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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

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

Unpublished Opinion No. 2026-UP-276 (S.C. Ct. App. Filed June 3, 2026)
Lower Court Case No. 2021-GS-26-02687 and -02688

THE STATE,

PETITIONER,

V.

ANIJAH YARNELL,

RESPONDENT

APPELLATE CASE NO. 2026-001715

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

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 [sic] 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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

The Court of Appeals correctly determined that it was bound by the trial court's factual findings as those factual findings were supported by evidence.

COUNTER-STATEMENT OF THE CASE

Introduction

Respondent and Remi Hargrove were dating until May 14, 2020, when they broke up due to an argument about dinner plans. App. 331, ll. 1-10. As a result, Respondent went to the apartment complex where Hargrove lived to drop off her belongings. App. 336, ll. 15-17. Respondent called Hargrove from the parking lot, who told Respondent to drop off her stuff and leave. App. 336, l. 2. Respondent took this to mean that Hargrove wanted him to give her things to her and then leave, so Respondent waited for Hargrove to return. App. 336, ll. 5-8. After some time had passed, Respondent decided to leave. While leaving, he saw Hargrove's vehicle pull into the parking lot. App. 337, ll. 4-6. Respondent circled back around to Hargrove's apartment to drop off her belongings. App. 338, ll. 14-15. When he returned, Respondent saw three people, including Michael Pennington (Decedent). App. 338, ll. 22-23.

Respondent rolled down his window and asked whether Hargrove was going to come get her belongings. App. 338, l. 24 – 339, l. 1. Decedent responded by screaming “get the fuck out of the car, get the fuck out of the car so I can fuck you up.” App. 339, ll. 2-4. Decedent lifted his shirt and began wrapping something around his hand, but Respondent could not say what. App. 339, ll. 4-6. Decedent then began to attempt to force his way into Respondent's vehicle. App. 339, ll. 7-8. Decedent punched Respondent through the window, so Respondent grabbed his firearm from his center console. App. 339, ll. 10-12. Decedent said, “if you pull it out you better use it,”¹ and reached for Respondent's firearm. App. 339, ll. 12-13. Respondent, fearing for his life, fired one shot in Decedent's general direction. App. 339, ll. 13-15. Decedent's toxicology indicated that he had recently used cocaine and had a blood alcohol content of around 0.05 at the

¹ Decedent's girlfriend, Emily Cerio, testified that Decedent said, “I'm from Virginia, and if you pull a gun, you better pull the trigger.” App. 281, ll. 19-21.

time of his death. App. 122, l. 18 – 124, l. 15; 125, l. 3. An expert forensic toxicologist testified that cocaine use is associated with “significant[ly] higher levels of aggression,” even without provocation. App. 127, ll. 5-9.² The expert further testified that, to a reasonable degree of medical certainty, Decedent was displaying some signs of aggression on the night of the incident, based on the type and amount of drugs in his system. App. 153, l. 1. – 154, l. 20.

Procedural History

A Horry County grand jury indicted Respondent for murder and possession of a weapon during the commission of a violent crime. App. 612-615. Respondent moved pretrial for immunity pursuant to the Protection of Persons and Property Act.³ App. 540. A hearing on the motion began on November 14, 2022, before the Honorable J. Mark Hayes, II. App. 1. Morgan and O’Brian Martin represented Respondent; Nancy Livesay and Christopher Helms represented the state. App. 1.

The Immunity Hearing

In addition to the above, the trial court heard testimony from Melissa Canon, a friend of both Respondent and Hargrove. She and Respondent were on the phone with each other during the incident. App. 40, ll. 19-24. Canon heard “a bunch of noise like somebody ran up on the car,” and heard someone say, “get the fuck out of the car, N, I’m going to beat your ass, get out of the car.” Then, seconds later, she heard someone trying to get through the car door. App. 40, l. 15 – 41, l. 22. Canon specifically remembered a person say to Respondent: “[G]et the fuck out of the car, I am going to fuck you up.” App. 41, ll. 3-9. Respondent and Canon talked again later that

² Further, Decedent was found with 1.5 grams of cocaine in his pocket, meaning at the time of the incident, Decedent was in the process of committing possession with intent to distribute cocaine, a felony.

³ S.C. Code Ann. §§ 16-11-410, *et seq.*

night. Respondent told her that he wanted to leave the apartment complex but was unable to. App. 44, ll. 4-16. Canon testified it was not uncommon for Respondent and Hargrove to “bicker” and argue, and the argument on the day of the incident was far from their first.

Derrin Card testified that he was visiting from New York on the day of the incident. He went to dinner with his girlfriend, Jennifer, and Hargrove. App. 63, l. 16 – 64, l. 14. Card testified that Decedent approached Respondent’s car, attempted to open Respondent’s door, and tried to punch Respondent through the window. App. 70, l. 6 – 72, l. 2. He further admitted that Respondent could not have easily driven away from the encounter, because he would have either had to back out or turn around. App. 96, ll. 9-12.

Kimberly Mears, from SLED, testified that Decedent’s fingerprint was found on the front driver door of Respondent’s car. App. 194, l. 18 – 195, l. 10. Further, a DNA analyst testified that Decedent could not be excluded as a contributor to DNA found on Respondent’s firearm. App. 261, ll. 4-7.

The Trial Court’s Order

In a fifteen-page written order, the trial court granted Respondent immunity on April 4, 2023. App. 547-561. The trial court began by stating the legal standard in depth. App. 547-553. The trial court then made its findings of fact. App. 554. Among those factual findings were the following: Respondent was seated in his vehicle at all times during the altercation. App. 554. Prior to the shot being fired, Decedent reached into the vehicle to strike Respondent and try to grab Respondent’s firearm. App. 554. The trial court pointed out that “fingerprint, palm print analysis, and eyewitness testimony established that [Decedent] grabbed the door handle during the altercation.” App. 554. Respondent did not present his firearm until after Decedent approached his vehicle, made threatening statements, and reached into the vehicle. App. 554-

555.⁴ The trial court found that Respondent, due to specific observations about his demeanor, was a credible witness. App. 557, n.19.

Ultimately, the trial court found that Respondent had proven his entitlement to immunity under the act and was not disqualified by S.C. Code Ann. §§ 16-11-440(B)(3) or (C). App. 557, n.19. Accordingly, the trial court granted Respondent's motion and dismissed the case. App. 561.

The State's Appeal

The state appealed the trial court's grant of immunity. In the Court of Appeals, the state raised four enumerations of error, which are similar to the ones it raises to this Court. App. 617. The Court of Appeals first rejected the state's argument that the trial court should have found that Respondent was not without fault in bringing about the difficulty. The Court of Appeals found that the trial court had credited Respondent's version of events, and that credibility finding was not without evidentiary support. App. 696. Therefore, the Court of Appeals was bound thereby. App. 696. Further, the Court of Appeals rejected the state's contention that Respondent brought about the difficulty "by showing up when he was uninvited and that [Decedent] was acting for [Hargrove's] protection." App. 697. This was because Hargrove was upstairs when the incident occurred, and there was no evidence that Respondent ever attempted to park or exit the car, or that he ever threatened violence against Hargrove. App. 697.

The Court of Appeals next rejected the state's argument that Respondent was not actually in imminent danger and did not reasonably believe he was in danger. App. 697. Again, the trial court's factual findings were supported by evidence and thus bound the Court of Appeals. App. 697. For much the same reason, the Court of Appeals affirmed the trial court's decision that

⁴ The state asserted at the hearing that Respondent's mere possession of the firearm implied that he was at the apartment complex to do harm to Hargrove. The trial court rightly rejected this assertion as wholly unsupported by any evidence. App. 555, n.13.

Respondent was entitled to the S.C. Code Ann. § 16-11-440(A) presumption. App. 698. Respondent presented evidence that he was in his vehicle and Decedent was in the process of trying to enter the vehicle unlawfully. App. 698. That testimony supports the trial court's factual findings. App. 699.

Finally, the Court of Appeals held that evidence supported the trial court's finding that Respondent was not engaged in unlawful activity at the time of the shooting. App. 699. While the Court of Appeals acknowledged Respondent's "questionable behavior by his obsessive attempts to contact [Hargrove] and his demeaning text messages," Respondent never threatened Hargrove, and he provided a reasonable explanation for his possession of his firearm that did not involve harming Hargrove. App. 699. The Court of Appeals did not address the trial court's decision under S.C. Code Ann. § 16-11-440(C), because that subsection was not material to its analysis. App. 700.⁵ Therefore, the Court of Appeals affirmed. App. 700. The state filed a petition for rehearing, App. 701-712, which was denied on July 10, 2026. App. 715-716.

The state now petitions this Court for certiorari.

⁵ The state characterizes this holding as the Court of Appeals finding its arguments under § 440(C) were not preserved. Petition for Certiorari 19. Respondent disagrees with this characterization. The Court of Appeals held that the trial court only discussed § 440(C) in a footnote and did not ultimately address whether Respondent was entitled to immunity under that subsection, because it had already determined Respondent was entitled to immunity under a different subsection. App. 700. Therefore, the Court of Appeals did not believe it needed to address the issue. App. 700. This is different from finding an issue unpreserved. The Court of Appeals did not say it *could not* address the issue; it said that it *need not* address the issue, because it was not material to the trial court's analysis. Respondent acknowledges that the Court of Appeals cited to caselaw referencing preservation, but Respondent would assert that one case cite does not prevail over the obvious import of the Court of Appeals' analysis.

STANDARD OF REVIEW

When immunity is claimed under the Protection of Persons and Property Act, the circuit court must make a pretrial determination of immunity using the preponderance of the evidence standard, which this Court reviews for abuse of discretion. *State v. Gray*, 438 S.C. 130, 141, 882 S.E.2d 469, 475 (Ct. App. 2022). “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.” *State v. Marshall*, 428 S.C. 11, 18, 832 S.E.2d 618, 621-22 (Ct. App. 2019). A trial court’s factual findings, including findings regarding the credibility of witnesses, are “entitled to great deference.” *State v. Johnson*, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015). “In other words, the abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the [circuit] court’s assessment of witness credibility.” *State v. Oates*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017).

ARGUMENT

The Court of Appeals correctly determined that it was bound by the trial court's factual findings as those factual findings were supported by evidence.

The trial court, after hearing testimony from several witnesses and viewing numerous exhibits, found by the preponderance of evidence that Respondent was entitled to immunity. The Court of Appeals, in a detailed, eleven-page opinion, found that those factual findings were supported by some evidence and affirmed. The state, unsatisfied with the fact that a circuit judge viewed the evidence differently than it, accuses the trial court of “egregious factual errors,” and the Court of Appeals of acting as a “rubberstamp,” offering no “legitimate critique” of the trial court’s order. To that end, the state invites this Court to grant discretionary review, just to perform a second, highly deferential “any evidence” review of the Court of Appeals, which will inevitably lead to the same conclusion reached by that Court. This Court should deny the state’s petition.

In 2006, the General Assembly passed the Protection of Persons and Property Act (the “Act”) to “codify the common law Castle Doctrine” and permit people “to protect themselves...without fear of prosecution.” S.C. Acts No. 379, § 1 (2006). In furtherance of that goal, the General Assembly provided that a “person who uses deadly force as permitted by [the Act] or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution....” S.C. Code Ann. § 16-11-450(A). Because the General Assembly used the word “immune,” this Court interpreted the Act to require “true immunity,” meaning that a person who claims immunity under the Act is entitled to a pretrial determination of their immunity. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). To that end, the circuit court must hold an evidentiary hearing, and then determine by the preponderance of

evidence whether a defendant is entitled to immunity from prosecution. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). At this hearing, the trial court must act as the fact-finder, simply declaring that there is a conflict of evidence that a jury should decide is not sufficient. *State v. Gray*, 438 S.C. 130, 142, 882 S.E.2d 469, 475 (Ct. App. 2022).

To establish immunity under the Act, the defendant must establish the elements of self-defense. *State v. McCarty*, 437 S.C. 355, 368, 878 S.E.2d 902, 909 (2022). Self-defense has four elements: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant either believed he was in imminent danger of death or serious bodily injury, or he actually was in such danger; (3) if the defense is based on the defendant's "belief of imminent danger," a reasonably 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. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). The effect of the Act, and the common law Castle Doctrine, is that the fourth element—duty to retreat—is "excused." *Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4.

The Act further provides, in relevant part, as follows:

(A) 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.

(B) The presumption provided in subsection (A) does not apply if the person:

...

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

...

(C) 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.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440. The proper inquiry is “whether, *at the time of the incident*, [the defendant] was engaged in an unlawful activity and was attacked in another place where he had a right to be.” *State v. Glenn*, 429 S.C. 108, 119, 838 S.E.2d 491, 497 (2019) (emphasis added). Further, if a defendant *is* engaged in unlawful activity, or is in a place where they have no legal right to be, his immunity is only foreclosed if the defendant’s actions were the proximate cause of the incident requiring self-defense. *Id.* at 120-21, 838 S.E.2d at 497; *State v. Jones*, 416 S.C. 283, 297, 786 S.E.2d 132, 139 (2016); *see generally also*, *State v. Buriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (defendant’s unlawful possession of a weapon not a bar to self-defense).

The state argues that the trial court erred in several ways. First, the state asserts that the trial court erred in finding that Respondent did not bring about the difficulty. Petition for Certiorari 12. Second, the state asserts that the trial court erred in finding that Respondent was in imminent danger. *Id.* at 15. Third, the state asserts that Respondent committed “four separate illegal activities” that undercut his immunity under the Act. *Id.* at 18. Finally, the state asserts

that the trial court's fact findings were so "egregious" that the Court of Appeals erred by applying the deferential standard of review at all. *Id.* at 20. None of the state's arguments possess merit.

A. Respondent did not bring about the difficulty and Respondent's alleged "unlawful acts" were not the probable cause of the encounter between Respondent and Decedent.

First, the state asserts that the trial court erred in finding that Respondent was without fault in bringing on the difficulty. The state asserts that Respondent caused the difficulty because, if not for his behavior earlier in the day, Decedent would not have been at Hargrove's apartment. Petition for Certiorari 13. Further, the state asserts that Respondent acknowledged that part of his motivation for travelling to Hargrove's apartment was a desire to see and speak to her. *Id.* at 13. The state further asserts that Respondent committed the criminal offenses of harassment and unlawful use of a cell phone. *Id.* at 14. The state's argument is without merit.

Again, this Court cannot reverse a trial court's factual findings unless they are wholly "without evidentiary support." *Jones*, 416 S.C. at 290, 786 S.E.2d at 136. At the outset, the state's assertions that Respondent committed several crimes must be addressed. The state's petition for certiorari accuses Respondent of no less than five crimes: harassment, stalking, trespassing, domestic violence, and extortion. Interestingly, as the trial court's order pointed out, the state did not charge Respondent with any of these offenses. App. 559, n.22. It seems inconsistent that the state would complain that the trial court did not declare Respondent guilty of criminal acts that the state itself, for whatever reason, was unwilling to present to a grand jury.

Beyond that, however, the state's assertions fail at the "proximate cause" part of the analysis. Any unlawful act that Respondent may have committed⁶ only bars him from immunity if that act is the proximate cause of the difficulty. *Glenn*, 429 S.C. 120-21, 838 S.E.2d at 497. Further, Respondent must have engaged in the unlawful act "at the time of the incident." *Id.* at 119, 838 S.E.2d at 497. For Respondent's acts to have been the "proximate cause" of the difficulty, they must have been both the "causation in fact" and the "legal cause." *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). "Causation in fact" means that the difficulty would not have occurred "but for" Respondent's actions. *Id.* "Legal cause" means that the difficulty was a foreseeable result of his actions; in other words, that the difficulty occurred as a "natural and probable consequence" of Respondent's actions. *Id.* Importantly, Respondent's actions *cannot* be the proximate cause of the difficulty if there was an "intervening cause" which "produces the result complained of, and without which the result would not have occurred." *Driggers v. City of Florence*, 190 S.C. 309, 2 S.E.2d 790, 791 (1939); *see State v. Leaks*, 114 S.C. 257, 103 S.E. 549 (1920) (defendant's participation in illegal card game "did not destroy the right of self-defense" because "[t]he casual connection between the unlawful act of gambling and the encounter...is too remote."); *cited approvingly by Glenn*, 429 S.C. at 120, 838 S.E.2d at 497.

Here, the state asserts that Respondent's repeated calling of Hargrove throughout the day was the proximate cause of the encounter between himself and Decedent. But for Respondent's actions to be the proximate cause of the encounter, the encounter must have been a foreseeable result of his actions. Respondent cannot have known, nor could anyone know, that using his cell phone to fight with his girlfriend would lead to an entirely different person, Decedent, attacking

⁶ To be clear, Respondent denies the numerous allegations of crimes made in the state's petition.

him without provocation.⁷ Even to the “most cautious mind” “there was nothing in the situation to suggest” to Respondent that he would be assaulted upon arrival by Decedent, who he did not even know would be there. *See Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 345 (1928).

Decedent’s attempted assault of Respondent is, as a matter of law, an intervening cause, because it was an intentional action that Respondent could not have foreseen. *See* RESTATEMENT (SECOND) OF TORTS § 448.⁸ For that reason, Respondent’s calling and texting Hargrove—even if unlawful—were not the proximate cause of the incident.

The state further argues that Respondent was trespassing at the time of the incident. However, the trial court made several factual findings that belie this assertion. For example, the trial court found that Respondent “was not aware the area was private property,” and the trial court credited Respondent’s testimony that he believed Hargrove had asked him to wait for her to deliver her belongings. App. 552, n.8.⁹ Those factual findings are supported by evidence—Respondent’s testimony—and therefore bind this Court. *Jones*, 416 S.C. at 290, 786 S.E.2d at 136. The import of those findings is that Respondent could not have committed trespassing, because he had no intention of committing trespassing, and trespassing is not a strict liability

⁷ The state seems to concede that Respondent did not provoke Decedent. Petition for Certiorari 15 (“He may not have provoked [Decedent’s] minimal and nonlethal violence....”).

⁸ “The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor’s negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.” *Id.*

⁹ This belief is supported by evidence other than Respondent’s testimony. For example, Emily Ciero told the police that Hargrove had possibly told Respondent, “*I’ll get [my stuff] you need to go home,*” App. 567 (emphasis added), which could reasonably be interpreted in the manner that Respondent did. Regardless, Respondent’s testimony was credited by the trial court, and that testimony supplies all the necessary evidence to require deference to the trial court’s finding of fact.

offense. *Cf. State v. Ferguson*, 302 S.C. 269, 271, 395 S.E.2d 182, 183 (1990) (general rule that all crimes require some level of intent).

The trial court's factual findings also belie the state's other contentions, namely that Respondent used his vehicle in furtherance of his "harassment" of Hargrove and that he lied in wait for Hargrove. Petition for Certiorari 19. Respondent reasonably believed that Hargrove had invited him to the apartment complex. Because there can be no such thing as "invited harassment," Respondent's mere travel to Hargrove's apartment cannot constitute harassment. The mere fact that Respondent hoped to speak to Hargrove while there is irrelevant. It is not a criminal offense to desire to have a conversation with one's ex-girlfriend.

For these reasons, the trial court's findings that Respondent did not bring about the difficulty and that Respondent was not acting unlawfully at the time of the shooting are supported by evidence. The Court of Appeals' decision finding as much is correct as a matter of law. This Court should deny certiorari.

B. The trial court's factual findings were not "so egregious" to justify departure from the long-standing deference this Court gives to findings of fact.

The state faults the Court of Appeals for not reversing the trial court finding Respondent to be a credible witness. It claims that the trial court's factual findings are so "egregious and unsubstantiated that they taint the trial court's entire understanding of the case." Petition for Certiorari 20.

To start, the state cites no authority for the proposition that appellate courts can abandon the standard of review just because one of the litigants uses the adjective "egregious" to describe fact finding it does not agree with.¹⁰ The state's failure to cite authority on this point makes

¹⁰ In fact, the state cites caselaw only thrice in its twenty-five-page brief.

perfect sense, because there is no authority to support such a proposition. In fact, such a proposition is wholly illogical. This Court already reverses if a trial court's fact finding is unsupported by any evidence. *Jones*, 416 S.C. at 290, 786 S.E.2d at 136. And if the trial court's fact finding is supported by some evidence, it can hardly be "egregious."

The state's chief assertion is that the trial court erred by finding Respondent to be a credible witness. "Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court's factual findings are supported by any evidence in the record." *State v. Johnson*, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015). Evidentiary support for a credibility finding can come from the trial court "assessing Respondent's actual demeanor on the witness stand." *Id.*; *Sumpter v. State*, 312 S.C. 221, 224, 439 S.E.2d 842, 844 (1994) ("Because the trial court's findings...rest largely on his evaluation of demeanor and credibility, those findings are given great deference.").

The state asserts that the trial court offered "only the barest explanation" in support of its credibility finding. Petition for Certiorari 22. The trial court, in finding Respondent to be credible, offered the following: "His demeanor while testifying was respectful to both attorneys while being questioned. He was not argumentative or belligerent. He appeared nervous, but also genuine with his attempts to give answers to the questions presented to him. His demeanor remained the same even when pressed by the state. He was a credible witness." App. 557, n.19. Respectfully, it is not clear what more the state wanted the trial court to say. The trial court described Respondent's demeanor while testifying and determined that demeanor lent credibility

to Respondent's testimony. *Johnson*, 413 S.C. at 467, 776 S.E.2d at 371; *Sumpter*, 312 S.C. at 224, 439 S.E.2d at 844.¹¹

Further, the state's assertions that Respondent's testimony is not credible because it was contradicted misstate the record. For example, the state complains: "[Respondent] conceded in testimony that he also wanted to see [Hargrove] and engage her in conversation, something he had been unable to accomplish with his maniacal cellphone efforts. This was something that [Hargrove] clearly wished to avoid based not just on the testimony of friends and family, but her own efforts to avoid [Respondent's] communications." Petition for Certiorari 23 (citation to appendix omitted). Hargrove did not testify at the immunity hearing. App. 557, n.19 (acknowledging the same). Therefore, the state's assertion can be reframed as follows: Respondent, who was a party to the conversations between himself and Hargrove, cannot credibly testify about them, but Hargrove's family and friends, who were not party to those conversations, can. To state this argument is to refute it. The trial court credited Respondent's characterization of his and Hargrove's relationship because that was the best evidence the trial court had. The state was free to call Hargrove as a witness; it chose not to. It cannot now complain that the trial court did not credit second-hand accounts of Hargrove's personal feelings.

The state further complains that the trial court did not make credibility findings as to the credibility of "other eyewitnesses." Petition for Certiorari 23. But this ignores the full context of

¹¹ It is not clear that the trial court was required to explain why he found Respondent credible at all. Frequently in bench proceedings the trial court will state in its order that it finds a witness credible without explaining why. A common example of this is orders dismissing PCR cases. The PCR court will often find an applicant not credible and his trial counsel credible with no explanation as to why. To the extent the state asserts that the trial court must always explain their credibility findings, such a holding would call hundreds or thousands of PCR cases into question. Of course, this is not the law, nor could it be, because it is often quite difficult to articulate why we believe another person to be truthful or untruthful.

the order. For example, the order states that Darrin Card testified that Decedent approached Respondent's car and told him, "to go home, no one wants you here." App. 556. However, Card told the police that Decedent said, "What's your problem?" App. 556. The trial court also points out that Emily Cerio testified inconsistently with what she told police. App. 556-557. Further, none of Hargrove's friends and family testified to Decedent's threatening language, "get out of the car so I can fuck you up," something testified to by both Respondent and Melissa Cannon. App. 555. Cerio also testified that Decedent was not drinking at the time of the incident, which is refuted by toxicology evidence. App. 281, ll. 9-18; 125, l. 3. In short, the state accuses Respondent of testifying in a manner that is contradictory but then faults the trial court for failing to credit the testimony of other witnesses that gave conflicting testimony.

Finally, the state faults the trial court for making two factual findings that it claims are particularly "egregious." First, the trial court stated once, in a footnote, that Respondent wanted to end the relationship with Hargrove. Petition for Certiorari 21; App. 557, n.19. Second, in the same footnote, the trial court indicated that the messages could be read as Respondent "expressing his affection for" Hargrove. Petition for Certiorari 21; App. 557, n.19. To start, neither of these findings are material. Regardless of who ended the relationship, Respondent still reasonably believed that Hargrove wanted him to drop off her belongings to her. And in any event, who broke up with who did not cause an entirely different person, who was not related to Respondent or Hargrove, and had recently used an illegal narcotic that made him more aggressive, to assault Respondent without prompting.¹² The fact that the trial court may have misstated one minor fact, in a footnote, does not render its fact findings "egregious."

¹² Again, the state concedes that Respondent did not provoke Decedent. Petition for Certiorari 15 ("He may not have provoked [Decedent's] minimal and nonlethal violence....").

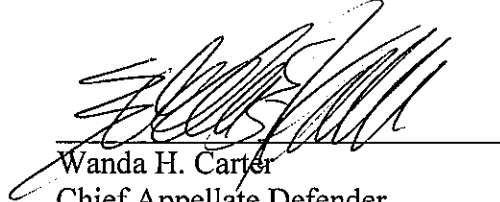
In a true “mask off” moment, the state asserts: “That [factual] finding is reached in disregard of record testimony to the contrary, in full adoption of the doubtful testimony offered *by the individual charged with murder....*” Petition for Certiorari 15 (emphasis added). This sentence exposes the state’s true quarrel with the trial court’s ruling: it was in favor of a criminal defendant. However, contrary to the state’s assertion, the law does not require that a trial court refuse to credit a witness’s testimony simply because that witness is *accused* of a crime by the very same litigant that he is testifying against.¹³ The state asks this Court to exercise discretionary review over this case simply to become the second appellate court to determine whether the trial court’s order is supported by any evidence. In so doing, the state accuses a learned trial judge and experienced Court of Appeals panel of making “egregious” and “uncritical” findings.

Two different courts have reviewed this case. There is no issue that warrants this Court’s review, and the petition for certiorari should be denied.

¹³ Respondent imagines that the state would not actually prefer such a rule, as it would mean that it could no longer call upon confidential informants working off criminal charges, which it does with regularity.

CONCLUSION

For the foregoing reasons, the state's petition for writ of certiorari should be denied.



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W. Chandler Norville
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ATTORNEYS FOR RESPONDENT

This 23rd day of September, 2026.