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Jun 25 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BARRY WAYNE JONES,

APPELLANT

APPELLATE CASE NO. 2022-000046

Appeal from Edgefield County

Honorable Walton J. McLeod, IV, Circuit Court Judge

Opinion No. 6147

PETITION FOR REHEARING

On June 10, 2026, this Court affirmed Appellant's conviction. State v. Barry Wayne Jones, Op. 6147 (S.C. Ct. App. filed June 10, 2026) (Howard Ad. Sh. No. 22 at 35). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court in reaching its decision.

Protection of Persons and Property Act

On appeal, Appellant argued the trial court abused its discretion by denying him immunity from prosecution because Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the Protection of Persons and Property Act. This Court

disagreed. For the reasons that follow, Appellant respectfully requests this Court grant rehearing and hold the trial court abused its discretion by denying him immunity from prosecution.

Respectfully, in holding the trial court did not abuse its discretion by finding Appellant was not entitled to immunity, this Court failed to apply the correct standard of review. See State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which *this court reviews under an abuse of discretion standard of review.*”) (emphasis added). Based on this Court’s analysis, it appears the Court engaged in a de novo review of the evidence rather than applying the correct abuse of discretion standard. The Court rarely, if ever, mentioned the trial court’s factual findings or legal conclusions and failed to discuss whether the trial court’s findings were supported by the evidence. For example, after discussing the evidence presented during the pretrial hearing, this Court stated, “Thus, *in our view*, Jones failed to establish by a preponderance of the evidence that he was without fault in ‘bringing on the difficulty.’” Op. at 45 (emphasis added). Respectfully, this Court’s opinion reads like an order by the trial court denying immunity as opposed to an appellate decision applying the abuse of discretion standard.

Moreover, along the same lines, this Court determined Appellant was not credible. Op. at 45. Significantly, the trial court in denying Appellant immunity *never* found Appellant was not credible. See R. 1501-1512. Credibility findings are factual findings. See State v. Johnson, 413 S.C. 458, 467-68, 776 S.E.2d 367, 371-72 (2015). The determination of credibility must be left to the trial court, which saw and heard Appellant and the other witnesses testify. State v. Cutro, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998) (“The determination of credibility *must* be left to

the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity.”) (emphasis added).

This Court’s factual finding that Appellant is not credible appears to be based in part on this Court’s view of Officer Kathman’s dashcam video. Op. at 45-46. Notably, the jury acquitted Appellant of the attempted murder of Captain Florida, which strongly suggests, contrary to this Court’s finding, that the jury found Appellant more credible than Captain Florida. Moreover, again contrary to this Court’s factual finding, Appellant presented expert testimony that, based on Kathman’s dashcam footage, Captain Florida fired first.

Unlike the trial court concluded, Appellant proved by a preponderance of the evidence that he was immune from prosecution under the common law elements of self-defense. Appellant was not at fault in bringing on the difficulty. Appellant was preoccupied with his decision to end his relationship with Angie. He had no interaction with Milledge on the day of the shooting until Milledge, unbeknownst to Appellant, walked out after Appellant and aggressively struck the rear of his vehicle. This caused Appellant renewed fear of Milledge after Milledge’s threat against Appellant about a month prior coupled with Appellant’s knowledge of Milledge’s reputation for violence. Appellant’s decision to return to the pool room was not unlawful or intended to start a conflict with Milledge. Rather, it was Appellant’s best option under the circumstances to end his eight month relationship with Angie. Appellant strongly disagrees that he was somehow at fault in bringing on the difficulty by merely parking in a parking lot where he had a right to be.

The state alleged Appellant’s text message, “I’m gonna kill that B’Boy,” was literal. However, Appellant’s text messages when read as a whole indicate he was seeking help from Joe Mims and Sergeant Mathis to assist in avoiding any conflict with both Angie and Milledge. It is telling that when Appellant arrived at the pool room, he remained in his car and did not seek a

conflict. Rather, it was Milledge who came outside and confronted Appellant. The surveillance footage is consistent with Appellant's account that Milledge aired his personal grievances against Appellant with increasing animosity.

The state argued Milledge told Appellant to leave early in the encounter and therefore Appellant was at fault in bringing on the difficulty when he refused to leave. While it was disputed whether Milledge asked Appellant to leave early on, even if true, Appellant's failure to instantly do so does not make him at fault in bringing on the difficulty. Appellant testified that as Milledge's aggression continued to escalate, he wanted to leave which was corroborated by his headlights turning on when he started his car as seen in the surveillance footage. However, Appellant believed using his hands to operate the vehicle and taking his eyes off of Milledge even for an instant would expose him to further harm. Appellant was not required to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." See State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989).

Further, it is apparent from Appellant's testimony and the surveillance footage that Appellant actually was in imminent danger of losing his life or sustaining serious bodily injury. The footage shows Milledge brandishing and threatening Appellant with a gun during the confrontation. Milledge's act of lifting his shirt to show Appellant the black object concealed on his waistband is almost universally recognized as a signal that one is armed. When Appellant fired the fatal shots, Milledge, who again Appellant knew was armed, was charging at Appellant. Accordingly, Appellant actually was in imminent danger and 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. However, even if Appellant was not in actual danger, based on Milledge's words and actions coupled with Milledge's prior threat and his

reputation for violence, it was reasonable for Appellant to believe he was in such imminent danger and a reasonable man of ordinary firmness and courage would have entertained the same belief.

Under the common law principles, Appellant was entitled to step out of his car and strike the fatal blow in order to prevent Milledge from “getting the drop on him,” and even if Milledge did not appear to have a gun raised in the moment Appellant shot, Appellant was permitted to judge Milledge’s actions more harshly based on his prior threat and reputation. See State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000); State v. Rash, 182 S.C. 42, 188 S.E.2d 435 (1936).

The above analysis proves that Appellant was entitled to immunity pursuant to the common law principles of self-defense. However, for purposes of argument, even if Appellant’s claim failed in one or more respects, he was still entitled to immunity pursuant to § 16-11-440(A) and § 16-11-440(C). Section 16-11-440(A) is applicable in this case and provides the Act’s strongest protections:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used **is in the process of unlawfully and forcefully entering**, or has unlawfully and forcibly entered a dwelling, residence, or **occupied vehicle**, or if he removes **or is attempting to remove another person against his will from** the dwelling, residence, or **occupied vehicle**; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(emphasis added). Appellant testified that Milledge demanded Appellant get out of his car and fight and pulled on his door handle in an effort to get Appellant out of the vehicle. Appellant described how Milledge became increasingly frustrated that Appellant would not get out of the car, which was

corroborated by Milledge's actions as seen in the surveillance footage demonstrating his escalating aggression, including his act of brandishing a gun. Appellant testified that it was his belief Milledge intended to forcibly remove him from the car as Milledge came toward him "with steam" immediately prior to Appellant making the decision to shoot. This is also corroborated by the surveillance footage which shows Milledge approaching Appellant's vehicle with aggression immediately before Appellant fired. These facts fall squarely within subsection (A) of the Act, which states, even in the absence of an obvious attack, that the act of attempting to remove an individual against his will from his vehicle creates a presumption of reasonable fear of imminent death or great bodily injury such that the individual can use deadly force against his assailant. Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to § 16-11-440(A).

Although Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the common law principles of self-defense and § 16-11-440(A), Appellant also proved he was entitled to immunity pursuant to § 16-11-440(C), which states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

(emphasis added). This portion of the Act specifically does away with any common law duty to retreat so long as an individual can prove he was attacked while acting lawfully in a place he had a right to be. There has been no claim by the state that Appellant was acting unlawfully at the time of his fatal encounter with Milledge, and Appellant was in a place where he had a right to be as he was sitting in his car in the parking lot of the pool room. Factually consistent with findings of immunity in cases like State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App.

2014), and State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016), Appellant had a right to use deadly force in the face of an attack by an intoxicated Milledge, who was determined to fight and was armed with a gun. Appellant's use of a gun to combat the threat of an armed attack by Milledge was a proper "force for force" response to end the assault and prevent death or great bodily injury to himself. Appellant had no duty to retreat pursuant to the Act. Accordingly, Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to § 16-11-440(C).

Respectfully, this Court should grant rehearing, hold the trial court abused its discretion by denying Appellant immunity, and reverse Appellant's conviction.

Evidence of Suicide Attempt

Appellant also argued on appeal that the trial court abused its discretion by admitting evidence that Appellant allegedly attempted suicide in the moments before he was taken into custody since, pursuant to State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018), the state failed to prove an unmistakable nexus existed by clear and convincing evidence linking the suicide attempt to a guilty conscious derivative of the offenses for which Appellant was being tried, and since any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

This Court held the trial court did not abuse its discretion by admitting the attempted suicide evidence. The Court determined that while "there is no testimony that conclusively established why Jones [Appellant] shot himself, his own actions and statements demonstrate 'an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of' the offenses for which Jones was on trial." This Court reasoned that if Appellant believed he acted in self-defense in shooting Milledge, "there was no need for

him to flee the scene with his weapons and ammunition, hunker down, and engage law enforcement in a shootout.” The Court also emphasized that there was no evidence to suggest Appellant was suicidal on the day he killed Milledge or that Appellant had made any statements suggesting he was suicidal before his shootout with law enforcement. Finally, this Court held the trial court did not abuse its discretion by finding the probative value of Appellant’s suicide attempt and statements was not substantially outweighed by the danger of unfair prejudice.

For the reasons that follow, Appellant respectfully requests this Court grant rehearing and hold the trial court abused its discretion by admitting evidence of Appellant’s alleged suicide attempt.

Suicide attempt evidence “is fraught with the potential for extreme prejudice” and “the admission of such evidence should be approached with the utmost caution.” Id. Consequently, before admitting such evidence, the “trial court shall determine whether the State has proven that: (1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial.” Id. at 92, 819 S.E.2d at 761-62. “Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.” In re Dickey, 395 S.C. 336, 354, 718 S.E.2d 739, 748 (2011) (internal citation omitted). “If the trial court concludes that the three factors have been established, the evidence is relevant and may be admitted, subject to a Rule 403, SCRE analysis. The suicide attempt evidence may be admitted only when all three factors have been met, and the evidence survives a Rule 403 analysis.” Id. at

92, 819 S.E.2d at 762. In light of this “rigorous framework,” suicide attempt evidence “will rarely be admitted.” Id. at 93, 819 S.E.2d at 762.

In Cartwright, the appellant was charged with molesting his daughter and two stepdaughters. While he was detained prior to trial, Cartwright attempted to commit suicide. Id. at 89, 819 S.E.2d at 760. During his testimony, Cartwright offered the following explanation as to why he attempted suicide: “I turned myself in. I’d been there for 30 days. I couldn’t get a bond. I was charged with the most heinous crimes that somebody could ever think about being charged with . . . I’m in my cell with all these things on my mind, and then the daughter that I loved . . . hates me so much because I had her husband . . . locked up . . . and she held a grudge against me, and they come and served me ten warrants . . . At that time I didn’t feel I wanted to live anymore.” Id. While noting the “case presents a close question,” our Supreme Court held evidence of Cartwright’s suicide attempt was admissible. Id. at 93, 819 S.E.2d at 762. The Court emphasized that prison staff found Cartwright hanging in his cell on the same day Cartwright was served with additional warrants and that Cartwright admitted he attempted suicide after he became aware of the new charges. Id. The record also showed that Cartwright had previously threatened to commit suicide if his daughter or stepdaughters “told anyone about the sexual abuse.” Id. The Court held the “fact that Cartwright acted on his threat and attempted suicide enhances the probative value of the evidence.” Id. The Court concluded evidence of Cartwright’s suicide attempt was relevant, that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and thus properly admitted. Id.

In this case, the state failed to establish “an unmistakable nexus exists by clear and convincing evidence linking” Appellant’s suicide attempt to a guilty conscience derivative of the offenses for which Appellant was on trial, the alleged murder of Milledge and attempted murder

of Captain Florida. Appellant attempted to commit suicide after being followed by and ultimately fired upon by law enforcement. Such actions by law enforcement suggested they did not believe Appellant acted in self-defense when he shot Milledge and further indicated Appellant faced imminent incarceration at best and death by law enforcement at worst.

Appellant's suicide attempt is not evidence of a guilty conscience from having to defend himself against Milledge or law enforcement. First, Appellant's encounter with law enforcement served as a break in the causal chain between Appellant shooting Milledge in self-defense and his suicide attempt where almost an hour passed between when Appellant shot Milledge and when he attempted suicide, particularly where Appellant did not attempt suicide during that hour. Second, Appellant testified at the pretrial immunity hearing that he shot Milledge out of necessity and not out of malice which is incongruous with a guilty conscience. Appellant freely testified that he shot Milledge in self-defense and only shot at law enforcement after he was shot and wounded by Captain Florida. Appellant's ability to testify about shooting Milledge and at law enforcement and his justification for doing so is contradictory to a guilty mind. Accordingly, the state failed to establish an "unmistakable nexus" linking Appellant's suicide attempt to a guilty conscience derivative of the offenses for which Appellant was tried.

Additionally, any probative value of Appellant's suicide attempt was substantially outweighed by the danger of unfair prejudice. The evidence has no probative value because it does not make it more or less probable that Appellant shot Milledge or at Captain Florida with malice. The only permissible use of suicide attempt evidence pursuant to Cartwright is to prove a guilty conscience where there is evidence of an unmistakable nexus between the suicide attempt and the offenses for which the defendant is on trial. As argued above, no such nexus exists in this case. Accordingly, the evidence has no probative value. However, the evidence was extremely

prejudicial to Appellant. Suicide is considered morally reprehensible in many different religions and cultures. As our Supreme Court recognized in Cartwright, such evidence is “fraught with the potential for extreme prejudice.” 425 S.C. at 91, 819 S.E.2d at 761. There is a reasonable probability that the evidence Appellant attempted suicide may have led the jury to convict Appellant on an improper basis, namely an emotional one. Consequently, it should have been excluded pursuant to Rule 403.

Respectfully, this Court should grant rehearing, hold the trial court abused its discretion by admitting evidence of Appellant’s suicide attempt, and reverse Appellant’s conviction.

Self-Defense Jury Instruction

Appellant also argued on appeal that the trial court abused its discretion by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant was not required to wait until his assailant got the drop on him, that he had the right to act under the law of self-preservation and prevent his assailant from getting the drop on him, since the charge was supported by the evidence and was crucial to the jury’s understanding of the law on self-defense.

This Court held the trial “court properly declined to give [Appellant’s] requested charge verbatim and correctly addressed the substance of the law, including the legal tenet that ‘one who acts in self-defense may act on appearances.’” Op. at 52. The Court emphasized that the charge included language instructing the jury that the law does not hold a defendant to a “refined assessment of the danger” and that a defendant may even be mistaken in his perception of the danger. Op. at 52. Finally, this Court concluded the “evidence at trial simply did not support a jury charge instructing that a defendant ‘doesn’t have to wait until his assailant gets the drop on him.’” Op. at 52.

For the reasons that follow, Appellant respectfully requests this Court grant rehearing and hold the trial court abused its discretion by failing to instruct the jury that Appellant was not required to wait until his assailant got the drop on him and that he had the right to act under the law of self-preservation and prevent his assailant from getting the drop on him.

Respectfully, this Court again improperly weighed the evidence and applied an incorrect standard of review in determining the trial court properly denied Appellant's request to charge. See Op. at 52. "When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts *must* consider the evidence *in a light most favorable to the defendant*." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012) (citing State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000)) (emphasis added). "If there is *any* evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the [circuit court's] refusal to do so is reversible error." Id. at 314, 733 S.E.2d at 609 (quoting State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000)) (alteration in original) (emphasis added).

This Court stated, "Decedent was not charging at Jones, had no weapon drawn, and was not endangering anyone when Jones chose to get out of his car and shoot the Decedent twice before fleeing the scene." Op. at 52. The Court also determined the footage suggested "Decedent was not attempting to forcibly (or otherwise) enter Jones's vehicle or remove Jones from it and was not pointing—or in possession of—any weapon." Op. at 52. Respectfully, these findings are this Court's perception of the surveillance footage. However, the footage also reasonably supports Appellant's testimony.

Appellant testified that toward the end of the confrontation, Milledge began to walk back toward the front door of the pool room. See State's Exhibit No. 14 (Pool Room Video).

Appellant was hopeful that he was finally going back inside. R. 1157, ll. 20-24. However, Milledge spun on his heels and headed back toward Appellant's car. See State's Exhibit No. 14 (Pool Room Video). After motioning aggressively with his arms and hands for Appellant to leave, Milledge continued to walk aggressively toward Appellant's car. See State's Exhibit No. 14 (Pool Room Video). Appellant reasonably believed Milledge was armed and could not see Milledge's right hand. R. 1162, ll. 7-10. When Milledge began to turn the corner toward Appellant's car, Appellant got out of the car and fired twice striking Milledge. See State's Exhibit No. 14 (Pool Room Video).

As seen, before waiting for Milledge to "get the drop on him," Appellant shot him in self-defense. Consequently, in the light most favorable to Appellant, there was evidence to support the requested instruction. As our Supreme Court stated in State v. Day, "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989)).

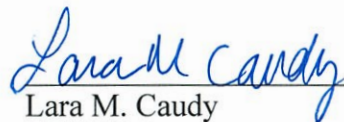
Additionally, unlike this Court held, the instruction on a defendant's right to act on appearances did not adequately cover the law. The right to act on appearances charge was supported by Appellant's testimony that he reasonably believed Milledge was armed after Milledge earlier displayed a gun and lifted his shirt to display a firearm on his waistband, particularly given the state's theory that Milledge was merely displaying a cell phone. The instruction the trial court refused to charge, that a defendant does not have to wait until his assailant gets the drop on him, was supported by Appellant's testimony and the surveillance footage which showed Milledge charging back toward the driver's side of Appellant's car where Appellant was located. It was crucial for the jury to understand that Appellant did not have to

wait until Milledge drew a firearm or began to pull Appellant out of the car, before Appellant acted in self-defense.

Since the trial court failed to charge an important element of self-defense relevant to Appellant's account of what occurred, respectfully, this Court should grant rehearing, hold the trial court abused his discretion by failing to properly tailor the self-defense instruction, and reverse Appellant's conviction.

Based on the foregoing, Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in affirming Appellant's conviction and sentence.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2026.

RECEIVED

Jun 25 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

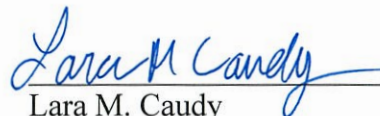
BARRY WAYNE JONES,

APPELLANT

APPELLATE CASE NO. 2022-000046

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 R. Brandon Larrabee, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 25th day of June, 2026.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

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Jun 25 2026

SC Court of Appeals

From: [Mcinnis, Sara](#)
To: [Brandon Larrabee](#)
Cc: ["brittanykilgore@scag.gov"; SC - BROWN ANGELA; Caudy, Lara](#)
Subject: 2022-000046 The State v. Barry W. Jones Petition for Rehearing
Date: Thursday, June 25, 2026 4:18:00 PM
Attachments: 2022-000046 The State v. Barry W. Jones Petition for Rehearing.pdf

Good afternoon Mr. Larrabee,

Attached for service in the above-referenced case is the petition for rehearing, which will be filed with the Court of Appeals today, June 25, 2026, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330