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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Certiorari to the Court of Appeals
Appeal from Horry County
Honorable J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2026-001715

THE STATE, PETITIONER,

v.

ANIJAH YARNELL, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on July 10, 2026.

PETITIONER'S QUESTIONS PRESENTED

- I. Did the Court of Appeals, along with the trial court, mischaracterize and misapply the bringing on the difficulty element of self-defense by equating it to explicit provocation of violence with Pennington and finding to the element satisfied despite strong evidence of harassment, stalking, and trespass?**
- II. Did the Court of Appeals err in affirming the trial court's finding of imminent danger of death or serious bodily injury where Yarnell remained in his locked and running vehicle, never saw Pennington with a weapon, and only surmised the possibility that Pennington might have a weapon rather than act on any appearance of imminent danger?**
- III. Did the Court of Appeals err in affirming the trial court's various holdings under S.C. Code §§ 16-11-440, where the record demonstrates abuse of discretion in ignoring four separate illegal activities committed and furthered by Yarnell's presence at the apartment complex, where the record demonstrates abuse of discretion in rulings contrary to undisputed material facts, and where Subsection (C) was deemed unpreserved for review?**
- IV. Did the Court of Appeals err in affirming egregious factual errors that constitute an abuse of discretion and negate the reasonable reliance upon findings of credibility by the trial court?**

STATEMENT OF THE CASE

Respondent Anijah Yarnell was indicted in June of 2021 by a Horry County Grand Jury for the murder of Michael Pennington and possession of a weapon during the commission of a violent crime. (2021-GS-26-02687 and - 2688). The case was prosecuted by Violent Crimes Assistant Solicitor Nancy Livesay and Assistant Solicitor Christopher Helms. App. 1. Yarnell, represented by M. O'Bryan Martin, Esq. and L. Morgan Martin, Esq., then filed a motion for immunity under the PPPA, S.C. Code § 16- 11-410, *et. seq.*, on November 7, 2022, and the State filed a reply shortly after. A full, three-day immunity hearing with 15 witnesses and approximately

76 exhibits was held before the Honorable Mark J. Hayes from November 14th to 16th, 2022, and Judge Hayes issued his order granting immunity from prosecution to Yarnell on April 4, 2023. App. 547. The State timely filed its notice of appeal on April 10, 2023. Following briefing, *but without conducting oral argument*, the Court of Appeals affirmed. The State filed a Petition for Rehearing on June 18, 2026. The Petition for Rehearing was denied on July 10, 2026. This Petition for Writ of Certiorari now follows.

STATEMENT OF FACTS

The Immunity Hearing

On May 14, 2020, Remington Hargrove (“Remi”) was visiting with her family. (App. 64, 75-76). She and Anijah Yarnell (“Yarnell”) had lived together at an apartment at Winchester Circle in Myrtle Beach, but the two were arguing that day and Remi ultimately ended her relationship with Yarnell. Remi then made it clear she did not want to see him or talk to him. App. 1-25, 311-312; State’s Exhibit 51 at App. 579, 581 (text messages between Yarnell and his friend Michelle); Defense Exhibit’s 46 # App. 611 (text messages between Remi and Yarnell). Remi sent her last message to him in the middle of the afternoon, and then her messages stopped. *Id.* Yarnell, on the other hand, proceeded to call Remi over 200 times in a single evening following the breakup. When it was clear that Remi was ignoring his calls, he used both *67 and a spoofing app to disguise his phone number. App. 286, 382-384. Yarnell’s behavior ultimately forced Remi to turn off her phone entirely. App. 271.

Yarnell then proceeded to send texts to a mutual friend, Michelle, wherein he insulted Remi and demanded Remi come to their home to pick up her things under the threat of destroying photos of her deceased father and tossing her belongings out and/or taking them to the dump. App. 382; Defense Exhibit 46 – App. 587 (text messages between Remi and Yarnell); States Exhibit 51, at App. 573-586. He repeated these threats to another friend, Missy, who was with Michelle at the

time. Missy then texted back at 7:27 PM, “Michelle says please don’t throw anything out, we will come tomorrow and get it if you want it gone.” State’s Exhibit 51, at App. 564. This response did not satisfy Yarnell and he then informed Missy that he was going to follow through on his threats against her property. State’s Exhibit 19 at App. 565; State’s Exhibit 51, App. 564-565.

Around 8:30 or 9:00 PM, and without invitation, Yarnell decided to drive to the Cross Gate Villas Apartment Complex (where he knew Remi would be heading after dinner) —it was a part of the larger Maddington Place collection of condos. App. 80, 206, 384, 473-480; States Exhibit 51, App. 572; State’s Exhibit 54 (map of complex); State’s Exhibit 55 (Private Property sign). Maddington Place was a private property that was not open to the public; owners needed a sticker on their car to park anywhere, and guests needed tags from the owners. If a car did not have a sticker or tag, Quality Towing would tow it. App. 469-471. An individual could only come onto the property if they were an owner or an invited guest of an owner, because the HOA wanted to “protect the owners and keep out the bad guys.” App. 479, 482-483. If a person was not invited, they would be declared a trespasser. App. 480, 483.

Jennifer Tassone (Remi and Emily’s aunt), Jennifer’s boyfriend Darrin Card, Remi, Emily Cerio, and Emily’s boyfriend Michael Pennington (“victim”) were at dinner at Handley’s Pub in Carolina Forest in the early evening. App. 78, 92-93, 268-269, 273. Remi was very upset about Yarnell at dinner, and made it known that she was afraid of him. App. 78. Darrin said, “I know that she was telling her aunts and her cousins just how bad things were and how violent he was.” “[S]he talked of violence and abuse and very controlling behavior.” App. 77, 78. Everyone at dinner knew that Remi had turned her phone off that day to avoid talking to Yarnell, as he had been harassing, messaging, texting, and calling her so much that she could no longer use her phone without interruption; any time she went to use it, a call from him would prevent her from accessing

its functions. App. 271, 291. Remi then told Darrin Card she did not want Yarnell near her and wanted him to help make sure Yarnell did not come over because she was afraid of what he might do. App. 86. Emily also asked her boyfriend (the victim, Michael Pennington) to come and make sure they were safe. App. 93

Darrin and Jennifer rode back to Maddington Place in a separate car from Remi and Emily. App. 64. Remi and Emily stopped at a Speedway Gas Station, and Emily called Pennington, who was in a third car, and told him, “She’s scared, she’s scared, she’s pregnant.” App. 272-275. Remi was 7 months pregnant at the time. App. 293. A few minutes later, Remi and Emily pulled into the complex and saw Yarnell in his car in the parking lot – he was there waiting for her and had not been invited. Remi again said she was scared. State’s Exhibit 49 at App. 567; App. 80, 301-302. Pennington was not with the group at the time because he had agreed to drive another individual home before heading to Maddington Place. App. 79-80.

They called Pennington and told him this, and he told them to meet him at Murphy’s Gas Station. App. 272-275. After they met up, Emily called her Aunt Jennifer and told her what was going on. Everyone agreed they would not go back to the complex without Pennington there, because Remi and Emily weren’t equipped to deal with an angry man. App. 293, 301-302; State’s Exhibit 4, App. 566, (Statement of Emily Cerio).

After seeing Yarnell at the apartment complex, leaving in fear, contacting Pennington, and contacting her family, Remi then briefly spoke with Yarnell on the phone. App. 272-274, 301-302. Remi told him she did not want to go home with him or see him; she asked him to leave her stuff at the complex and go home. App. 274-275, 293-294, 301-302. “[L]eave it and go . . . I’ll get it you need to go home. I don’t want to see you.” State’s 49, App. 566 (Statement of Emily Cerio). Yarnell, instead of following her instructions to leave her things and go home, remained at the

complex and admitted in his testimony that he did so because he wanted to interact with Remi. App. 332, 435-436.

About 15 minutes later, at approximately 9:30 PM, Darrin saw Pennington arrive in a second car, and then he saw Emily and Remi pull into the complex in the third car. App. 271, 293. He also saw Yarnell pull out of the complex and watched as Yarnell saw Emily and Remi pulling in. The three of them (Emily, Remi, and Yarnell) then had a brief conversation. App. 68, 81, 271, 275. Remi was terrified, shaking, and scared. App. 292, 302. Remi once again told Yarnell to leave because she didn't want to see him. App. 277, 281. He yelled at her aggressively and accused her of blocking him in, and she denied such. App. 279, 294-295. Yarnell then drove off, the two girls parked, and because Remi was afraid that Yarnell might have a weapon, Emily took her upstairs immediately. App. 69, 82, 292-293; State's Exhibit 49, App. 569.

Pennington, Jennifer, and Darrin had a conversation in the parking lot while this was going on. App. 279-280, 297. Jennifer had just gotten into her van to take a phone call and Emily was coming back down to get her phone charger when Yarnell wheeled back into the complex and pulled right up next to Pennington. App. 83-84, 98-99, 281, 297-298. By this time, Yarnell had fully turned out onto Deerfield Lakes Drive, but then had turned around and come back into the complex. App. 206, 210, 231; App. 249; Defense Exhibit 32 (aerial photo of apartment complex). Pennington was not acting aggressively when he walked up to Yarnell's driver's side window and said, "Hey, why don't you just go home, you're not welcome at this time." App. 72, 281, 284- 285, 310. "No one wants you here, go home." *Id.* Yarnell refused to leave. App. 83, 289.

He had partially pulled into a parking space but had not turned off his car; his doors were locked, the driver's-side window was mostly rolled up, and he was moving his car slowly while he was talking to Pennington. App. 86-88, 304-306. No one blocked his car at any point. App. 87-

88, 249. Pennington also said, “Hey, what’s your problem?” App. 91. After Yarnell continued to refuse to leave, Pennington said, “You know what, why don’t you just get out of the car?” “Come on, let’s go, come on tough guy.” App. 84. Yarnell replied, “Am I supposed to be scared of that?” several times. App. 41, 43, 46. Pennington did not threaten Yarnell with a weapon and did not put his hands on the car until Yarnell’s gun came out. App. 87, 299.

Yarnell then fully stopped his car (yet left it running), pulled his Glock 17 up, and Pennington said, “You have a gun,” looking shocked. App. 84, 257. Pennington then moved to the side and tried to reach for the gun or hit it to push it out of the way through the window crack. App. 282-284, 299-300, 304-306. He then said, “I’m from Virginia and if you pull a gun you better pull the trigger.” App. 281. Yarnell then cocked the gun. State’s 49, App. 566. Emily was standing close to Pennington, and she testified Pennington was trying to protect her and the others from the gun Yarnell was holding. App. 282-284. Pennington tried to pull on the door handle, but the door was locked. App. 45, 70-72, 283-285, 300. Yarnell then pulled the trigger and shot him. App. 73-74. The gunshot went through the window and struck Pennington. Yarnell then drove off, leaving Pennington dying in the parking lot. Yarnell never called 911. (State’s Exhibit 23 (photograph of the window); State’s Exhibit 36 (photograph of where Pennington landed in the parking lot); Defense Exhibit 16 (another photograph of the parking lot).

Pennington was not touching the car and he was at least 10-12 inches from the gun when Yarnell fired. App. 85, 174. He was bent over when the bullet entered his chest in a downward direction. State’s Exhibit 33 (autopsy photo showing bullet wound); Defense Exhibit 15 (autopsy photo showing the bullet’s trajectory). Pennington’s DNA was not found on the gun. App. 260-261, 266. According to texts he sent to Missy after being released on bond, Yarnell claimed Pennington had taken off his belt and wrapped it around his hand and was hitting him with it like

it was a gang thing, but no other witness testified to that, and the photos of Pennington showed he still had his belt on. App. 56-57, 242-249; State's Exhibit 32 (photograph of the contents of Pennington's pockets). Yarnell also testified that Pennington had punched him through the window, but he admitted that he had not seen Pennington in possession of a deadly weapon nor act as though he were. He merely contemplated the "what if" possibility that Victim might be armed. App. 339, 345, 418-419.

Detective Jonathan Kelly went to Yarnell's apartment around 11 PM that night to talk to him about what had occurred. App. 158-159. Detective Kelly said the window on Yarnell's car was slightly bowed outward like it had been pushed out but there was no other damage to the car. App. 162, 164. He also testified the bullet hole was about 6 inches down from the top of the window, meaning the window was likely only cracked 2-3 inches (as it shows below) to a maximum of 6-8.5 inches down if the bullet had been fired into the very bottom of the window. App. 163, 167, 241-242; State's Exhibits 23, 25; Defense Exhibits 14, 20, and 43 (showing the window and then showing the length of Yarnell's car). Below is Defense Exhibit 43:



The detective testified Yarnell did not have injuries on his hands or any part of his body, and neither did his car. App. 163. SLED dusted for prints, and only one of Pennington's left-handed fingerprints was found on the paint below the middle part of the window. App. 180-185, 193-198. SLED's latent prints expert testified Pennington could have just as easily put his hand on the bottom part of the window when he initially went up to talk to Yarnell. App. 198.

Pennington's prints were not found on the front side or back side of the window. *Id.* Neither his DNA nor his fingerprints were found on the door handle of Yarnell's Hyundai. App. 263.

Yarnell was also examined at the Horry County Detention Center later that night, and it was reported that he was not bleeding and had received no medical treatment. No part of his body showed injury, except what looked like a cold sore on his bottom lip. App. 256, 320-325, 353-354; State's Exhibits 38 to 44 and 47 (photographs of Yarnell's face and body); State's Exhibits 45-46 (photographs of the tops and bottoms of Yarnell's hands).

Emmet Leonard Hall, who had thirty-years of experience installing auto glass, testified that regulators (which are inside car doors) attach to vehicle windows and are what are responsible for making the windows go up and down on their tracks. He testified the regulator in State's Exhibit 23 (Yarnell's Hyundai) was not on the track, so the regulator would not have pushed the window up or down; the glass would have fully shattered if someone had tried to raise or lower it. App. 488-490, 493-494. He testified that the window was therefore inoperable after the bullet went through it and was only being held together by window tint. App. 490-494.

Yarnell never made any legitimate attempt to drop off Remi's clothes that night and never told anyone he was scared of Pennington. App. 46, 310-311.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Elwell*, 403 S.C. 606, 609, 743 S.E.2d 802, 804 (2013). Therefore, this Court is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law. *Id.* "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR.

ARGUMENTS

Holding of the Trial Court

Under the facts summarized above, and contrary to the State’s argument that Yarnell was engaged in an unlawful activity and/or using his vehicle to further an unlawful activity under subsection (B), the trial court concluded that Yarnell had satisfied subsection (A) of 16-11-410 and was entitled to the presumption of reasonable fear of imminent peril.

The State argued Subsection (C) as well. In conducting its probable cause analysis, the court found that Yarnell had a right to be in his vehicle, but more vexingly, that Yarnell had a lawful right to be in the parking lot. Notwithstanding the evidence of criminal harassment committed by Yarnell, and the use of his vehicle to stalk the Maddington Place property so that he could force an encounter with Remi, he was not trespassing because Remi had stated: “[L]eave it and go . . . I’ll get it you need to go home. I don’t want to see you.” Rather than find credible the clear textual meaning of this statement *and* the contextual meaning of this statement given the clear fear and avoidance that Remi had exhibited, the court adopted Yarnell’s alleged interpretation that he was to deliver Remi’s belongings to her personally. The court’s ruling here also disregarded the concession that Yarnell explicitly wished to see and speak with Remi and that his presence that night was pursuant to that desire. The trial court attempted to pad its decision by noting that the private property warnings on the complex were not universal as it was not improper for defense counsel to drive around the parking lot for purposes of their case preparations, and that other permissible entries such as mail and package deliveries likewise created technical invitees. The trial court therefore concluded that since Remi had asked Yarnell to drop off her belongings, he was not trespassing “when [he] drove his vehicle into the common area of the parking lot.” App.

552. The court further concluded that even if Yarnell could be found to be trespassing, “his being in his vehicle was not the proximate cause of the attack against him.” App. 553.

The trial court reached a number of inconceivable factual conclusions and omissions. First, the court commented upon Yarnell’s demeanor and based upon such, deemed him a credible witness. That credibility was then fully extended so as to fully accept “his description of his relationship with Remi.” Second, from the court’s written order, he viewed the relationship simply as one of a young couple who frequently argued. The 200+ phone calls, many made as untraceable, were excused by the court as consolingly regrettable – as opposed to being *criminal* harassment. Third, the disgusting and abusive name calling proven by Yarnell’s own texts were not addressed. Fourth, the extortive threats against Remi’s property to force a meeting with her against her wishes were not addressed. Fifth, the repeated indications of Remi’s fear of Yarnell, despite such being a direct result of Yarnell’s actions that day, were not addressed. Sixth, the court misconstrued the timeline of events in such a way as to find that Yarnell’s presence at the complex was the result of Remi’s invitation for him to drop off her belongings. App. 557. That is not established by the record. He arrived at the complex *without* Remi’s knowledge. Only after she learned that he was there waiting for her, did she leave, call for help from friends and family, and then instruct him to leave her belongings and go home which is not an invitation but rather a specified *ejection*. Such certainly did not convey an invitation for his initial presence, nor did it convey a reason for his return; Yarnell disregarded the instructions entirely.

From these factual errors, three overarching misconceptions of the case arose that negate any discretion that might be awarded to the trial court: 1) unilaterally accepting Yarnell’s description of the relationship was an abuse of discretion when *his own texts and behaviors* demonstrated harassment, stalking, verbal abuse, and a disregard for Remi’s demand that he stay

away from her; 2) it was an abuse of discretion to reach the factual finding that Remi and Yarnell's argument "*resulted in Petitioner wanting to end the relationship and bring Remi her belongings;*" and 3) it was an abuse of discretion to find "*the messages also read as Petitioner expressing his affection for Remi.*" App. 557.

The record establishes that Yarnell's description of the relationship under oath is directly contradicted by his admitted behaviors, Remi was the individual who chose to end the relationship with Yarnell, and any feigned affection by Yarnell is overshadowed by his having called her a "whore," a "weak" person, and "a piece of shit." It is not hyperbolic to say that the court's findings to the contrary are not just simple misconceptions of the record – but material errors that demonstrate the court did not have any reasonable understanding of the dynamics at play, and its findings of credibility and application of the law cannot be sustained in tandem with such. (*Infra*). However, the Court of Appeals did precisely that.

Holding of the Court of Appeals

The Court of Appeals concluded that the circuit court did not abuse its discretion in finding that Yarnell was without fault in bringing on the difficulty. That finding was first based upon Yarnell's testimony that his only reason for being at the apartment complex was to drop off Remi's clothing, and his belief that she wanted him to wait so that he could give them to her in person. It was then based upon the inconsistent testimonies of Cerio and Card as to the timeline in which the firearm was displayed in contrast to when Victim attempted to open the door or punch through the slightly opened windshield. It likewise concluded that since there was no evidence that Yarnell attempted to park or exit his vehicle, or expressly threaten violence against Remi, he could not be found to have brought on the difficulty. The Court of Appeals couched both findings on the basis

that it could not disregard the trial court's finding of Yarnell as a credible witness. *State v. Yarnell*, No. 2023-000571, 2026 WL 1587243, at *4 (S.C. Ct. App. June 3, 2026); (App. 692).

The Court of Appeals likewise found no abuse of discretion relating to the trial court's finding of reasonable imminent danger. This was based upon the alleged punch (through a mostly closed windshield), the attempt to open the car door, and the use of threatening language. The Court appeals noted that Yarnell never saw Pennington with a deadly weapon, but only reference the lack of knowledge of what Pennington might have in his pants. The Court of Appeals again couched its affirmance on the finding of credibility for Yarnell by the trial court. *Id.* at 5; App. 693.

The Court of Appeals found no abuse of discretion in the trial court's holding that 16-11-440(A)(1) & (2) were satisfied because Pennington "was in the process of unlawfully and forcefully entering Yarnell's car and had attempted to remove Yarnell from the car." It found the same for subsection (B), wherein the trial court found Yarnell was not engaged in unlawful activity at the time of the shooting, and because there was no express threat by Yarnell against Remi. The Court of Appeals again relied upon the trial court's finding Yarnell credible to uphold his assertion that he was only there to drop off Remi's belongings. Lastly, the Court of Appeals chose not to address subsection (C), asserting that the issue was not before the court because the trial court had only addressed it via footnote and did not reach a ruling as whether Yarnell was entitled to immunity under subsection (C).

ARGUMENTS

- I. The trial court and Court of Appeals erred in mischaracterizing and misapplying the first element of self-defense. Yarnell brought on the difficulty by trespassing on private property so as to further facilitate his harassing and stalking behavior.**

Certiorari should be granted in this matter to correct the misapplication of the “bringing on the difficulty” element for self-defense. The Court of Appeals erred in finding no abuse of discretion by Judge Hayes in his ruling that Yarnell did not “provoke Pennington’s attack.” Such was a misstatement of the element, as the law asks whether the defendant “was without fault in bringing on the difficulty.” The distinction is a crucial one that seeks a factual proof of direct provocation rather than contributory fault, as it purposefully enabled the trial court to focus solely upon the interaction between Pennington and Yarnell and effectively ignore the substantial res gestae of events that created the dispute. It was legal error to characterize and decide the legal issue in such a way by Judge Hayes, and it is subsequent legal error by the Court of Appeals to endorse and affirm the trial court’s finding of the first element of self-defense.

The first element also presents reversible error on the basis of factual conclusions not supported by the record. The trial court and the Court of Appeals have failed to properly consider the res gestae of the dispute that created turmoil between the individuals that night. Remi broke up with Yarnell due to his behavior. His own texts demonstrated that reality and his anger about the situation. State’s Ex. 51; App. 572-586. His response was to insult Remi, harass her with 200 cell phone calls, and threaten to destroy her property unless she were to “come get her shit” from him immediately. State’s Ex. 51; App. 572-586. This was an obvious pretext for creating an opportunity to see and communicate with Remi, which she adamantly did not want, and such is a common fuse for domestic abuses. Moreover, and in contradiction to Judge Hayes’ and the Court of Appeals’ affirmance, Yarnell admitted that his ultimate decision to drive to Remi’s apartment and then wait for her for nearly an hour was *partly motivated by a desire to see and talk to Remi*. App. 332. This is an explicit concession from Yarnell that negates the premise that he was “only” there to deliver her belongings. It therefore constituted error on the part of the trial court in the application of S.C.

Code §§ 16-11-440(B) & (C), and as it pertains to trespass. (*Infra*). And, in the context of the strained interpretation of the instructions Yarnell claims he was given (“drop the stuff off and leave”), his decision to *stay* at Maddington Place in order to see and talk to Remi was satisfying *his own desires* that harassment had not successfully accomplished.

Yarnell does not dispute that he called Remi over 200 times that afternoon and evening – not 2, not 20 – but more than 200 times. There is no other description of such behavior than to call it what it is: harassment and unlawful use of cellphone. See S.C. Code Ann. § 16-3-1700; S.C. Code Ann. § 16-17-430. It is this undisputed harassment by Yarnell that brought about the difficulty with Pennington. Definitively, had Yarnell not harassed Remi and threatened to destroy her property, Pennington would not have had any basis for discord toward Yarnell. In fact, Pennington’s presence that night was explicitly requested because of the fear Remi was feeling toward Yarnell and his behaviors that day. App. 92-93.

Had Yarnell not engaged in threats of destroying Remi’s property, neither he nor Pennington would have been present that night. After committing harassment and threats against property, Yarnell still had not been able to see or speak to Remi, so he turned to his efforts from telephonic harassment to staking out her known destination that night. Remi did not learn of Yarnell’s presence at the complex until she arrived the first time and left to wait at the gas station. It was at that time she communicated her ejectment by telling him to leave her belongings and go home.¹ App. 274-275. Had Yarnell simply followed Remi’s instruction to drop the stuff off and

¹ Contrary to the trial court’s order, there is no apparent communication from Yarnell that provided Remi with advanced notice that he was going to the apartments to drop off her belongings. The first correspondence of that kind came at 9:17:58pm App. 587, which was well after his harassing behavior had forced Remi to turn off her phone, well after he had arrived at the apartment and waited without permission, and would coincide with being *at or after* Remi and Emily first arrived at the complex but immediately left upon seeing Yarnell there. They then went to the nearby gas

leave, he would not have been there upon Remi's return (contrary to his admitted intention), and the opportunity for confrontation would never have arisen. App. 274; 277. Had Yarnell simply (even by his own doubtful interpretation) dropped off her belongings and left the scene without attempting to engage in conversation or seek Remi's *personal* involvement, this confrontation would not have arisen. Lastly, had Yarnell left when he was asked, thereby establishing ejectment, the opportunity for confrontation would not have occurred. App. 83; 87. Judge Hayes ruled that "the facts established Remi had consented to Petitioner bringing her belongings to her at Maddington Place." App. p. 552, n. 8. That finding is reached in disregard of record testimony to the contrary, in full adoption of the doubtful testimony offered by the individual charged with murder, and is simply contrary to the extensive efforts Remi made to avoid or limit contact with Yarnell due to his fear inducing behavior.

As has been consistently argued by the State, Yarnell was very clearly "not without fault" for bringing about the difficulty in question. His criminal harassment of Remi that evening, his unwanted presence at the complex, and his refusal to follow Remi's instructions for ejectment led to the dispute with Pennington. He may not have provoked Pennington's *minimal* and nonlethal violence, but he certainly brought on the underlying difficulty and then ultimately used his weapon to shoot an unarmed man that posed no serious threat while located in a place he did not have a right to be, and while possessing a means to quickly leave the confrontation without any risk of injury. Certiorari is warranted to correct both legal and factual error in this case – Yarnell deserves to be tried.

II. The Court of Appeals erred in affirming the trial court's finding of imminent danger of death or serious bodily injury because Yarnell remained in his locked and running vehicle, never saw Pennington with a weapon, and only surmised the possibility that

station to make numerous phone calls and wait for Pennington, and the ultimate shooting took place the apartment at approximately 9:45. App. 565.

Pennington might have a weapon rather than act on any appearance of imminent danger.

Certiorari should be granted because the Court of Appeals erred in affirming the trial court's finding Yarnell satisfied the presence of actual imminent danger or the reasonable belief of such. The Court of Appeals erred in finding no abuse of discretion by Judge Hayes in his ruling that Yarnell was in actual danger of death or great bodily injury, and that Yarnell's fear of imminent danger was real and that a reasonably prudent man of ordinary firmness and courage would have come to the same belief. App. 560. This finding was an uncritical adoption of the testimony of Yarnell, without consideration of the contradictory details presented in the record and without consideration of Yarnell's own contradictory testimony. The Court of Appeals has erred in its refusal to critically review the factual findings of the trial court as to the second element of self-defense, where Yarnell's own testimony detracts from his establishment of reasonable fear, and where forensic evidence demonstrated the impossibility of Yarnell's story of the crime. *At minimum*, such discredited his testimony when tested against unbiased forensic and photographic evidence.

The lower courts disregarded the physical limitations of how much danger a reasonably prudent man would feel from the implausibility of having his gun taken from him through a minimally opened car window and locked door. (See Defense Ex. 43). The trial court inexplicably dismissed the possibility that the window was nearly up during Pennington's alleged attempt to grab the gun App. 554, n. 11, despite the fact that photograph evidence of the position of the window was taken and the mechanic demonstrated that the window *was inoperable* once the window became shattered. App. 491. The trial court likewise disregarded Yarnell's own testimony that the position of the window was such that it prevented "good punches" against him. App. 348. Yarnell likewise presented no testimony that he ever saw Pennington or any other witness with a

weapon of any kind. Instead, he surmised the possibility that they *might* be armed (without a basis for such) and based his fear of danger on that presupposition.

The law permits a person acting in self-defense to act *on appearances*, and Judge Hayes relied on such law as his basis for finding imminent danger. App. 549, citing *State v. Scott*, 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018)). Yarnell's unsupported fear of imagined weapons in Victim's pockets and the unscrutinized single use of the doorhandle were used as the factual basis supporting the trial court's ruling. However, the law of appearances is intended to permit a defendant to use deadly force when he believes (even if mistaken) that an assailant is in the process of drawing or presenting a deadly weapon – but that belief has to be based on some distinct evidence and not the shooter's imagination. No such testimony was provided by Yarnell, and as such it was legal error on the part of the trial court to rely on that facet of the law.

Despite these clear deficiencies in the trial court's record review and application of the law to the facts of the case, the Court of Appeals affirmed the trial court's findings. The Court of Appeals erred in that affirmance and certiorari is warranted to review and reverse the same.

III. The Court of Appeals erred in affirming the trial court's various holdings under S.C. Code § 16-11-440.

Abuse of discretion arises by way of error in the application of law, and by reaching factual findings that are unsupported by the record. The Court of Appeals committed reversible error in affirming the trial court's abuse of discretion in both regards. First, in its application of criminal statutes S.C. Code Ann. § 16-17-430 and §§ 16-3-1700-1710. Application of these statutes makes clear that Yarnell's behavior was criminal, and much of the trial court's own Order adopted findings that satisfy the statutes. Specifically, the court's Order conceded the 200 phone calls and the threats to destroy property. The trial court's notation that defendant was supposedly regretful of such, does not make his behavior less criminal, and the failure to identify criminal conduct constitutes

subsequent abuse of discretion in the application of § 16-11-440, as it should have rendered the entire statute inapplicable. Secondly, the Court of Appeals affirmed despite material findings of facts from the trial court that deviated from uncontested record evidence as to who chose to end the relationship and what Yarnell's own conceded motivation was for his presence at the complex. These constitute material factual findings that suited the narrative of immunity, but were not just "unsupported" by the record but were in diametric conflict with the record. When a trial court's misunderstanding of the circumstances of a case is so fundamentally flawed, appellate review is not engaging in reweighing evidence, it is engaging in correcting an abusive disregard of evidence. Third, the Court of Appeals committed legal error again in the finding subsection § 16-11-440(C) was not properly before it for review.

a. There are four separate illegal activities committed by Yarnell that satisfy § 16-11-440(B)

Notwithstanding the errors relating to the first two elements of self-defense, additional errors on the part of the trial court arose and those errors were improperly affirmed by the Court of Appeals. Certiorari should be granted to review those errors and the Court of Appeals' affirmance.

The Court of Appeals erred in finding no abuse of discretion by Judge Hayes in his ruling that Yarnell did not lose his presumption of reasonable fear under S.C. Code §§ 16-11-440(B). This case is not as complex as Judge Hayes sought to make it. Yarnell broke the law by harassing Remi, and that harassment is the direct cause for Yarnell's presence at the crime scene and Pennington's animus. Specifically, the unlawful conduct is established by his unlawful use of a telephone and his criminal harassment, and Yarnell utilized his car to further the desired intent of those acts: *see and speak with Remi*. See S.C. Code Ann. § 16-17-430; See S.C. Code Ann. § 16-3-1700-1710.

Yarnell likewise was acting unlawfully by trespassing on private property without an invitation. Yarnell did not arrive at the complex under a request by Remi to deliver her belongings. She learned of his presence when she arrived, left the premises in fear, and subsequently instructed him to leave her belongings and go home. Such was an ejectment from the premises with the explanation that she did not want to see him. That ejectment was later repeated by Remi's friends as well. Yarnell repeatedly failed to comply.

As mentioned above, even considering the doubtful interpretation of Remi's instructions that Yarnell now asserts while attempting to avoid a murder charge, he conceded that he was desirous of seeing and speaking with Remi and was at least partially there for that purpose. That exceeded the scope of any lawful presence a court could conceivably attribute to his actions under the facts of the case. Notwithstanding the additional argument that Yarnell intended to harm Remi, there are four separate grounds for unlawful conduct on the part of Yarnell that satisfy subsection (B): 1) harassment by in the form of derogatory communications and *extreme* repetitious attempts at communication (often using clandestine methods to hide his identity) after Remi chose to end the relationship; 2) harassment, with the ulterior motive of forcing an in person meeting, by way of threats against Remi's property; 3) use of the same threats to stalk Remi and lie in wait at the location he knew she would arrive at that evening; 4) trespass upon private property for the same improper purpose of seeking an in-person meeting with Remi.

b. The Court of Appeals erroneously found arguments under § 16-11-440(C) unpreserved for review.

The Court of Appeals erred in ruling that the trial court's alternative finding under subsection (C) is unpreserved. Respondent conceded at the hearing that subsection (C) was an underlying argument of the State and actively argued against its application. App. 509-510, 517. Indeed, the State argued that Respondent could not satisfy subsection (C) in briefing. App. 545.

The Court of Appeals suggests that its mention is limited to “a footnote in considering whether a proximate cause analysis was required under subsection 16-11-440(B), but did not address whether Yarnell was entitled to immunity under subsection 16-11-440(C).” This simply is not a fair or accurate assessment of the Order granting immunity. Extensive discussion of subsection (C) can be found in both the text and footnotes of pages 4, 5, 6 and 7 of the Order, and the trial court explicitly states: “Nevertheless, as will be explained herein, when applying McCarty’s proximate cause test while examining subsections (A) and (B) to the present facts, the proximate cause test does not alter the present decision. App. 550-553. As such, the argument was presented, argued against, and ruled upon by the trial court. As argued in brief, that ruling was in error. It was properly before the Court of Appeals and its finding to the contrary was in error.

The trial court erred in its legal application of statutory law, as well as its factual conclusions in support. The Court of Appeals has erred in affirming the findings under subsection (B) and in declining to address subsection (C) as unpreserved. Certiorari is warranted to review and reverse this holding.

IV. The Court of Appeals affirmed egregious factual errors that constitute an abuse of discretion and negate the reasonable reliance upon findings of credibility.

a. Certain factual errors affirmed by the Court of Appeals were so egregious and unsubstantiated that they taint the trial court’s entire understanding of the case.

The Court of Appeals erred in finding Judge Hayes was within his discretion in ruling that Yarnell had satisfied his burden of proof for each of the first three elements of self-defense. In addition to the arguments raised above demonstrating that these finding were reached in reliance upon erroneous application of law, they were also reached on factual findings and generalized finding of credibility for Yarnell that were wholly unwarranted in the record. Such may be entitled

to “great deference,” but not absolute deference. Here, deference was granted in error by the Court of Appeals and certiorari should be granted to review and reverse these findings.

The most egregious factual error by Judge Hayes is the finding that “[t]he argument result[ed] in Petitioner wanting to end the relationship and bring Remi her belongings.” App. 557, n. 19 (emphasis added). At no point in the record does Yarnell indicate that he was independently desirous of wanting to end his relationship with Remi. By proof of Yarnell’s own messages, the exact opposite is true; Remi sought to end the relationship with Yarnell and he responded with apparent scorn, anger, pettiness, and ultimately criminal behavior. His texts include the following statements:

She’s moving with Allie she said Bc we are “done” she’s too weak to have a kid on her own we both know that she needs me or you bc she’s weak Allie can’t take care of her.

...

Today so since she wants to leave so bad I’ll gladly throw her shit put (out).

...

She choosed allie over me today so I don’t care along with her photos and shit I’m getting every last thing out she will not succeed as a single mother as of now because she’s too weak.

...

So since she thinks she can do it we will see I’ll send money as much as she needs but she doesn’t need me so tell her to remember that because I’m the only guy that will ever but (put) up with the bs that comes with her.

State’s Ex. 51; App. 579-581. (errors in original).

These texts were stated *before the shooting*, before Yarnell had a substantial reason to portray himself or his actions in a way that is less provocative and less criminal, and they come *directly from Yarnell*. Yet, immediately following Judge Hayes’ glaring error as to who sought to end the relationship, he follows with “[t]he messages also read as Petitioner expressing his affection for Remi.” App. p. 557, n. 19. There is no deference to this conclusion from the record;

these texts are an unbiased demonstration of who wanted to end the relationship and how poorly Yarnell reacted and behaved afterward.

This text message evidence was corroborated by evidentiary proof that after the argument/break-up, *Petitioner called Remi over 200 times in a single evening*. Respondent concedes this and concedes that often his calls were placed every minute or placed multiple times within the same minute. Judge Hayes' finding that it was Petitioner who wished to end the relationship, is not a disputable question of fact, it is a blatant abuse of discretion as to the record evidence and it relates to the single fundamental dispute taking place that leads to the crime. "A circuit court abuses its discretion when its ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *The State, Appellant, v. Anijah Yarnell, Respondent.*, No. 2023-000571, 2026 WL 1587243, at *3 (S.C. Ct. App. June 3, 2026) (quoting *State v. Marshall*, 428 S.C. 11, 18, 832 S.E.2d 618, 621-22 (Ct. App. 2019)). Those are the precise words of the Court of Appeals' opinion in this matter, and yet the warned of error was squarely before them. Such is reversible error, and this Court should grant Certiorari to review.

b. The trial court's finding of Yarnell as a credible witness was unfounded in light of the record and the Court of Appeals' affirmance was in error to rely upon such as a proper use of discretion.

The trial court reached a general finding that Yarnell was a credible witness. However, he offered only the barest explanation in support of this finding and in disregard to substantial record contradictions. App. 557, n. 19. When the review of the record is taken in comparison, the court's finding, both generally and specific to certain factual and legal matters, is not deserving of the deference the law usually affords. Certiorari should be granted to review these unfounded findings of credibility.

Yarnell conceded on the stand that he was not at Remi's apartment solely to satisfy his interpretation of "drop it off and leave." He conceded in testimony that he also wanted to see Remi and engage her in conversation App. 332, something he had been unable to accomplish with his maniacal cellphone efforts. This was something that Remi's clearly wished to avoid based not just upon testimony of friends and family, but her own efforts to avoid Yarnell's communications. This is the first of many instances where Yarnell's supposed "credibility" is unfounded. It is furthered by Yarnell's repeated refusal to admit that Remi did not wish to see or speak with him and his refusal to consider his pre-argument invitation to her home revoked in light of the subsequent break-up and his reactions, her termination of communications, and the testimony that supports an explicit desire not to see him. App. 382-398; 277. These were absurd positions from Yarnell in his testimony for immunity, but like the many other inconvenient contradictions, they were ignored by the trial court and not critically considered by the Court of Appeals.

Despite the fact that the other eyewitnesses who testified created numerous questions of disputed fact relevant to the argument, the confrontation, and the ultimate use of force, the trial court failed to provide a finding *as to their credibility*. It instead used its broad finding of credibility for Yarnell App. 557, n. 19 to satisfy all of the factual disputes of the case in Yarnell's favor, despite a lack of record support for numerous matters. These above facts, and others, demonstrate the abuse of discretion in finding Yarnell credible *as to all matters* related to this crime. Yarnell's 1) concession that he called Remi a "piece of shit" and "dumb fuck" App. 386, 2) his claim that he needed orthodontic repair but refused to read his own doctor's reports to the contrary App. 359, 3) his claim to have no knowledge as to why Victim would have displayed aggression toward him at that time, 4) his claim that he rolled the window up after the shooting which is contradicted by mechanic's testimony that such was not possible App. 489-491, and 5) his denial of anger despite

clear texts and behavior to the contrary App. 396; 399 all demonstrate that the carte blanche credibility assigned to Yarnell was in direct conflict with the record.²

“Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved.” *S.C. Dep’t of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). Here, the Court of Appeals does not require an opportunity to review Yarnell’s testimony at the hearing, because his testimony as to his state of mind and behavior while on the stand are objectively contradictory to his previous statements and behaviors displayed by admitted evidence. The shield of deference cannot guard a finding of credibility that is defeated by a witness’s own contradictions. This question of credibility even goes to quintessential assertions such as Yarnell testifying that he “had no idea” why Victim would be angry with him. App. 347. He made this assertion despite having just hours before threatened to destroy Remi’s property, after persistently using *67 to harass her and force communications, and after calling Remi “a piece of shit” and a “dumb fuck.” Pennington arrived *with* Remi and her friends, to affirm the trial court’s acceptance of Yarnell claiming to have no understanding of tensions for the situation is to rubberstamp a credibility finding without any legitimate critique. That’s not deference, it is indifference.

The law exists to ensure that the trial court is granted deference, not infallibility. It was error by the Court of Appeals to find the credibility finding deserving of deference generally, and it was error by the Court of Appeals not to at least limit deference and deny such for specific matters where the record and Yarnell’s own testimony are so blatantly contradictory to the trial court’s finding.

² This list does not represent every contradiction and every basis for discreditable testimony. The whole of the record is replete with such weaknesses in testimony in contrast to the trial court’s ruling, and Petitioner argues that all such are emblematic of the same reversible error.

The factual errors discussed ultimately result in legal errors as well. The finding that Yarnell was not at fault for bringing on the difficulty renders the application of subsection B(3) one of legal error. Yarnell's presence was a continuation of his harassment, which was unquestionably demonstrated by the text messages, the 200 phone calls, and the threat of destruction of property if Remi did not create some means of an encounter between her and Yarnell. Yarnell's behavior was extortionist, his use of his vehicle to camp out at her apartment was a furtherance of such unlawful activity, and the Court of Appeal's affirmance of the trial court's dismissive interpretation of the evidence was egregious error. Certiorari should be granted to review and reverse such error.

CONCLUSION

Petitioner respectfully petitions this Court to grant certiorari so that the Court of Appeals' affirmance of the many trial court errors can be reviewed and critiqued.

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