was not preserved for appellate review because McKinney made no objection when the State introduced the Littles video into evidence. In any event, the Court of Appeals properly affirmed the decision because: (1) it was well within the trial court's broad discretion to allow the video's use where: (a) admitting it as a preliminary question under Rule 104, SCRE, showed the trial court did *not* blindly accept the solicitor's argument and (b) admitting it in the context of an immunity hearing, at which the trial court was the sole fact-finder and was well-suited to weigh the evidence presented in determining whether McKinney had carried his burden of proof, insulated McKinney from any possible prejudice from a failure to strictly follow the rules of evidence; and (2) the statement was not hearsay where (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, the Court of Appeals properly affirmed because any possible error in allowing the State to use the Littles video to cross-examine McKinney was harmless and non-prejudicial where the video could not have reasonably contributed to the trial court's denial of immunity.**

In his petition, McKinney argues the Court of Appeals erred in affirming the trial court's decision to admit the Littles video and in further finding its admission was not prejudicial. McKinney particularly complains that the trial court's decision was based on accepting the solicitor's claim that the rules of evidence do not apply to immunity hearings. McKinney argues this was an improper basis on which the court allowed the State to cross-examine McKinney about his alleged statement to Littles. McKinney acknowledges "Judge Kinlaw does not mention the Littles video by name," but argues the trial court's reference to "the State's evidence, theory, and witness statements" suggests the "the judge credited the Littles video with finding McKinney brought upon the difficulty by coming to the club." (Petition, p.8). The Court of Appeals disagreed. Its decision to affirm was valid for several reasons; therefore, certiorari should be denied.

First, although not addressed by the Court of Appeals, McKinney’s argument is simply not preserved for appellate review because he affirmatively stated he had no objection when the Littles video was moved into evidence at the immunity hearing. *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. Here, the trial court’s ruling—to permit the State to play the Littles video before questioning McKinney about the statement he allegedly made to Littles—was made during the State’s cross-examination of McKinney. It was entirely consistent with other actions permitted by the trial court that did *not* strictly comply with the rules of evidence, like allowing McKinney 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 McKinney 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* McKinney’s quite effective testimony discrediting 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 McKinney if there was any objection and McKinney responded: “No, Your Honor.” He made no reference to his prior objection or the State’s previous use of the Littles video, likely because it had no prejudicial impact. The Littles

video was then admitted into evidence. (R.p.151, lines 3-22). Because McKinney 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 was unpreserved for appellate review. *Morales; Byers; Aldret*.

Second, and more critically, even if preserved, the trial court's discretionary decision to allow use of the Littles video did not constitute reversible error because: (1) as noted by the Court of Appeals, the decision to admit the video as a "preliminary question" under Rule 104, SCRE, shows the trial court did *not* blindly accept the solicitor's argument about the rules of evidence; and (2) admitting the video in the context of an immunity hearing, at which the trial court was the sole fact-finder and was well-suited to weigh the evidence presented in determining whether McKinney had carried his burden of proof, insulated McKinney from any possible prejudice from a failure to strictly follow the rules of evidence, particularly where an immunity hearing could reasonably be construed as a proceeding during which the rules of evidence do not apply under Rule 1101(d)(3), SCRE. It also did not constitute error because: (1) the statement was not hearsay where (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, the Court of Appeals properly affirmed because the video was harmless and non-prejudicial where it could not have reasonably contributed to the trial court's denial of immunity. Indeed, McKinney 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, the denial of immunity as well as McKinney's convictions were properly affirmed, and certiorari should be denied.

Despite trial counsel's clear decision to abandon any objection to the admission of the Littles video, on appeal McKinney complained 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." (Petition, p.4). He challenged the solicitor's and trial court's references to Rule 104, SCRE, and asked the Court of Appeals to imagine a parade of horrors were the rules of evidence not applicable to immunity hearings. (Petition, p.7). McKinney acknowledged the solicitor "may have also confused 'preliminary hearing' in Rule 1101(d)(3) with 'pretrial hearing'" (Petition, p.7); 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.

#### **Rules of Evidence - Applicability**

As recognized by the Court of Appeals, it is simply not accurate to suggest the trial court operated completely outside the rules of evidence where it stated it was admitting the Littles video under one of those rules—Rule 104, SCRE. Thus, the "egregious argument" made by the solicitor and allegedly accepted by the trial judge, did not control. Furthermore, the extent to which a trial court must strictly adhere to every rule of evidence during an immunity hearing is not as clear-cut as McKinney proclaims. If this Court's analysis was merely an academic exercise rather than a decision to grant or deny certiorari, 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 McKinney 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. See Rule 1101(d), SCRE ("The rules (other than with respect to privileges) do not apply to . . . preliminary hearings in

criminal cases . . .”).<sup>2</sup> For both of these reasons, the Court of Appeals properly affirmed the trial court’s decision to admit the Little’s video for consideration during the immunity hearing.

### **Rules of Evidence – 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 McKinney asserted—the details of the offense provided by McKinney—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 McKinney’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

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<sup>2</sup> Preliminary hearings in criminal cases are held before a magistrate, who must determine if there is probable cause to support the arrest. *State v. Ramsey*, 381 S.C. 375, 376–77, 673 S.E.2d 428, 429 (2009). 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 in the nuances of admissibility.

The State acknowledges the Court of Appeals 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) (“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.”), *reversed and remanded*, *State v. Dennis*, 447 S.C. 323, 926 S.E.2d 250 (2026). 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, yet not one warranting a grant of certiorari.

technically meets the definition of hearsay in subsection (c), the Littles video was not hearsay because it was used as a prior statement by McKinney that was inconsistent with McKinney'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, McKinney's alleged statement to Littles was not hearsay and was admissible. Whatever the case, as argued below, if the trial court was required to follow the admissibility requirements of the rules of evidence, and the Littles video constitutes hearsay, its admission was nonetheless non-prejudicial such that the trial court's ruling does not constitute reversible error. Under any scenario, the Court of Appeals properly affirmed.

#### **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 noted in footnote 2 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, proffer, 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).

As found by the Court of Appeals, any error in the admission or use of the Littles video for cross-examination was not prejudicial to McKinney. First, McKinney effectively nullified any possible prejudice during his redirect examination and, second, Littles’ comments on the video were insubstantial in view of the evidence presented of McKinney’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, McKinney 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 McKinney 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, McKinney did not show 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,

the admission of the Littles video, the denial of immunity under the Act, and McKinney's convictions were properly affirmed. Certiorari should be denied.

## II.

**The Court of Appeals properly affirmed the trial court's finding that McKinney 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.***

In his petition for a writ of certiorari, McKinney argues the Court of Appeals erred in affirming the trial court's denial of his motion for immunity from prosecution on grounds that he was illegally carrying a handgun and that he failed to avoid the difficulty. He contends the Court of Appeals "misinterprets *Glenn* and erred in its proximate cause analysis," and that as a result this Court should grant certiorari, conduct the proper proximate cause analysis, and reverse the denial of immunity. (Petition, p.9). McKinney complains that the trial court's written order (1) "does not make conclusive factual findings," (2) "never makes any specific credibility [findings] as to any witness," (3) "makes no finding that McKinney's testimony was not credible," (4) "makes no finding that [McKinney's] unlawful activities were the proximate causes of the altercation," and (5) "states in a conclusory fashion that appellant did not show he reasonably believed deadly force was necessary." (Petition, p.18-p.19). He argues the Court of Appeals' "multiple errors begin with failing to engage with the incontrovertible video evidence," and then extend to accepting "the deeply flawed legal reasoning of the trial court."

McKinney argues the trial court did not conduct the required *proximate cause* analysis before concluding his unlawful activity precluded immunity under the Act, and the Court of Appeals then erroneously concluded that the proximate cause analysis was satisfied simply by McKinney coming to the club with a gun. He contends that “had the [trial] court applied *Glenn* and conducted a proximate cause analysis, it could not have found [he] was barred from immunity.” (Petition, p.21). McKinney further argues the trial court’s 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.” (Petition, p.21). He complains the trial court effectively saddled him with a duty to retreat by finding he could have avoided the danger by not coming to the club, arguing that because “he was not acting unlawfully” and was “actually retreating” when he was shot, this finding was in error. (Petition, p.21-p.22). Finally, McKinney 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. (Petition, p.22). For all of these reasons, McKinney argues he is entitled to a reversal of his convictions and a finding of immunity from prosecution or, alternatively, a new immunity hearing, (Petition, p.23).

However, as the Court of Appeals correctly deduced, each of McKinney’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. McKinney’s arguments were properly rejected by the Court of Appeals under its standard of review. The trial court followed the appropriate procedure under rulings from this Court: holding a pretrial hearing, evaluating the credibility of the

witnesses, weighing the evidence, and ultimately finding McKinney did not carry his burden of proving he was entitled to immunity under the Act. It then issued a detailed written order addressing McKinney's failure to establish entitlement to immunity under any provisions of the Act. The trial court's findings that McKinney 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 were 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 was properly affirmed, and McKinney's convictions were appropriately allowed to stand.

#### **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, defense 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. 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 McKinney carried his burden of proving, by a preponderance of the evidence, his entitlement to immunity when ruling on his request, and that ruling was properly affirmed. The specific findings enabled the Court of Appeals 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 held a pretrial hearing, evaluated the credibility of the witnesses, weighed the evidence, and issued a detailed written order. 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. McKinney’s arguments to the contrary simply could not prevail under the Court of Appeals’ standard of review. The trial court’s findings that McKinney 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) had evidentiary support, were not controlled by errors of law and were properly 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) “Carlos 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 led 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 McKinney did not prove he was “not without fault in bringing on the difficulty.” This was based on factual findings that: (1) McKinney, after initially having left the club, returned with a gun in his possession, (2) security guards had been told McKinney was coming back to the club, with a gun, looking to settle a beef with someone, and (3) McKinney 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 McKinney refused to take his hands out of his pockets, where the gun was concealed, despite multiple commands to do so.

McKinney 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.” (Petition, p.21). 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 McKinney’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 significantly inform the trial court’s analysis—an analysis that appropriately concluded McKinney was at fault in bringing on the difficulty.

#### **Self-Defense: Duty to Retreat**

The trial court concluded McKinney 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 McKinney: (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 constitutes ample evidence to support the finding “the defendant could have avoided the danger.” As noted by the trial court, McKinney could have avoided the danger merely by choosing to do one of these two things.

McKinney claims “because he was not acting unlawfully, he had no duty to retreat.” (Petition, p.21). 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 McKinney 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 McKinney 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 McKinney had a duty to retreat under a standard self-defense case.

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

The trial court concluded McKinney 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) McKinney was a convicted felon barred from lawfully possessing a firearm; (2) McKinney did not have a valid concealed weapons permit; (3) McKinney, after initially having left the club, returned with a gun in his possession, (4) security guards had been told McKinney was coming back to the club, with a gun, looking to settle a beef with someone, and (5) McKinney 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,” as found by the Court of Appeals, 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 McKinney 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, McKinney 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.” (Petition,

p.20-p.21). 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*, this 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, where a defendant commits a violent act, using deadly force, while unlawfully possessing a firearm, the burden should 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 McKinney's unlawful activity was indeed a proximate cause of the incident. This conclusion was a reasonable inference to be drawn from the evidence. Indeed, McKinney'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 McKinney's unlawful act. Because the incident was foreseeable, McKinney's unlawful activity was a proximate cause of the shooting, and the trial court's finding in this regard was properly affirmed.

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

The trial court concluded McKinney 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) McKinney 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) McKinney flashed a gun at Victim and stated "you are not the only one with a gun;" (3) McKinney 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 McKinney had a handgun

in his pocket and was looking to settle a “beef” with someone, attempted to approach McKinney and escort him to his truck as the club was closing; (5) while club security was escorting the defendant away from the group, McKinney 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 McKinney 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 McKinney. 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 McKinney was initially hit with less-than-lethal bean bag rounds fired by Jenkins before he returned fire. McKinney 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 McKinney 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 McKinney did not have a reasonable belief his use of deadly force was necessary, and the Court of Appeals properly affirmed.

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 was appropriately affirmed under the standard of review.

### CONCLUSION

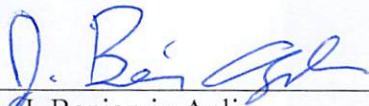
Based on the foregoing reasons, the State submits this Court should deny the petition for a writ of certiorari in its entirety and let stand the decision of the Court of Appeals. The trial court properly admitted the Littles video and denied McKinney's motion for immunity, and the Court of Appeals properly affirmed. Accordingly, certiorari should be denied. If the Court grants the petition for a writ of certiorari, the State would request permission under the rules to fully brief the issues contained herein.

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