

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Aug 31 2026

SC Court of Appeals

Appeal from Berkeley County

The Honorable Dale E Van Slambrook, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. MCDANIEL,

APPELLANT

APPELLATE CASE NO. 2025-001738

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred as a matter of law by improperly applying the proximate cause analysis of a felon in possession of a firearm in making an immunity determination under S.C. Code Ann. § 16-11-440(C) and by finding appellant could have retreated before the need arose to use deadly force in self-defense?

STATEMENT OF THE CASE

Appellant was indicted by a Berkley County grand jury following a shooting that occurred on January 14, 2024. The charges were for the attempted murder of Jared Cleveland, the attempted murder of Jarod Cleveland, two counts of possession of a weapon during a violent crime, and a felon in possession charge. R. 475-489. An evidentiary hearing was held before the Honorable Dale Van Slambrook on August 19, 2025, to address appellant's assertion of immunity under S.C. Code Ann. § 16-11-410, et seq. R. 1. Appellant was represented by Melisa Gay and Sara Norton with Kawohikukapulani Morris and Kayla Donato appearing for the State. R. 1. Following the evidentiary hearing, the trial court denied immunity by written order. R. 470. Appellant was then tried before Judge Slambrook and a jury from August 25 – 27, 2026. R. 92. Counsel for both parties remained the same. R. 92. The jury found appellant guilty as indicted for the attempted murder of Jared Cleveland, guilty of the lesser included offense of assault and battery of a high and aggravated nature as to Jarod Cleveland, guilty on two counts of possession of a weapon during the commission of a violent crime, and guilty of the felon in possession charge. R. 451, ll. 9 – 452, ll. 4. Judge Slambrook sentenced appellant to fifteen years for the attempted murder conviction, fifteen years for the ABHAN conviction, and five years for the three weapons offenses with all sentences running concurrently. R. 467, ll. 8 – 24.

This appeal follows.¹

¹ Appellant's counsel files the present brief under the provisions of Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

STATEMENT OF THE FACTS

Appellant was at a social club/sports bar in Berkley County on the evening of January 14, 2024. R. 11, ll. 8 – 19. Appellant was carrying a handgun on his person that evening. R. 23, l. 12 – 20. While playing pool, appellant asked about another patron who he did not recognize.² R. 12, l. 16 – 13, l. 2. Appellant understood this individual was with two other people who were brothers, identified as Jared Cleveland and Jarod Cleveland. R. 12, l. 16 - 13, l. 9. During this interaction inside the bar, appellant indicated feeling threatened:

He kept saying, do you know me? Do you know me? And I put my hands up to say it's not like that. And then a whole bunch of guys got in between us. The family members here, he's one of the guys that got in between us also. So after they break it up, I walked outside.

R. 14, ll. 2 – 7. As appellant exited the establishment, he was followed by the two brothers, one of whom (identified as Jared Cleveland) saying he was going to get a gun. R. 14, ll. 8 – 25. Since leaving the bar had not diffused the situation, appellant attempted to approach Jared Cleveland to let him know there was no need for a gun and that the situation was not serious. R. 15, ll. 2 – 7. This portion of the encounter was captured on video and introduced in support of appellant's immunity.³ State's Exhibit 1 confirms appellant's account that he approached Jared Cleveland as Cleveland reached into a white vehicle and retrieved a gun (the video is only 36 seconds in length). As appellant related during the immunity hearing, his purpose in approaching Jared Cleveland was to talk and try to calm down the situation. However, Jared Cleveland had obtained the firearm and was already in the process of pointing it at appellant: "I see him reaching over, like, he's going under his seat and then he pointed a gun at me and that's

² This person was identified as Corey Cleveland, a cousin to the Cleveland brothers. R. 44, l. 9 - 45, l. 23.

³ State's Exhibit 1 has been included in the Record on Appeal and has been transported to this Court for review if needed.

when I rushed him and he started firing a gun." R. 15, ll. 17 – 20. As appellant and Jared Cleveland wrestle over the handgun, Jarod Cleveland enters the video from behind appellant with a drawn handgun. State's Ex. 1; R. 17, ll. 10 – 24. As appellant and Jared Cleveland separate, muzzle flashes from their respective handguns can be seen. State's Ex. 1. Appellant can be seen running from Jared Cleveland's vehicle with both persons firing towards each other. State's Ex. 1. During the altercation, it was undisputed that appellant was shot and required emergency surgery for the wound to his leg, Jared Cleveland received a gunshot wound to his ear. Jarod Cleveland was struck by a round and was paralyzed. R. 18, l. 14 – 19, l. 17; 54, ll. 2 – 9; 67, ll. 1 – 7.⁴

While the Cleveland group testified that before the shooting occurred appellant showed his weapon and even slapped Jarod Cleveland in the face in the parking lot, all of these alleged actions were not shown in the video evidence. R. 66, ll. 3 – 23.

⁴ Jarod Cleveland claimed the bullet in his back to be a .40 caliber round, though no medical or other testimony supported that claim. R. 67, ll. 1 – 10. Both the Clevelands were armed with 9 mm handguns that evening while appellant acknowledged carrying a .40 caliber. R. 26, ll. 5 – 6; 291, ll. 12 – 23.

STANDARD OF REVIEW

“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.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

ARGUMENT

The trial court erred as a matter of law by improperly applying the proximate cause analysis of a felon in possession of a firearm in making an immunity determination under S.C. Code Ann. § 16-11-440(C) and by finding appellant could have retreated before the need arose to use deadly force in self-defense.

A. The stand your ground law.

The pertinent part of the Protection of Persons and Property Act (hereinafter the Act) governing appellant's actions is as follows:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440 (C)(2006).

As noted by our Supreme Court, “a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat.” State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013).

There are “four elements that must be established to justify the use of deadly force” in connection with a stand your ground immunity claim. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). The elements are:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually

was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Id. However, the fourth element (an implication of a duty to retreat) is excused by the Act. *See State v. McCarty*, 437 S.C. 355, 369, 878 S.E.2d 902, 910 (2022) (holding that “[i]t is the fourth element—the duty to retreat—that is excused under the Act and the Castle Doctrine”).

In *State v. Glenn*, our Supreme Court explained that “a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence.” *State v. Glenn*, 429 S.C. 108, 118 838 S.E.2d 491, 496 (2019). “If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable.” Id. Where section 16-11-440(C) is applicable, “it replaces the duty to retreat element required to establish self-defense.” Id. at 119, 838 S.E.2d at 497. “In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be.” Id. When considering whether the defendant was in a place where he had the right to be as required by the Act, the trial court must consider proximate cause or a causal connection to the incident. Id. at 119-120, 838 S.E.2d at 497. “[T]o bar a victim of crime from claiming immunity based on a hyper-technical reading of the statute would lead to absurd results when his presence in the place he was attacked had no relation to the incident itself.” Id. at 120, 838 S.E.2d at 497. Additionally, “a proximate cause analysis must also be applied to the unlawful activity element of subsection (C).” Id.

B. The trial court's ruling improperly mixed a duty to retreat requirement with the fault in bringing on the difficulty element to deny immunity.

In its order denying immunity, the trial court erred as a matter of law in its interpretation of S.C. Code Ann. § 16-11-440(C). Here, the trial court ruled:

Additionally, Section 16-11-440(C) can replace a duty to retreat, but is not applicable to Defendant because he has not shown by a preponderance of the evidence that his activity was lawful. Among the unlawful acts, Defendant illegally possessed a firearm in a bar, brandished a firearm in a threatening manner, and attacked Victim when Victim approached his car.

R. 474.

The trial court's interpretation of the "acting lawfully" language of the statute failed to properly consider the fact that appellant was in a place where he had a right to be (a public establishment and the parking lot) and the elimination of a duty to retreat under S.C. Code Ann. § 16-11-440(C). This is shown by our Supreme Court's example outlined in State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019):

This absurdity is readily illustrated through this example: A person peaceably jogging through a public municipal park at 8:59 p.m. would be entitled to defend herself from an attacker under the protection of the Act, but should the clock turn to 9:00 p.m., at which time the park "closes" under the municipal code, when she is attacked, then she is categorically barred from immunity under the Act due to her technically not having the "right to be" there. Such an absurd result would undoubtedly thwart the Legislature's intended objective to protect victims of crime.

Id., 429 at 120, 838 S.E.2d at 497.

In the present case, the trial court's logic places appellant in a similar situation to the hypothetical jogger in Glenn. This situation can be contrasted with other situations in which an accused "creates" the unlawful activity which properly precludes the use of self-defense. *See State v. Williams*, 427 S.C. 246, 250, 830 S.E.2d 904, 906 (2019) (holding "a defendant is not entitled to a charge of self-defense if the evidence supports only the conclusion that he acted 'in

violation of law' in a manner 'reasonably calculated to produce [a violent] occasion.'"); State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (finding that one who provokes or initiates an assault cannot assert self-defense unless he withdraws in good faith and announces his intention to retire from the assault).

The trial court's ruling that appellant was not acting lawfully prior to the difficulty at the car captured on video placed a duty to retreat into S.C. Code Ann. § 16-11-440(C) that our legislature never intended. Appellant was "not engaged in an unlawful activity" when he when he approached Jared Cleveland to diffuse the situation. As he approached Jared Cleveland, appellant was aware of Jared Cleveland's intention to arm himself. Since appellant was confronted in a place he had a right to be and was under "no duty to retreat" and had "the right to stand his ground and meet force with force." S.C. Code Ann. § 16-11-440(C). Requiring appellant to retreat from Jared Cleveland's escalation of events, as the trial court's ruling did, ignores the requirements set forth under the Act and requires reversal. The fact that appellant was a felon and was legally prohibited from carrying his own firearm does not alter this fact. Under our law, the illegal carrying of the firearm must be the proximate cause of the difficulty rather than itself being an illegal act. Stated differently, the mere legality of one's possession of a weapon does not dictate application of S.C. Code Ann. § 16-11-440(C). Rather, the proper question is whether the weapon itself was directly connected to the source of the difficulty: for example, taking a loaded weapon to a drug deal. Such action "as a matter of established law" is not 'merely incidental' to the act of arming himself in self-defense." State v. Williams, 427 S.C. 246, 254, 830 S.E.2d 904, 908 (2019). The lower court's focus on appellant's status as a felon in possession of a firearm at a bar was therefore an error of law since neither was the proximate cause of the disturbance which required appellant to use deadly force. See State v. Burriss, 334

S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (noting that "*McCaskill* and *Goodson* stand for the proposition that a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting."). Appellant's actions here in carrying a gun fall in line with Burriss and not Williams. Appellant was not carrying a gun into an illegal action with the intent to participate in that illegal action. Rather, appellant was carrying a weapon for the same reason numerous people that evening were armed: in self-defense. The trial court erred as a matter of law in misapplying the proximate cause analysis required in Williams and Burriss regarding this aspect of the facts.

Further, "a person has the right to act on appearances, even if the person's belief is ultimately mistaken." State v. Dickey, 394, S.C. 491, 501, 716 S.E.2d 97, 101 (2011). A citizen does not have to wait for an aggressor "to get the drop on him." State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936). Here, appellant was confronted with an escalation of events by Jared Cleveland's decision to arm himself with a gun. Appellant's actions, considering Jared Cleveland had companions, one of whom also moved to actively arm himself, was reasonable. Jarod Cleveland had also moved towards a different vehicle and testified that he too armed himself with a handgun. State's Ex. 1.

As explained in State v. Harris, 382 S.C. 107, 114, 674 S.E.2d 532, 536 (Ct. App. 2009), "[The defendant] doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him." One does not have to wait until being fired upon to use deadly force. State v. Nichols, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997); *see also* State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000) (holding that

once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act).

The video evidence of the encounter shows appellant behaving and walking normally as he approaches Jared Cleveland's car. Jared Cleveland's action of grabbing a handgun put appellant's life in danger. *See Dickey*, 394 S.C. at 499, 716 S.E.2d at 101. This Court should reverse the lower court and find appellant meets the requirements for immunity under S.C. Code Ann. § 16-11-440(C) and reverse his conviction for voluntary manslaughter.

The lower court compounded the error in finding fault in appellant being an armed felon at a bar with the finding that appellant "had ample means of retreat which would have extinguished any need for deadly force prior to the confrontation at Victim's car, which the Court finds was instigated by [appellant]." R. 474. This error of law extends from the trial court's erroneous rejection of S.C. Code Ann. § 16-11-440(C), which negates any duty to retreat requirement. In finding appellant at fault before the difficulty caught on State's Exhibit 1, the lower court improperly rejected immunity at the time deadly force was actually needed and used. Even if the trial court were to accept that some action by appellant inside the bar caused difficulties, appellant's exit of the bar was an attempt to diffuse the situation. The action of the Clevelands, in moving to arm themselves for combat, was the source of the difficulty shown on State's Exhibit 1. Appellant's response to the aggressive movements shown was reasonable and should not have formed the basis for a denial of immunity. This Court should reverse the denial of immunity and either grant appellant immunity and reverse appellant's convictions, or, as discussed below, remand this matter for clarification on the lower court's immunity order.

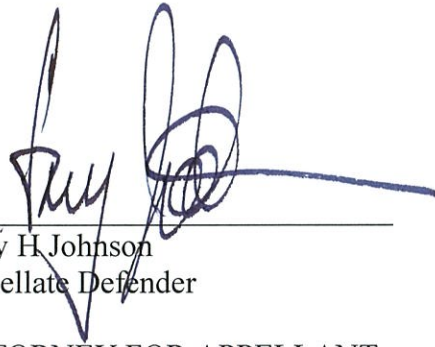
C. If this Court does not rule appellant is entitled to immunity under S.C. Code Ann. § 16-11-440(C) based upon the lower court’s ruling and the evidence presented due to lack of findings on each of the required elements, a remand would be proper for specific findings of fact on all the elements of immunity under the Act.

“We emphasize that a circuit court, as the designated factfinder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.” State v. McCarty, 437 S.C. 355, 374, 878 S.E.2d 902, 912–13 (2022). In McCarty, our Supreme Court ultimately remanded the case since the lower court failed to make specific findings to enable appellate review.

As noted in State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019), this Court may be reluctant to “infer findings of fact which do not appear in the record.” Id., 429 S.C. at 123, 838 S.E.2d at 499. As such, if this Court does not find the evidence supports a finding of immunity under S.C. Code Ann. § 16-11-440(C), a remand for a new immunity hearing would be proper to allow specific findings of fact and conclusions of law on the required elements.

CONCLUSION

Based upon the foregoing argument, this Court should either reverse appellant's conviction and find immunity pursuant to S.C. Code Ann. § 16-11-440(C) or remand this matter for clarification of the lower court's order denying such immunity.

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line.

Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of August, 2026.

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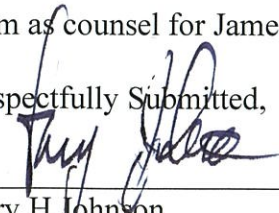
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Ciream McDaniel states:

- (1) He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
- (2) He has reviewed the record of appellant's trial before Judge Dale E. Van Slambrook, which was held on August 25-27, 2026, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
- (3) He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the pre-trial hearing August 19, 2025, to address appellant's assertion of immunity under S.C. Code Ann. § 16-11-410.

WHEREFORE, he asks the Court to relieve him as counsel for James Ciream McDaniel.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender

This 31st day of August, 2026.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
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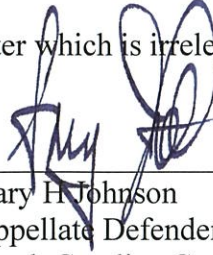
APPELLATE CASE NO. 2025-001738

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Hearing August 19, 2025 transcript;
- (2) Trial August 25 – 27, 2026 transcript;
- (3) Order denying immunity;
- (4) State's Exhibit 1 (video) to be transported;
- (5) Indictments and sentence sheets for each charge.

I certify that this designation contains no matter which is irrelevant to this appeal.



Gary H. Johnson
Appellate Defender
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ATTORNEY FOR APPELLANT

This 31st day of August, 2026.

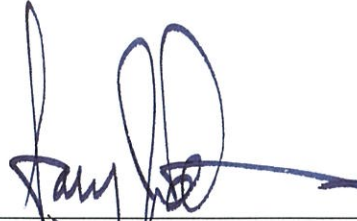
CERTIFICATE OF COUNSEL

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

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SC Court of Appeals



Gary H Johnson
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 31st day of August, 2026 and on James Ciream McDaniel #298092 at Lee Correctional Institution.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Monday, August 31, 2026 4:54 PM
To: Mark Farthing
Cc: Grace Sommer; Johnson, Gary
Subject: 2025-001738 - State v. James McDaniel - Anders Brief of Appellant
Attachments: 2025-001738 - State v. James McDaniel - Anders Brief of Appellant.pdf; 2025-001738 - State v. James McDaniel - Record on Appeal.pdf; 2025-001738 - State v. James McDaniel - Proposed Transportation Order.pdf

Dear Mr. Farthing,

Attached please find the Anders Brief, Record on Appeal, and proposed Transportation Order in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Gary H. Johnson
Appellate Defense

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