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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County

Honorable Walton J. McLeod, IV, Circuit Court Judge

Opinion No. 6147 (S.C. Ct. App. Filed June 10, 2026)

Lower Court Case No. 2018-GS-19-00418

THE STATE,

RESPONDENT,

V.

BARRY WAYNE JONES,

PETITIONER

APPELLATE CASE NO. 2026-002098

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 24, 2026.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by holding the trial court correctly denied Petitioner immunity from prosecution pursuant to the Protection of Persons and Property Act, when Petitioner proved by a preponderance of the evidence that he was entitled to immunity?
2. Did the Court of Appeals err by holding the trial court did not abuse its discretion in admitting evidence that Petitioner allegedly attempted suicide in the moments before he was taken into custody where, pursuant to State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018), the state failed to prove an unmistakable nexus existed by clear and convincing evidence linking the suicide attempt to a guilty conscious derivative of the offenses for which Petitioner was being tried, and where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE?
3. Did the Court of Appeals err by holding the trial court did not abuse its discretion in failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Petitioner, specifically that Petitioner was not required to wait until his assailant got the drop on him, that he had the right to act under the law of self-preservation and prevent his assailant from getting the drop on him, since the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense?

STATEMENT OF THE CASE

An Edgefield County grand jury indicted Petitioner on October 24, 2018, for murder and attempted murder. R. 1578-1581. A pretrial hearing pursuant to the Protection of Persons and Property Act ("the Act") was held on September 7-8, 2021, before the Honorable Walton J. McLeod, IV. By order filed October 15, 2021, the court denied Petitioner immunity. R. 1501-1512. Petitioner's case was called to trial on December 3, 2021, before Judge McLeod, and a jury. Solicitor Rick Hubbard and Assistant Solicitor Robert McNair represented the state. Luke Shealy, Brian Shealy, and Casey Secor represented Petitioner. R. 380. On December 13, 2021, the jury acquitted Petitioner of attempted murder, but found him guilty of murder. R. 1491, l. 22 – 1492, l. 4. He was sentenced to thirty-five years imprisonment. R. 1494, ll. 14-16. On

December 20, 2021, Petitioner filed a motion for a new trial. R. 1547-1555. By order dated January 7, 2022, the court denied the motion. R. 1556-1560.

After briefing and oral argument, the Court of Appeals affirmed Petitioner's conviction. State v. Barry Wayne Jones, Op. 6147 (S.C. Ct. App. filed June 10, 2026) (Howard Ad. Sh. No. 22 at 35). On June 25, 2026, Petitioner filed a petition for rehearing. By order dated August 24, 2026, the Court of Appeals denied rehearing. This petition for writ of certiorari follows.

ARGUMENT

1.

The Court of Appeals erred by holding the trial court correctly denied Petitioner immunity from prosecution pursuant to the Protection of Persons and Property Act, when Petitioner proved by a preponderance of the evidence that he was entitled to immunity.

Relevant Facts

Petitioner moved pretrial for immunity from prosecution pursuant to the Protection of Persons and Property Act. R. 1497. During the pretrial hearing, Petitioner presented the testimony of Tony Friar, Douglas Lacey, Randy Yonce, David Eagerton, and Petitioner. Douglas Lacey, who was qualified as an expert in video enhancement without objection, was retained by the defense to enhance certain portions of the surveillance footage that captured the shooting at the Johnston Pool Room. R. 31, l. 17 – 35, l. 22. He cropped and zoomed in on specific identified portions of the video to make the images “more visually appealing.” R. 40, ll. 1-23. The enhanced videos and still images were admitted for purposes of the hearing as Defendant's Exhibit No. 1. R. 43, l. 24 – 45, l. 13.

Tony Friar, who lived in Johnston his entire life, knew both Petitioner and Milledge Hall, the decedent. R. 8, ll. 5-20. Friar worked with Petitioner and his wife at Savannah River Site (SRS). R. 15, l. 14 – 16, l. 12. Friar grew up with Milledge and knew him from living in the

same small community. He maintained Milledge had a reputation of being a fighter. There was a specific occasion Friar recalled where Milledge physically threatened his grandson's football coach after the coach disciplined Milledge's grandson. R. 8, l. 21 – 13, l. 16. One evening in April 2018, about a month before the shooting, Friar went to the pool room to eat with his wife and brother on Milledge's invitation. At some point, Petitioner sat down with Friar and his family. Petitioner commented that Milledge did not like Petitioner and that the two "had some beef." Friar learned that Milledge was telling people that Petitioner had been fired from SRS. After Petitioner returned to his seat, Milledge came and sat down with Friar. Milledge asked Friar if Petitioner had been fired from SRS. Friar told him no. Milledge admitted he did not like Petitioner and then "said you know me, I got something for him [Petitioner]." Simultaneously, Milledge made a "balled up fist" and hit it into his "other hand." R. 17, l. 3 – 21, l. 15.

Randy Yonce was at the pool room on May 7, 2018, but left before the shooting. He saw both Petitioner and Milledge there that day. Petitioner was sitting with Yonce at the front of the establishment while Milledge "was sitting over on the other part of the bar." Yonce did not hear Petitioner express any concerns about Milledge nor Milledge express any concerns about Petitioner. At some point, Angie Smith, Petitioner's girlfriend, walked in. She did not sit with Petitioner. When Angie came in, Petitioner "said something to the effect of oh, hell, here comes Angie." He then said he was concerned Angie was going to "start some trouble" because the two were having difficulties. Shortly thereafter, Petitioner and Yonce left. R. 47, l. 3 – 50, l. 18.

Petitioner's testimony at the pretrial immunity hearing mirrored his testimony before the jury. He explained his background, his relationship with Angie, and his prior interaction with Milledge about a month before the shooting in which he confronted Milledge about Milledge telling others Petitioner had been fired from SRS rather than retired. See R. 58, l. 12 – 77, l. 4. During this confrontation, Milledge "got up off his barstool and came at [Petitioner]." Milledge

“got all up in [Petitioner’s] face.” Petitioner backed up and put his hands up. Milledge then threatened, “I’ll beat your ass all over this bar.” Milledge weighed “280 or more pounds” and was bigger, taller, and stronger than Petitioner. Milledge’s threat scared Petitioner and he immediately walked away and told Angie they needed to leave. Petitioner explained that after this confrontation, he “tried to keep his distance” from Milledge by sitting at the front of the pool room when he visited and by frequenting a different establishment in nearby Saluda. Sometime after this confrontation, Friar warned Petitioner to be careful with B’Boy [Milledge] because he’s been fighting all his life.” R. 76, l. 2 – 82, l. 17.

Petitioner then described what occurred on Saturday, May 5, 2018, and what occurred leading up to the shooting on May 7, 2018, including how Milledge struck the back of Petitioner’s car as he was pulling out of the pool room parking lot less than an hour before the shooting. R. 83, l. 8 – 97, l. 14. Petitioner testified that when Milledge “beat” on the back of his car, it “startled” him. Milledge then yelled. Petitioner was scared and “knew something was up.” R. 97, l. 12 – 98, l. 7.

After gathering his valuables from Angie’s house, Petitioner returned to the pool room to break up with Angie. R. 98, l. 8 – 99, l. 19; R. 101, ll. 2-4. He waited in his car hoping Angie would come outside so the two could talk. However, within a minute or so of Petitioner’s arrival, Milledge came outside and confronted Petitioner. Milledge repeatedly demanded Petitioner get out of the car and threatened to “beat” him. Milledge tried to open Petitioner’s door. He pulled on the handle, but the door was locked. Milledge stood outside Petitioner’s window for nearly ten minutes. His tone and demeanor became increasingly more aggressive. As the confrontation escalated, Milledge ordered Petitioner out of the car to fight. Petitioner continued to refuse. He was scared of Milledge and knew Milledge could harm him. Milledge

was larger and stronger than Petitioner. R. 112, l. 15 – 124, l. 1. Milledge lunged at Petitioner several times. See State's Exhibit No. 14 (Pool Room Video).

Eventually, Milledge pulled out a gun. See State's Exhibit No. 14 (Pool Room Video). While the state alleged this object was a phone, Petitioner knew it was a gun. R. 159, ll. 2-4. After initially pointing the gun, Milledge put the gun back in his waistband. However, Milledge subsequently pulled his shirt up with his left hand and showed Petitioner the gun again, which was on his right side, the same side as his phone. See State's Exhibit No. 14 (Pool Room Video). Petitioner felt threatened for his life. At that point, Petitioner reached for the gun bag that was on the backseat. He grabbed the first gun he could. It ended up being his wife's .38 special handgun. Petitioner put the gun on his lap. R. 124, l. 7 – 125, l. 11. Milledge eventually began telling Petitioner to leave. Milledge became increasingly angry and frustrated that Petitioner would not get out of the car to fight. Petitioner was also asking Milledge to leave the side of his car and go inside. Knowing Milledge was armed and could shoot him at any time, Petitioner did not want to pull out of the parking lot until Milledge was safely back inside the pool room. Toward the end of the confrontation, Milledge began to walk back toward the front door of the pool room. Petitioner was hopeful that he was finally going back inside. However, Milledge spun on his heels and headed back toward Petitioner's car. Milledge motioned aggressively with his arms and hands for Petitioner to leave. He continued to walk aggressively toward Petitioner's car. Petitioner knew Milledge was armed, but could not see Milledge's right hand. When Milledge began to turn the corner toward Petitioner's car, Petitioner got out of the car and fired twice striking Milledge. Once Milledge was on the ground, Petitioner got back into the car and drove away. R. 126, l. 13 – 132, l. 13; See State's Exhibit No. 14 (Pool Room Video).

David Eagerton, who was qualified as an expert in forensic toxicology and pharmacology without objection, testified that Milledge's blood alcohol content (BAC) at the time of the

shooting was somewhere between 0.1 and 0.13. R. 222, l. 20 – 223, l. 7; R. 228, ll. 15-20. Eagerton explained that an individual with a BAC of 0.1 to 0.13 will have “pronounced impaired judgment.” “Their decision making ability is going to be impacted in a negative way. They usually have a little bit more difficulty in self-control and things of that nature.” Individuals may also become angrier at those levels. R. 231, ll. 8-23.

The state presented several witnesses, including Renee Kaigler, Clayton Hall, Laynce Hatcher, and Brenda Hall, who claimed Milledge was not a violent person, was not the type of person who liked to fight, and was never known to carry a gun. See R. 257, ll. 1-11; R. 300, l. 16 – 301, l. 8; R. 303, l. 10 – 307, l. 3; R. 333, l. 22 – 334, l. 22; R. 344, ll. 2-16.

On May 7, 2018, Kaigler lived across the street from the pool room. She heard the gunshots and saw someone on the ground. She ran across the street and discovered it was Milledge and that he had been shot. Kaigler denied that Milledge had a gun. She claimed she did not see a gun on the ground next to Milledge nor did she see anyone pick up a gun from around Milledge’s body. R. 254, l. 22 – 256, l. 25. Kaigler later admitted that she did not know how many people had been outside before she reached Milledge. R. 262, ll. 9-24.

Betty Jean Edwards testified that, at the time of the shooting, she was at the IGA grocery store adjacent to the Johnston Pool Room. While she was outside in the parking lot, she heard two people arguing. She saw Milledge standing next to a gray car. He was arguing and “making motions with his hands.” Her “perception” was that “Milledge wanted this man to” leave. She claimed the man in the car called Milledge’s name. She then saw the man get out of the car and heard two shots. Edwards got into her car and drove to the pool room. She saw Milledge on the ground. She claimed she did not see a gun on or around Milledge nor did she see anyone remove a gun. Edwards later admitted that there were trees blocking her view and she did not have a

“clear line of sight” from the IGA parking lot to the pool room parking lot where Milledge was standing. R. 275, l. 25 – 293, l. 25.

Clayton Hall testified to the problems he had with Petitioner as a patron of the pool room. He and his wife left for an overnight trip on Sunday, May 6, 2018, the day before the shooting. Before Clayton left, he claimed he told his grandfather, Milledge, that he intended to ask Petitioner not to return to the pool room. R. 294, l. 19 – 300, l. 15. Clayton admitted that he kept a .40 caliber revolver in a secure location behind the cash register inside the pool room. However, he claimed Milledge, did not know about this gun. R. 304, l. 14 – 305, l. 20.

Layne Hatcher, a regular patron at the pool room, testified that he went to the pool room on May 7, 2018. When he arrived, he saw Milledge outside. Milledge was arguing with somebody in a car. However, Hatcher could not see or hear the person in the car. As Hatcher was walking by Milledge into the establishment, he heard Milledge say “no, I’ll tell you what you’re gonna do, you’re gonna leave and not come back.” Several minutes later, Hatcher heard a gunshot. After he heard the first shot, he turned and saw Petitioner fire a second shot. Hatcher claimed he did not see Milledge with a gun before or after the shooting. R. 327, l. 1 – 333, l. 16.

Defense counsel argued Petitioner proved by a preponderance of the evidence that he was entitled to immunity pursuant to both § 16-11-440(A) and § 16-11-440(C). R. 354, ll. 15-17. Counsel discussed the prior difficulties between Petitioner and Milledge. He also mentioned the interaction Tony Friar had with Milledge in which Milledge again threatened Petitioner. During the confrontation leading up to the shooting, counsel emphasized that as Milledge’s “gestures escalate” Milledge is clearly seen holding a black object that Petitioner identified as a gun. Milledge then did the “universal gesture” (lifting his shirt to expose his waistband) indicating he had a gun. Counsel further argued that even assuming Milledge did not have a gun, Petitioner is

allowed to act on appearances. Additionally, Petitioner was permitted under the law to judge Milledge “more harshly” due to the pair’s prior difficulties. R. 364, l. 3 – 365, l. 13.

Defense counsel emphasized Petitioner’s testimony that leading up to the shooting, Milledge repeatedly ordered Petitioner to get out of the car and fight, and pulled on Petitioner’s door handle in an effort to remove Petitioner from the car. Petitioner refused to get out of the car, which increasingly frustrated Milledge. While counsel asserted Petitioner had no duty to retreat pursuant to the Act, “case law says” the court must apply common law rules of self-defense first, one being that “you should retreat” unless it puts you in more harm. Counsel emphasized Petitioner’s testimony that he was worried Milledge would have harmed him if he had taken his eyes off Milledge in order to reverse out of the parking lot since he knew Milledge was armed and Milledge kept repeatedly walking back to the vehicle. R. 366, l. 7 – 367, l. 7.

Pursuant to § 16-11-440(A), counsel argued that the unrefuted evidence showed Milledge was pulling on Petitioner’s door handle, demanding he get out of the car, and telling him “I’ve got something for you,” and “if you don’t get out, I’ll make you get out.” Counsel asserted that after Milledge brandished a gun, he turned “quite quickly for a big man and then continues to come forward, as Mr. Jones said, with steam, that is an on-going attempt to remove him from his vehicle.” R. 369, ll. 12-24. Petitioner only shot when “he thought it was the last thing to do, otherwise he wouldn’t be here, he would be mangled by a larger man who he had clearly seen had a gun.” R. 371, l. 20 – 372, l. 7.

The court found Petitioner was at fault in bringing on the difficulty. It emphasized that Petitioner returned to the pool room with multiple guns minutes after he sent a text message to Joe Mims stating, “I’m going to kill that Be Boy.” Additionally, the court found there was evidence Milledge ordered Petitioner to leave multiple times but Petitioner “refused to adhere to this request.” The court determined Petitioner’s “refusal to leave upon the request of Mr. Hall

[Milledge], with the ability to do so, supports the finding that he was at fault in bringing on the difficulty and his claim for self-defense fails.” Even assuming Petitioner was not at fault in bringing on the difficulty, the court concluded Petitioner’s “claim of self-defense fails under the next two elements.” The court found Petitioner failed to show he was in actual imminent danger or that he reasonably believed he was in imminent danger. It emphasized the testimony from state witnesses who claimed they did not know Milledge to carry a gun and the fact that no gun was allegedly ever seen nor recovered around Milledge’s body after the shooting. R. 1508-1509.

The court further found Petitioner failed to establish he was entitled to immunity pursuant to § 16-11-440(A) or (C). As to subsection (A), the court emphasized that the surveillance footage “showed that when [Petitioner] exited his vehicle and subsequently fired the first shot, Mr. Hall [Milledge] was at the front of the vehicle not in the process of entering his [Petitioner’s] car.” Consequently, the court concluded Petitioner was not entitled to the presumption of reasonable fear. Regarding § 16-11-440(C), the court found Petitioner was not in a place he had a right to be. He emphasized that although Petitioner was lawfully present at the pool room initially, once he was asked to leave by Milledge, he was stripped of that right and became a trespasser. Therefore, Petitioner was not permitted to use deadly force. R. 1510-1511. Petitioner filed a written objection to the court’s order denying immunity. See R. 1513-1535.

Discussion

The Court of Appeals erred by holding the trial court did not abuse its discretion in denying Petitioner immunity from prosecution pursuant to the Protection of Persons and Property Act, when Petitioner proved by a preponderance of the evidence he was entitled to immunity. In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. Id. The statute states in relevant part:

(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.

...

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

This Court emphasized in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) “that immunity under the Act ‘is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence,’ save the duty to retreat.” State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014) (quoting Curry, 406 S.C. at 371-72, 752 S.E.2d at 266-67). In State v. Glenn, the 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.” 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. Furthermore, when considering whether the defendant was in a place where he had a right to be as required by the Act, the trial court must consider proximate cause or a causal connection to the incident. Id. at 119-20, 838 S.E.2d at 497.

Petitioner proved by a preponderance of the evidence that he was immune from prosecution under the common law elements of self-defense. Petitioner was not at fault in bringing on the difficulty. Petitioner was preoccupied with his decision to end his relationship with Angie. He had no interaction with Milledge on the day of the shooting until Milledge, unbeknownst to Petitioner, walked out after Petitioner and aggressively struck the rear of his vehicle. This caused Petitioner renewed fear of Milledge after Milledge’s threat against Petitioner about a month prior coupled with Petitioner’s knowledge of Milledge’s reputation for violence. Petitioner’s decision to return to the pool room was not unlawful nor intended to start a conflict with Milledge. Rather, it was Petitioner’s best option to end his eight month relationship with Angie. Petitioner strongly disagrees that he was somehow at fault in bringing on the difficulty by merely parking in a parking lot where he had a right to be.

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

The state argued Milledge told Petitioner to leave early in the encounter and therefore Petitioner was at fault in bringing on the difficulty when he refused to leave. While it was disputed whether Milledge asked Petitioner to leave early on, even if true, Petitioner’s failure to instantly do so does not make him at fault in bringing on the difficulty. Petitioner testified that as Milledge’s

aggression continued to escalate, he wanted to leave which was corroborated by his headlights turning on when he started his car as seen in the surveillance footage. However, Petitioner believed using his hands to operate the vehicle and taking his eyes off of Milledge even for an instant would expose him to further harm. Petitioner was not required to retreat “if by doing so he would increase his danger of being killed or suffering serious bodily injury.” See State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989).

Further, it is apparent from Petitioner’s testimony and the surveillance footage that Petitioner actually was in imminent danger of losing his life or sustaining serious bodily injury. The footage shows Milledge brandishing and threatening Petitioner with a gun during the confrontation. Milledge’s act of lifting his shirt to show Petitioner the black object concealed on his waistband is almost universally recognized as a signal that one is armed. When Petitioner fired the fatal shots, Milledge was charging at Petitioner. Accordingly, Petitioner actually was in imminent danger and the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. However, even if Petitioner was not in actual danger, based on Milledge’s words and actions coupled with Milledge’s prior threat and his reputation for violence, it was reasonable for Petitioner to believe he was in such imminent danger and a reasonable man of ordinary firmness and courage would have entertained the same belief.

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

The above analysis proves that Petitioner was entitled to immunity pursuant to the common law principles of self-defense. However, even if Petitioner's claim failed in one or more respects, he was still entitled to immunity pursuant to § 16-11-440(A) and (C). Section 16-11-440(A) is applicable in this case. Petitioner testified that Milledge demanded Petitioner get out of his car and fight and pulled on his door handle in an effort to get Petitioner out of the vehicle. Petitioner described how Milledge became increasingly frustrated that Petitioner would not get out of the car, which was corroborated by Milledge's actions as seen in the surveillance footage, including brandishing a gun. Petitioner testified that it was his belief Milledge intended to forcibly remove him from the car as Milledge came toward him "with steam" immediately prior to Petitioner making the decision to shoot. This is also corroborated by the surveillance footage which shows Milledge approaching Petitioner's vehicle with aggression immediately before Petitioner fired. These facts fall squarely within subsection (A) of the Act, which states, even in the absence of an obvious attack, that the act of attempting to remove an individual against his will from his vehicle creates a presumption of reasonable fear of imminent death or great bodily injury such that the individual can use deadly force against his assailant. Petitioner proved by a preponderance of the evidence that he was entitled to immunity pursuant to § 16-11-440(A).

Petitioner also proved he was entitled to immunity pursuant to § 16-11-440(C). This portion of the Act specifically does away with any common law duty to retreat so long as an individual can prove he was attacked while acting lawfully in a place he had a right to be. There has been no claim by the state that Petitioner was acting unlawfully at the time of his fatal encounter with Milledge, and Petitioner was in a place where he had a right to be as he was sitting in his car in the parking lot of the pool room. Factually consistent with findings of immunity in cases like State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), and State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016), Petitioner had a right to use deadly force in

the face of an attack by an intoxicated Milledge, who was determined to fight and was armed with a gun. Petitioner's use of a gun to combat the threat of an armed attack by Milledge was a proper "force for force" response to end the assault and prevent death or great bodily injury to himself. Petitioner had no duty to retreat pursuant to the Act. Accordingly, Petitioner proved by a preponderance of the evidence that he was entitled to immunity pursuant to § 16-11-440(C).

Respectfully, this Court should grant certiorari and hold the trial court erred by denying Petitioner immunity from prosecution.

2.

The Court of Appeals erred by holding the trial court did not abuse its discretion in admitting evidence that Petitioner allegedly attempted suicide in the moments before he was taken into custody where, pursuant to State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018), the state failed to prove an unmistakable nexus existed by clear and convincing evidence linking the suicide attempt to a guilty conscious derivative of the offenses for which Petitioner was being tried, and where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

Relevant Facts

Petitioner moved pretrial to exclude any evidence that Petitioner allegedly attempted to commit suicide shortly before he was taken into custody pursuant to State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018) and Rule 403, SCRE. R. 1536. The court held an *in camera* hearing on the motion. R. 388, ll. 17-18.

Deputy Robert Harter of the Edgefield County Sheriff's Office testified that he participated in the "actual takedown" of Petitioner on Log Creek Road. He was one of the officers who "converged" on Petitioner as he was lying on the ground in the apex of the driver's door of his vehicle. When Harter walked up, he saw two guns on the ground beside Petitioner. Another officer

asked Petitioner “if he was hurt” because he was covered in blood. Petitioner allegedly said “he had shot himself.” Petitioner never mentioned the word suicide nor did he say anything about trying to kill himself. He also did not give any explanation for why he shot himself. R. 391, l. 5 – 393, l. 5. In his statement shortly after the event, Harter wrote Petitioner said “he was hurting and had tried to shoot himself under the chin.” R. 400, l. 3 – 401, l. 5.

Deputy Sherrill with Edgefield County responded to Log Creek Road after Petitioner was in custody. Sherrill was asked to accompany Petitioner to the ambulance and ride with him to the hospital. While Petitioner was on a stretcher being transported to the ambulance, he allegedly said to Sherrill, “I wish y’all would have killed me. Y’all should have just let me die.” Petitioner did not offer any explanation for why he wanted to die. While in the ambulance, Petitioner allegedly said, “The only hole that hurts is the one I put in my neck.” R. 403, l. 4 – 407, l. 16.

Sergeant Morgan with Edgefield County likewise responded to Log Creek Road. He arrived after the gunfire had ceased, but before Petitioner was taken into custody. He and Sergeant Densmore moved in together to arrest Petitioner. After Petitioner was in custody, Morgan asked him “about his current medical state.” There was blood all over Petitioner’s face and chest. Petitioner told him “where he was shot at, where he was hurting at, around his chest, stomach, arm there, and then he lifted his head and he said I’m also shot here (referring to the “chin area”).” Petitioner then voluntarily told Morgan, “I tried to kill myself and I couldn’t even do that.” R. 413, l. 23 – 416, l. 19. Petitioner did not give a reason why he attempted to kill himself. R. 423, ll. 7-14.

Lastly, Captain Florida, the Edgefield County officer involved in the shootout with Petitioner, testified that while he was giving Petitioner commands before his arrest, such as “stop shooting . . . let me see your hands . . . clear your hands,” Petitioner allegedly told Florida “that he wanted me to let him bleed to death.” Petitioner did not provide a reason as to why he wanted

Florida to let him bleed to death. Florida claimed Petitioner made this statement after all the gunfire had ended. R. 424, l. 4 – 429, l. 15.

At the conclusion of the *in camera* testimony, defense counsel argued the state failed to meet its burden of proving the evidence was admissible. Counsel outlined the three factors enumerated by this Court in Cartwright: (1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial. Counsel conceded the state met its burden of proving the first two factors. As to the third factor, counsel asserted the state failed to show Petitioner attempted suicide because he [felt] so guilty, one, for the crime of murder against Milledge Hall, and two, that he [felt] so guilty for his participation in the shootout with law enforcement on Log Creek Road.” Counsel emphasized that there was no evidence in the record as to why Petitioner attempted suicide. Petitioner never offered any explanation for doing so and the state failed to prove by clear and convincing evidence that it was because of Petitioner’s “overwhelming guilt for shooting Milledge Hall or his overwhelming guilt for shooting at Officer Florida.” R. 432, l. 2 – 434, l. 16.

As to Rule 403, SCRE, defense counsel argued any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. He argued suicide is “a bad act.” It is a crime under the common law and “a moral crime to many people.” Consequently, counsel asserted the admission of such evidence would lead the jury to convict Petitioner on an improper basis. Specifically, counsel stated, “They’re [the jurors are] sitting here wrestling with these issues of malice, or self-defense, and all of a sudden their mental doors are proverbially just blown off by hearing about how he [Petitioner] tried to commit suicide and they’re not thinking. They’re not applying the facts to the law now. They’re thinking about what a bad man he

[Petitioner] is for doing that. I can't believe he would do that. . . . I'm done. I'm done listening. And that is the problem." Counsel continued, "[T]hey may be so overborne by disgust for a man [who] would try to take his own life regardless of the circumstances." Counsel further argued the evidence had little probative value given that Petitioner had a "strong self-defense claim at the pool hall" and therefore it was less likely that the attempted suicide was related to Petitioner's alleged guilty conscious. R. 446, l. 10 – 449, l. 3.

The court ultimately found evidence of Petitioner's attempted suicide was admissible. It concluded that the three factors outlined in Cartwright had been met. It maintained that the "chain of events" including the shooting at the pool room, what occurred leading up to the confrontation with law enforcement about forty minutes after the shooting, and the statements Petitioner made concerning the self-inflicted wound "demonstrate a nexus by clear and convincing evidence of attempted suicide that can be linked to a guilty conscious." As to Rule 403, the court ruled that "in light of the specific facts of this case," in which Petitioner asserted self-defense, "the highly probative nature that encapsulates that entire story of facts outweighs the prejudicial effect of the evidence of attempted suicide." The court emphasized that "it is a close call and it's supposed to be." Yet, it found the evidence admissible after considering the "rigorous framework." R. 455, l. 22 – 457, l. 7. Petitioner contemporaneously objected when the attempted suicide evidence was admitted before the jury. See R. 706, ll. 14-24; R. 783, l. 4 – 784, l. 3; R. 793, l. 9 – 794, l. 9; R. 799, l. 24 – 801, l. 17.

The Court of Appeals held the trial court did not abuse its discretion by admitting the attempted suicide evidence. The court determined that while "there is no testimony that conclusively established why Jones shot himself, his own actions and statements demonstrate 'an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of' the offenses for which Jones was on trial." The court reasoned

that if Petitioner believed he acted in self-defense in shooting Milledge, “there was no need for him to flee the scene with his weapons and ammunition, hunker down, and engage law enforcement in a shootout.” The court also emphasized that there was no evidence to suggest Petitioner was suicidal on the day he killed Milledge or that Petitioner had made any statements suggesting he was suicidal before his shootout with law enforcement. Finally, the Court of Appeals held the trial court did not abuse its discretion by finding the probative value of Petitioner’s suicide attempt and statements was not substantially outweighed by the danger of unfair prejudice. App. 100-101.

Discussion

The Court of Appeals erred by holding the trial court did not abuse its discretion in admitting evidence that Petitioner allegedly attempted suicide in the moments before he was taken into custody where, pursuant to State v. Cartwright, the state failed to prove an unmistakable nexus existed by clear and convincing evidence linking the suicide attempt to a guilty conscious derivative of the offenses for which Petitioner was being tried, and where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

“Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” Cartwright, 425 S.C. at 90, 819 S.E.2d at 760 (quoting Rule 401, SCRE). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Id. at 90, 819 S.E.2d at 761 (quoting Rule 403, SCRE). “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” Id. at 91, 819 S.E.2d at 761 (quoting State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001)).

Suicide attempt evidence “is fraught with the potential for extreme prejudice” and “the admission of such evidence should be approached with the utmost caution.” Id. Consequently,

before admitting such evidence, the “trial court shall determine whether the State has proven that: (1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial.” Id. at 92, 819 S.E.2d at 761-62. “Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.” In re Dickey, 395 S.C. 336, 354, 718 S.E.2d 739, 748 (2011). “If the trial court concludes that the three factors have been established, the evidence is relevant and may be admitted, subject to a Rule 403, SCRE analysis.” Id. at 92, 819 S.E.2d at 762. In light of this “rigorous framework,” suicide attempt evidence “will rarely be admitted.” Id. at 93, 819 S.E.2d at 762.

Here, the state failed to establish “an unmistakable nexus exists by clear and convincing evidence linking” Petitioner’s suicide attempt to a guilty conscience derivative of the offenses for which Petitioner was on trial, the alleged murder of Milledge and attempted murder of Captain Florida. Petitioner allegedly attempted to commit suicide after being followed by and ultimately fired upon by law enforcement. Such actions by law enforcement suggested they did not believe Petitioner acted in self-defense when he shot Milledge and further indicated Petitioner faced imminent incarceration at best and death by law enforcement at worst.

Petitioner’s suicide attempt is not evidence of a guilty conscience from having to defend himself against Milledge or law enforcement. First, Petitioner’s encounter with law enforcement served as a break in the causal chain between Petitioner shooting Milledge in self-defense and his suicide attempt where almost an hour passed between when Petitioner shot Milledge and when he attempted suicide, particularly where Petitioner did not attempt suicide during that hour. Second, Petitioner testified at the pretrial immunity hearing that shot Milledge out of necessity

and not out of malice which is incongruous with a guilty conscience. Petitioner freely testified that he shot Milledge in self-defense and only shot at law enforcement after he was shot and wounded by Captain Florida. Petitioner's ability to testify about shooting Milledge and at law enforcement and his justification for doing so is contradictory to a guilty mind. Accordingly, the state failed to establish an "unmistakable nexus" linking Petitioner's suicide attempt to a guilty conscience derivative of the offenses for which Petitioner was tried.

Additionally, any probative value of Petitioner's suicide attempt was substantially outweighed by the danger of unfair prejudice. The evidence has no probative value because it does not make it more or less probable that Petitioner shot Milledge or at Captain Florida with malice. The only permissible use of suicide attempt evidence pursuant to Cartwright is to prove a guilty conscience where there is evidence of an unmistakable nexus between the suicide attempt and the offenses for which the defendant is on trial. As argued above, no such nexus exists in this case. Accordingly, the evidence has no probative value. However, the evidence was extremely prejudicial to Petitioner. Suicide is considered morally reprehensible in many different religions and cultures. As this Court recognized in Cartwright, such evidence is "fraught with the potential for extreme prejudice." 425 S.C. at 91, 819 S.E.2d at 761. There is a reasonable probability that the evidence Petitioner attempted suicide may have led the jury to convict Petitioner on an improper basis, namely an emotional one. Consequently, it should have been excluded pursuant to Rule 403.

Respectfully, this Court should grant certiorari, hold the Court of Appeals erred by finding the trial court did not abuse its discretion in admitting evidence of Petitioner's suicide attempt, and reverse Petitioner's conviction.

3.

The Court of Appeals erred by holding the trial court did not abuse its discretion in failing to tailor the self-defense instruction, specifically that Petitioner was not required to wait

until his assailant got the drop on him, that he had the right to act under the law of self-preservation and prevent his assailant from getting the drop on him, since the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense.

Relevant Facts

Petitioner submitted numerous written requests to charge. Petitioner's Request to Charge No. 6 concerned the right to act on appearance as it relates to self-defense. See R. 1495. The request read in part:

One who acts in self-defense may act on appearances. He may be mistaken. The law does not hold him to a *refined assessment* of the danger, provided, of course, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. **He 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 from getting the drop on him; if it is apparent his assailant is taking steps to get the drop on him, one who acts in self-defense must take steps first to prevent such assailant from getting the drop on him.** See State v. Rash, 182 S.C. 42, 50 (1936); State v. Starnes, 340 S.C. 312, 322 (2000). (emphasis added)

The parties "had an extensive charge conference" with the court in chambers. R. 1389, l. 8. After the charge conference, defense counsel put his objections on the record. Counsel objected to the court not charging the entirety of Request to Charge No. 6. R. 1390, ll. 16-25. The court emphasized that it granted the request to charge "in part." While it acknowledged it did not "take your charge verbatim," it maintained it "took the spirit of the charge." R. 1390, ll. 18-20. The court ultimately charged the jury concerning the right to act on appearances as it pertains to self-defense as follows:

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. **One who acts in self-defense may act on appearances. He may be mistaken. The law does not hold him to a refined assessment of the danger, provided, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of the danger.** It is for you to decide whether the defendant's fear of immediate danger of death or serious

bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

R. 1480, ll. 4-16 (emphasis added).

As seen, the court refused to charge a critical part of Petitioner's Request to Charge No. 6, specifically:

He 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 from getting the drop on him; if it is apparent his assailant is taking steps to get the drop on him, one who acts in self-defense must take steps first to prevent such assailant from getting the drop on him.

The Court of Appeals held the trial "court properly declined to give [Petitioner's] requested charge verbatim and correctly addressed the substance of the law, including the legal tenet that 'one who acts in self-defense may act on appearances.'" App. 100. The court emphasized that the charge included language instructing the jury that the law does not hold a defendant to a "refined assessment of the danger" and that a defendant may even be mistaken in his perception of the danger. App. 100. Finally, the Court of Appeals concluded that the "evidence at trial simply did not support a jury charge instructing that a defendant 'doesn't have to wait until his assailant gets the drop on him.'" App. 100.

Discussion

The Court of Appeals erred by holding the trial court did not abuse its discretion in failing to instruct the jury on the critical language contained in Petitioner's Request to Charge No. 6. R. 1495. This charge was supported by the evidence and was crucial to the jury's understanding of the law of self-defense.

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608 (Ct. App. 2012) (quoting State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)). "The law to be charged must be determined from the evidence presented at trial." Id.

(quoting State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000)) (internal quotation marks omitted); See Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should “consider the court’s jury charge as a whole in light of the evidence and issues presented at trial”).

“When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” Id. at 314, 733 S.E.2d at 608-609 (citing Cole, 338 S.C. at 101, 525 S.E.2d at 512-513). “If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the [circuit court’s] refusal to do so is reversible error.” Id. at 314, 733 S.E.2d at 609 (quoting State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000)) (alteration in original).

In State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984), this Court suggested a standard self-defense instruction. However, in State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Court made clear that it did not intend Davis to be the exclusive self-defense charge. Instead, “a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant.” State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). “A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant.” Id. (citing Fuller, 297 S.C. 440, 377 S.E.2d 328).

In State v. Nichols, 325 S.C. 111, 116-117, 481 S.E.2d 118, 121 (1997), the defendant argued the trial court’s instructions on the law of self-defense were inadequate under Fuller, where the court instructed the jury solely on the common law elements of self-defense. Nichols objected to the charge and requested additional instructions on: (1) the right to act on appearances; (2) relevance of prior difficulties; and (3) that a person does not have to wait before

acting in self-defense. Id. at 117, 481 S.E.2d at 121. This Court held Nichols was entitled to a charge on the right to act on appearances because Nichols testified he thought he had seen a shiny object in the deceased's hand. Id. The Court also found the evidence showed there had been prior difficulties between Nichols and the deceased including an instance where the deceased pointed a rifle at Nichols. Consequently, the Court concluded Nichols was entitled to a charge on the relevance of prior difficulties. Id. Further, the Court held Nichols was entitled to a charge that he did not have to wait before acting in self-defense since Nichols testified he thought he saw a gun in the deceased's hand and did not wait for the deceased to fire or aim at him. Id. (citing State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936)).

In this case, the trial court erred by refusing to instruct the jury on the specific element of self-defense requested by Petitioner since it was applicable to Petitioner's account of what occurred. Petitioner testified that toward the end of the confrontation, Milledge began to walk back toward the front door of the pool room. Petitioner was hopeful that he was finally going back inside. R. 1157, ll. 20-24. However, Milledge spun on his heels and headed back toward Petitioner's car. After motioning aggressively with his arms and hands for Petitioner to leave, Milledge continued to walk aggressively toward Petitioner's car. Petitioner knew Milledge was armed and could not see Milledge's right hand. R. 1162, ll. 7-10. When Milledge began to turn the corner toward Petitioner's car, Petitioner got out of the car and fired twice striking Milledge. See State's Exhibit No. 14 (Pool Room Video). Before waiting for Milledge to "get the drop on him," Petitioner shot him in self-defense. See State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). Consequently, in the light most favorable to Petitioner, there was evidence to support the requested instruction.

Additionally, unlike the Court of Appeals held, the instruction on a defendant's right to act on appearances did not adequately cover the law. The right to act on appearances charge was

supported by Petitioner's testimony that he reasonably believed Milledge was armed after Milledge earlier displayed a gun and lifted his shirt to display a firearm on his waistband, particularly given the state's theory that Milledge was merely displaying a cell phone. The instruction the trial court refused to charge, that a defendant does not have to wait until his assailant gets the drop on him, was supported by Petitioner's testimony and the surveillance footage which showed Milledge charging back toward the driver's side of Petitioner's car where Petitioner was located. It was crucial for the jury to understand that Petitioner did not have to wait until Milledge drew a firearm or began to pull Petitioner out of the car, before Petitioner acted in self-defense.

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

CONCLUSION

Based on the foregoing argument, this Court should grant certiorari and order further briefing on the questions presented. Petitioner ultimately requests this Court reverse the decision of the Court of Appeals and remand for a new trial.

Respectfully Submitted,


Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of October, 2026.