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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Appellate Case No. 2021-000676

THE STATE, .....RESPONDENT,

v.

MARK ROBERT VOLSTROMER,.....APPELLANT.

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**INITIAL BRIEF OF RESPONDENT**

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## **APPELLANT'S STATEMENT OF ISSUES ON APPEAL**

In this self-defense case, did the trial court err in refusing to allow the defendant and his wife to inform the jury of their knowledge of the decedent's conviction for criminal sexual conduct and that the decedent had been hanging around with a man who molested the defendant's daughter which was relevant to the jury's assessment of the defendant's state of mind and the reasonableness of his actions?

## **RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL**

Whether the trial court properly excluded the victim's twenty-six-year-old criminal sexual conduct second degree conviction (from 1989) because it was too remote in time to be admissible in a murder trial that had no sexual component whatsoever?

## STATEMENT OF THE CASE

Appellant was indicted at the May 2016 term of the grand jury for Richland County for the murder of Keith “Lanny” Pruitt. (2016-GS-40-02355). Tr. 11. The case was prosecuted by Deputy Solicitor April W. Sampson and Assistant Solicitors Stephanie Taylor and Samuel C. McGlothlin; Appellant was represented by Aimee J. Zmroczek, Esq., and Sarah M. Austin, Esq. Tr. 1. Appellant proceeded to trial by jury on June 14 and the jury found him guilty as charged on to June 18, 2021. Tr. 966-971. He was sentenced by the Honorable DeAndrea Benjamin to 35 years’ imprisonment. Tr. 976. Appellant timely filed a notice of intent to appeal and a brief in support of that appeal and this Brief of Respondent follows.

### *Crux of Appellant’s Argument*

Appellant argues the trial court improperly kept the victim’s twenty-six-year-old criminal sexual conduct second degree conviction from the jury because it would have helped him demonstrate his state of mind to the jury and help strengthen his case for self-defense. IBOA at 4. The court ruled that the prior conviction was too remote in time to be relevantly connected to the murder, especially because the murder did not have a sexual component to it. Tr. 500-501, Tr. 516-533, Tr. 581-582, Tr. 598-600.

## STATEMENT OF FACTS

### “I’m done.” – Mark Volstromer

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62-year-old Keith “Lanny” Pruitt moved to a house off Megan Court in southeast Columbia in the early months of 2015. Tr. 151, Tr. 203, Tr. 613-614; Defense Exhibits 1, 42, 44, 45 (aerial maps). Eight months later, firefighters found Pruitt’s body lying face down in the road in front of the Volstromers’ white picket fence after first responders responded to shots fired. Tr. 117-122, Tr. 147-148, Tr. 242-248. He was barely breathing and died a few minutes later from a GSW to his abdomen. Tr. 136, Tr. 201-210, Tr. 335. He’d been shot by Appellant, his neighbor, after a brief verbal argument. Tr. 120, Tr. 134.<sup>1</sup>



<sup>1</sup> The map above is Defense Exhibit 43, showing the Volstromer’s home, the four surveillance cameras (Channels 1-4), the distances between Appellant and the victim, and more.

The Carolina Panthers had just lost their first football game of the season two days after Christmas. Tr. 637, Tr. 689. Keith Pruitt was riding in the passenger's side of his friend Rick Holten's truck<sup>2</sup> on Megan Court in the late afternoon when they saw Barbara Volstromer standing in her yard taking pictures. Tr. 185, Tr. 313, Tr. 645. Megan Court was the only way to Pruitt's house. Tr. 387. The two pulled up to the fence and Rick began to talk to her. Tr. 390, Tr. 646; State's Exhibits 17 to 19, State's Exhibit 39, 50 (photos of the fence.) The conversation quickly turned to the boundary dispute the Volstromers had been having with Pruitt – they had been fighting over who owned Megan Court for eight months. Tr. 390, Tr. 672, Tr. 706-717. The Volstromers had lived in front of it at 1129 Antioch Amex Church Road since 1995. Tr. 159, Tr. 722. Instead of calling 911, Appellant (hearing noises) told his daughter to be prepared to call 911, grabbed his .380 pistol, and went outside. Tr. 170, Tr. 237, Tr. 383-384, Tr. 453-455.<sup>3</sup>

Both Rick and Pruitt stayed in the truck until Appellant came out of his house. Tr. 323, Tr. 383; State's Exhibits 46 and 51 (video footage from two different angles). Rick turned off the truck and Pruitt got out and walked around to the back of it to get something out of a cooler. Tr. 314, Tr. 398, Tr. 401, Tr. 438. Appellant told him to "walk over here," motioning to his yard. Tr. 391. Pruitt walked up to the tall white fence (never crossing it) and held his hands out to the side, saying "I've got something for you," and "I'm not coming over there." Tr. 193, Tr. 314-315, Tr. 392, Tr. 398; State's Exhibit 46 (video). He had nothing in either hand. Tr. 313.

Volstromer took five steps toward Pruitt, said "I'm done," and shot him. Tr. 399, Tr. 718, Tr. 772, Tr. 881; State's Exhibit 46. It had only been 49 seconds since he'd left his home. Tr. 462. Barbara was also armed with a .38 and had pulled it out as she was talking to the two men

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<sup>2</sup> Rick Holton did not testify at trial because he died in an unrelated incident beforehand. Tr. 376.

<sup>3</sup> Volstromer was seen leaving his house at 4:36:10 PM on the video, State's 46. Tr. 435.

but had accidentally dropped it. Tr. 648-649. Appellant turned to his wife and said, “Yeah, I shot his ass.” Tr. 772, Tr. 881. He also said, “Why’d you make me do that Lanny?” State’s 46.

Pruitt fell toward the fence and landed on the edge of the county road with part of his body in it and part of his body in the leaves in front of the fence. Tr. 402, Tr. 437. Rick drove off in the truck and left Pruitt lying there alone. Tr. 411. Neither Appellant, Barbara, nor Rick told law enforcement that Pruitt had a weapon. Tr. 160-161, Tr. 329-330. No one mentioned that Appellant may have acted in self-defense until years later. Tr. 176, 312, Tr. 329-330.<sup>4</sup>

Richland County Sheriff’s Office Deputy Joseph Vadazc spoke to Appellant—who smelled of alcohol—at the scene. Tr. 161, Tr. 168, Tr. 374. They had a short conversation where Appellant referenced the ongoing dispute his family had had with Pruitt, but he did not mention that any of the prior incidents had been violent. Tr. 165. Vadazc said, “He just plainly told me, ‘We were having an argument and I pulled out my gun and shot him.’” Tr. 167. Vadazc reported Appellant’s demeanor to be “unusual.” Tr. 146. A man had just been shot and “it was all just very matter of fact, and it just seemed odd.” Tr. 146.

Investigator Travis Holdorf also spoke to the Appellant at the scene. “When I asked Mark what happened, he just said he lost it, that they had been harassed by Lanny Pruitt, and that is why they installed surveillance cameras.” Tr. 376. “He stated the victim . . . was acting cocky, so he just shot him.” Tr. 384. The investigator said, “I asked him the direct question, “Did Mr. Pruitt do anything to threaten you?” and he said, “No.” Tr. 385; State’s Exhibit 2 (Appellant’s written statement). The whole incident was caught on camera – and it had audio. Tr. 276-277, Tr. 484; State’s Exhibit 46 (showing and recording the shooting in its entirety.)

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<sup>4</sup> A small brown knife was eventually found on the victim’s body at the hospital, separated from his belt’s Gerber knife holder. Tr. 449, Tr. 511, Tr. 514.

## STANDARD OF REVIEW

“It is difficult to fix any time within which such testimony shall be admitted or excluded. This has to be left largely to the discretion of the trial judge, and his discretion will not be disturbed, unless it is manifest that there has been an abuse of his discretion to the prejudice of the accused.” *State v. Peak*, 134 S.C. 329, 133 S.E. 31, 34 (1926); *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

## ARGUMENT

**I. The trial court properly excluded the victim's twenty-six-year-old CSC 2nd conviction because it was too remote in time to be relevantly connected to the murder: a crime with no sexual component whatsoever. It would only serve to confuse the jury.**

This is a case about boundaries. Societal, legal, and physical property line boundaries. It is a case about a man who took matters into his own hands and crossed a legal boundary by taking a loaded weapon to a word fight and shooting a man out of anger with no legal justification. Appellant argues the trial court erred by excluding the victim's twenty-six-year-old criminal sexual conduct second degree conviction because it was relevant to show his state of mind: why he felt he had to shoot the victim. The State disagrees and submits Appellant's argument is without merit. The conviction was far too attenuated to be relevant. The prior conviction did not involve the Volstromers and was too far removed from the time of the incident to be used show conforming conduct. The murder at hand had absolutely no sexual component to it. This Court should affirm the trial court.

*A. Arguments at Trial: Rules 404(a)(2) & 405(b), SCRE:  
Tr. 500-501, Tr. 516-533, & Tr. 581-582*

**Rule 404(a)(2):** (a) Evidence of a person's character or a trait of character is not admissible for the purposes of proving action in conformity therewith on a particular occasion, except:  
(2) Evidence of a pertinent trait of character of the victim of the crime offered by the accused.

**Rule 405(b):** Methods of Proving Character – (b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

The State moved to exclude the victim's prior record before the June 2021 trial began but the defense argued the convictions were admissible under Rules 404(a)(2) and 405(b), SCRE. Tr. 71-72. The defense wanted the jury to hear that the victim had a 1989 criminal sexual conduct

second degree conviction (“CSC 2nd”) and a 2000 assault and battery of a high and aggravated nature conviction (“ABHAN”). Tr. 516-517. They wanted to introduce the convictions to show the victim had a propensity for violence in order to strengthen the Appellant’s case for self-defense and argued that remoteness was not a factor under Rule 404(a)(1), SCRE. Tr. 517-518. The judge quickly excluded the ABHAN after learning no one in the Volstromer family knew about it until after the shooting. Tr. 516-525. However, the Volstromers knew about the CSC because Barbara had found it on the Lexington Public Index about a month prior. Tr. 531.

The parties discussed *State v. Brown*, 321 S.C. 184, 467 S.E.2d 922 (1996), *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), and *State v. Mekler*, 379 S.C. 12, 664 S.E.2d 477 (2008) during their arguments regarding the CSC 2nd conviction. Tr. 519-524. To counter the defense’s argument, the State argued that if the Supreme Court of South Carolina did not allow a twenty-three-year-old conviction to come in in *Brown*, a twenty-six-year-old conviction would definitely be excluded. Tr. 521. (In *Brown*, the defendant wanted to introduce evidence of the victim’s prior twenty-three-year-old manslaughter conviction to prove he had a reasonable apprehension of violence from the victim in a self-defense or homicide case. Tr. 520-521.) The State asked about the correlation in the present case because there had been no testimony that the shooting was of a sexual nature, pointing out that *Brown* held that other instances of violence on the part of the deceased were not admissible *unless* they were directed against the defendant or were so closely connected in time to reasonably indicate the state of mind of the deceased. Tr. 521-522.

The State pointed out that the difficulties admitted in in both *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), and *State v. Mekler*, 358 S.C. 1, 626 S.E.2d 890 (2005), occurred only a few months before the charges for which each defendant was on trial. Tr. 523-524, Tr. 351-352. The trial court asked the defense, “How do these charges establish self-defense? . . . “You’ve got

to think about the reason [they are] coming in.” Tr. 524-525. “I don’t know how she [Barbara] can testify she knew he had a propensity for violence because of a CSC. Now if this was a rape case and she saw him approach someone . . . then maybe he could say well I know he is well known for raping women. But that is not the case here.” Tr. 525.

The defense argued that the CSC conviction was relevant because they would introduce testimony showing the victim’s 16-year-old daughter had been molested when she was younger by a neighbor, who was currently friends with Appellant. Tr. 526. They argued the new connection “refreshed” the conviction, even though the Volstromers never reported the alleged assault to the police. Tr. 526, Tr. 528. They also argued there was an incident where the victim took photos of the 16-year-old in public, and on the incident date in question told Barbara Volstromer she was “cute.” No other evidence was presented in support of admission. Tr. 530.

The trial court held, “It is not even related,” and pointed out, again, the remoteness. Tr. 526-527. She also pointed out the fact that the daughter was not present during the shooting. Tr. 529. “There’s no evidence to support anything sexual.” Tr. 528-529.<sup>5</sup> She then said the daughter was not outside at the time and there was no discussion of anything sexual. Tr. 528-529. She concluded by making a finding that the conviction was too remote to come in and there was no correlation because there “is no sexual allegation here.” “The probative value of it coming in

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<sup>5</sup> The court continued: “Y[ou] want to add the layer that this victim had recently started hanging out with this neighbor that previously assaulted the defendant’s daughter, who was on the actual scene, even though she was at the house, actual scene of the confrontation, and that this man that this lady says he is hanging out with and the victim are hanging out, whose name has not been brought up in the whole trial. You are talking about a random person, and we have nothing to support that the victim was with this person at any point in time.” Tr. 529

would be to determine . . . state of mind for purposes of self-defense, and the CSC [was] not related in any way to the murder charge and the allegations in [it.]” Tr. 532; Tr. 599-600.<sup>6</sup>

The incident would have to be so closely connected at the point of time or occasion with the homicide that it would reasonably indicate the state of mind of the deceased or produce reasonable apprehension of great bodily harm. Tr. 354.

The trial court renewed its ruling after the defense renewed its objection. Tr. 598-600. The court again said, “There is no connection. They were not fighting about Pruitt coming onto the property but over a fence in the road and who owned the property.” Tr. 599. The trial court did, however, allow the defense to introduce some of “the prior difficulties” between the victim and the Appellant that occurred in the year prior to the shooting. Tr. 600.

**May 29, 2015 Incident: Tr. 345, Tr. 619-620**

The victim was sitting in his truck the church parking lot across the street from the Volstromer’s property when Barbara Volstromer came up to him and they exchanged words. He told her he was going to rain hell down on her, and that he was the devil. Tr. 619-620. The Volstromer’s daughter took photos of him, and he took photos right back. The police were called. Tr. 345, Tr. 620. Barbara reported they installed the surveillance system after this incident. Tr. 624.

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<sup>6</sup> The court did allow the defense to proffer Barbara Volstromer’s testimony about the victim’s CSC conviction in camera and put their arguments on the record. Tr. 500-501; Tr. 516-533. They argued it was admissible under Rules 404(a)(2) and 405(b), SCRE, because it went to the Appellant’s state of mind and his family’s fears and spoke to why he felt he needed to defend himself. Tr. 526. They argued the jury needed to know about it in order to accurately assess the mind and reasonableness of the Appellant’s actions because of the alleged assault of the Appellant’s daughter by one of the victim’s associates. They maintained that because the charge was a crime of violence, it was a pertinent trait offered by the accused and was relevant to their assessment of danger, as Appellant argued he acted in self-defense. Tr. 354.

**September 1, 2015 Incident: Tr. 344, Tr. 624-626**

Barbara called the police and reported that Pruitt and his friends were riding up and down Megan Court on their four-wheelers revving their engines and shining flashlights onto her property. Tr. 624. Pruitt reportedly told her, “You don’t know who you are dealing with.” Tr. 346, Tr. 625-626. The Volstromers reportedly decided to move after this occurred. Tr. 626.

**December 20, 2015 Incident, Tr. 632**

Someone rode by the Volstromer’s house, and the microphone captured someone saying, “Die.” Tr. 632; Defense Exhibit 19. Appellant also reportedly heard gunshots, but he did not know who had fired a weapon or where they were when they fired it. Tr. 747.

**B. The Applicable S.C. Rules of Evidence Do Not Authorize Admission of the Conviction**

The defense cited Rules 404 and 405, SCRE, in attempting to justify the admission of the CSC conviction. The relevant part of Rule 404 here, (a)(2), limits admissible character evidence to only that of a victim when offered by an accused to show the victim acted in conformity therewith on the particular occasion in question. However, evidence admissible under Rule 404(a)(2) is *still* subject to the Rule 403 balancing test (the offering party must show the probative value is not substantially outweighed by its prejudicial effect, *State v. Garner*, 304 S.C. 220, 403 S.E.2d 631 (1991)). It is also subject to that of Rule 405(b), SCRE: the offering party must prove the trait of character offered is an essential element of a charge, claim, or defense in order for the “proof,” or, conviction, to be admissible.

The twenty-six-year-old CSC 2nd degree conviction of the victim’s does not pass any of these tests. First, it does not pass 404(a)(2). A criminal sexual conduct second degree conviction is not in any way the same or similar as a murder charge with no sexual component. The defense argued it showed a “propensity for violence” but argues “violence” in a general, overly broad

sense. How could a decades-old CSC conviction show the victim acted in conformity therewith on the day of the shooting? The Appellant and his family did not know the details of the CSC – they only knew it was a felony. Were they attempting to prove he acted sexually violent on the day in question by moving it in? No. Therefore, they could not offer the conviction to prove conforming conduct under 404(a)(2).

The conviction also fails Rule 403, but the trial court did not discuss the rule in depth, so Respondent chooses not to discuss it here in depth. It just bears mentioning that the prejudicial effect the victim far outweighs any probative value. It finally, and also, fails Rule 405(b). The defense would have had to prove the trait of character the prior conviction would highlight was an essential element of the charge or of his defense in order for the conviction to be admissible. The Appellant claimed self-defense, so the conviction would have to somehow show the victim brought on the difficulty, caused a reasonable person of ordinary courage to fear great bodily harm or death, as well as the other elements of self-defense. *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011). A really old sexual conviction of the victim's does not directly prove the Appellant was compelled to act to defend himself during a verbal argument over a property line. How does it prove he was actually in fear for his life or that of a member of his family. The victim did not present a weapon and did not even cross over onto the Appellant's property at any point. Only words were exchanged until Appellant fired and killed the victim.

The defense cited *State v. Amburgey* (decided before the Rules of Evidence were established) to show the victim's prior conviction was wrongly excluded. *State v. Amburgey*, 206 S.C. 426, 34 S.E.2d 779 (1945); IBOA at 12; *see also State v. Brown*, 321 S.C. at 187, 467 S.E.2d at 923-924. However, *Amburgey* only underscores how the trial court here was correct.

“The rule has long been established in this State that evidence of other specific instances of violence on the part of the deceased are not admissible *unless*:”

- 1. They were directed against the defendant; or
- 2. If directed against others, were so closely connected in point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide; or
- 3. To produce reasonable apprehension of great bodily harm.

*Amburgey*, 206 S.C. at 429, 34 S.E.2d at 780; *State v. Day*, 341 S.C. 410, 419-420, 535 S.E.2d 431, 436 (2000) (emphasis added.)

The CSC in question was not directed against the defendant. Therefore, the defense would have to prove that a twenty-six-year-old CSC conviction (of which the defendant and his wife knew no details) would have either so closely connected that it would have reasonably shown the mind of the victim *or* would have produced reasonable apprehension of great bodily harm. The trial court followed this roadmap and made specific rulings on the record that the defense failed to meet their burden on any of the elements. The defense argued the conviction caused the Appellant and his wife to be afraid of the Appellant, which may be true; but it would not create fear of great bodily injury or death in an ordinary person of reasonable fitness or courage at the particular moment in time, even combined with the other incidents between the parties in the months before the incident. It was a verbal argument at which the victim presented no weapon or made no threats and did not advance on Appellant. This Court should affirm.

*C. The Defense Did Not Sufficiently Connect the Conviction to the State of Mind of the Appellant Before the Killing to Justify Admission*

“The conduct, actions, and general demeanor of the accused immediately before the killing are admissible to show that he was in a vicious humor” as his frame of mind at the time of the homicide bears greatly upon the issue in the case. *State v. Gregory*, 127 S.C. 87, 120 S.E. 499, 503 (1923). The same rule applies as to the temper of the victim at the time of the homicide.

*State v. Miller*, 73 S.C. 280, 53 S.E. 426 (1906). However, as stated above, in order to introduce prior convictions to show the temper of the victim was a certain temperature or the defendant acted because he thought the temper of the victim was a certain temperature (due to his knowledge of the conviction, of course), the defendant must prove the conviction is “sufficiently connected in time and circumstances to be submitted as evidence to the jury.” *State v. Peak*, 134 S.C. at 329, 133 S.E. at 35. The trial judge is in the best position to make these assessments, and

It is difficult to fix any time within which such testimony shall be admitted or excluded. This has to be left largely to the discretion of the trial judge, and his discretion will not be disturbed, unless it is manifest that there has been an abuse of his discretion to the prejudice of the accused.

*State v. Peak*, 134 S.C. 329, 133 S.E. 31, 34 (1926).

*State v. Peak* provides an excellent example of the type of victim conduct our Supreme Court has contemplated meets the spirit of admissibility in Rules 404 and 405. In *Peak*, the jury convicted the defendant of voluntary manslaughter instead of murder because evidence was introduced that the victim had so badly beaten up the defendant to his shame shortly before that fundamental fairness dictated the jury hear about it: *Id.*

The jury might have concluded, and from their verdict apparently did conclude, that as a result of what took place on the road not long before the homicide, the appellant went home, and under the pretext of hunting for a cow, got his gun and took a number of shells, and went hunting for the deceased, and killed him; and by their verdict they found that the appellant had not had time within which to cool, and, while smarting under what had recently taken place, took the life of the deceased.

*Peak*, 133 S.E. at 35.

*State v. Brown*, however – a case discussed at length at Appellant’s trial – provides an example of conduct far too remote to be admissible. *State v. Brown*, 321 S.C. 184 (1996). The defense in *Brown* attempted to admit a twenty-three-year-old voluntary manslaughter conviction in a murder case and our Supreme Court upheld the trial court’s decision to keep it out. They decided the conviction was far too remote to logically show the defendant’s state of mind or to

prove he had a reasonable apprehension of violence from the victim. *Brown*, 321 S.C. at 187, 467 S.E.2d at 924. The same is true here of the victim's twenty-six-year-old conviction.

“Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the judge's discretion” and will not be disturbed on appeal absent “an abuse of discretion resulting in prejudice to the accused.” *State v. Peak*, 133 S.E. at 34. This Court should affirm the trial court's use of discretion.

### Other Examples

- **FOUR MONTHS, ADMISSIBLE:** *State v. Day*, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434-435 (2000) (holding a four-months-previous act of violence of the victim was admissible because evidence was sufficient to show the defendant believed he was in imminent danger of being shot by the victim as he believed the victim had figured out he did not actually murder his lover as planned; murder conviction reversed and remanded. The victim had held a double-barrel shotgun to his head for hours and forced him to drive around four months prior.)
- **LESS THAN THREE MONTHS, ADMISSIBLE:** *State v. Meckler*, 368 S.C. 1, 14, 626 S.E.2d 890, 897 (Ct. App. 2005) (holding evidence a defendant was aware of a victim's prior act of violence (which occurred less than three months before the murder) was admissible to show the victim's state of mind and to show he had a reasonable apprehension of great bodily harm from the victim).

#### *D. Appellant Did Not Prove the Danger Was Reasonably Apparent*

A homicide is not justifiable or excusable on the ground of self-defense by reason of a danger or apprehension of danger, of slight bodily injury, or of a mere indignity, or of a slight or moderate injury, such as that to be apprehended from a simple or ordinary assault or battery with the hand or fist of a weapon, unless the assault is accompanied by acts indicating imminent danger of serious bodily harm or felony and produces in the mind of accused a **reasonable belief of such danger**.

*State v. Amburgey*, 206 S.C. at 431, 34 S.E.2d at 781.

“[T]he jury should also, of course, consider the question of reasonably apparent danger.”

*Id.* Could a reasonable defendant believe he was in imminent danger of losing his life or suffering serious bodily harm? Or, better yet, could a reasonable jury believe he believed he was? “A man does have the right to act on appearances. The necessity may be real or apparent.

But a man of ordinary prudence, firmness, and courage must also believe that using deadly force would be necessary to prevent death or great bodily harm.” *State v. Peak*, 133 S.E.2d at 32.

To quote the trial judge in *Amburgey*: “I will say . . . that the point we are concerned with, the trait of character of the deceased, is peace and good order or turbulence and violence” and a criminal sexual conduct conviction “would not necessarily relate to that.” *Amburgey*, 206 S.C. at 430, 34 S.E.2d at 780. In fact, it is “irrelevant as to his reputation for turbulence and violence.” 40 C.J.S. Homicide § 222(2); *Amburgey*, 206 S.C. at 430, 34 S.E.2d at 780.

Here, the Appellant intentionally armed himself with a gun, exited his house, and inserted himself into a verbal argument his wife was already in. He reached into his pocket, walked toward the victim, said “I’ve had it,” and shot him as he stood on a county road. He argues a twenty-six-year-old conviction of the victim’s should have been admitted, because if it had, the jury would have somehow found him not guilty because of self-defense. He simply has not proven this to be true. This Court should affirm.

### CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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