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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Heath P. Tayor, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JASON BARRY BELL,

APPELLANT.

Appellate Case No. 2023-001326

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Appellant told the police he killed his elderly father as an act of mercy. Did the trial court err in refusing to charge voluntary manslaughter to the jury because, under the plain language of the statute, evidence existed that this was "the unlawful killing of another without malice?"

2.

Did the trial court err in admitting a jail call in which appellant was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403?

3.

Did the trial court err under the Confrontation Clause in admitting the results of a third-party toxicology report through the pathologist?

RESPONDENTS COUNTER-STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err in declining to charge the jury on involuntary manslaughter when the act was not manslaughter under South Carolina law, when nothing in the history of murder law would support such a charge, and when other states have found such a charge is not warranted?

2.

Did the trial court err in admitting a jail call that gave the jury important information about the dynamics between Appellant and his parents when such a call did not unfairly prejudice Appellant?

3.

Was any error the trial court made in the admission of expert testimony about the victim's toxicology report harmless without a doubt when, under Appellant's theory of the case, he was still guilty of murder rather than manslaughter?

STATEMENT OF THE CASE

Appellant proceeded to trial in front of the Honorable Heath P. Taylor. (R. p. 1). The trial was conducted August 7–10, 2023. *Id.* Appellant was represented by Ash Chisholm, Esq., and Pierce Wehman, Esq., of the First Circuit Public Defender. (R. p. 2). The State was represented by David Osborne, Esq., and Jillian Frederick, Esq., of the First Circuit Solicitor's Office. *Id.*

At trial, the court declined Appellant's request to charge the jury on manslaughter in addition to murder. (R. p. 432, ll. 16–18). Over Appellant's objection, the trial court admitted a recording of a phone conversation between Appellant and his mother. (R. p. 60, ll. 2–24; R. p. 276, ll. 23–25). The court also allowed a forensic pathologist to testify about the results of the victim's toxicology test. (R. p. 405, l. 22–p. 407, ll. 11). Appellant was found guilty of murder. (R. p. 493, ll. 20–24). He was sentenced to life imprisonment. (R. p. 506, ll. 9–11). This appeal follows.

STATEMENT OF FACTS

In the earliest hours of 2021—the morning of New Year's Day—a death was reported to the St. George Police Department. At 8:02 a.m., Donald Weatherford—at the time a patrol officer with the department—was dispatched to an apparent suicide on Kelly Drive. (R. p. 168, ll. 17–21; p. 170, ll. 11–17). He arrived at the home four minutes later. (R. p. 170, l. 17).

When Investigator Adam Dunway arrived shortly thereafter, he found Jim Bell—a retired local attorney—seated in his recliner, with his feet propped up on an Ottoman and a gunshot wound to the left side of his head. (R. p. 253, l. 25–p. 254, l. 5). No suicide note would be found at the scene. (R. p. 176, ll. 7–9; p. 193, ll. 9–15). Jim Bell had not committed suicide.

That soon became clear to investigators. Coroner Paul Brothers arrived at the scene and, as part of his inspection, decided to pull off a blanket that was covering Jim Bell's body. (R. p. 188, ll. 9–11). A gun tumbled to the floor. (R. p. 188, ll. 11–13). When the revolver was opened, there were two spent shell casings inside. (R. p. 191, ll. 2–4). Brothers realized that with two shots fired, it was unlikely that Jim Bell had killed himself. (R. p. 191, ll. 4–7).

According to St. George Police Chief Brett Camp, his department quickly focused on a person of interest: Jason Bell (Appellant), Jim Bell's son. (R. p. 200, ll. 3–6). Shortly before 11 a.m., Chief Camp told Appellant that the police believed they were investigating a homicide. (R. p. 200, ll. 8–9). Appellant asked law enforcement if he needed to be placed in handcuffs. (R. p. 201, l. 23–25).

After Appellant had been detained and was at the police station, Chief Camp and Appellant took a smoke break. (R. p. 204, ll. 8–16). While the two men were outside, Appellant decided to confess to killing Mr. Bell. He told Chief Champ: "I am the one and I killed my father. I was the one that did it." (R. p. 205, ll. 15–18). The two men then returned to the interview room, and

Appellant gave a fuller account of what happened. (R. p. 205, ll. 15–21; State's Exh. 9). According to Appellant, he was acting on Jim Bell's request, expressed years earlier, that if the older man was suffering in his final days and could not end his own life, Appellant would do it for him. (Exh. 9). By New Year's Eve, with his father suffering from pulmonary fibrosis, Appellant decided the time had come. (Exh. 9; R. p. 354, ll. 1–3). Appellant said Jim Bell had spent much of the previous day screaming in pain. (Exh. 9). Appellant cried and prayed as he considered his next steps. (Exh. 9). "Doing it was bad enough," he told investigators. "Working up the courage to do it was the worst." *Id.*

That night, Appellant went downstairs and found his father asleep. *Id.* With New Year's Eve fireworks going off, Appellant fired two bullets into his father's head. *Id.* He then dropped the gun and returned to his bedroom upstairs, after which he continued to cry and pray. *Id.* His mother discovered the body the next day. *Id.*

On March 24, 2021, as Appellant was in jail, he placed a phone call to his mother, Rose. The phone call included the following exchanges:

> APPELLANT: Okay. Um, I got a, um—I got a, uh, letter, from, uh, from [a lawyer], uh, about you, um, you getting appointed to be the, um, personal representative of the, of the estate
>
> ROSE BELL: Yeah.
>
> APPELLANT: And, um, I honestly, as you, I, I don't, I've never seen the will before, I don't know if I'm actually, I was left anything in it or if I'm not in it all. So I did want to know—
>
> ROSE BELL: No.
>
> APPELLANT: —(a) am I in it at all?
>
> ROSE BELL: No, it's all left to me.

> APPELLANT: That's what I thought, that's what. I just didn't know if that was part of the legalese that he had to send me something that, I mean.
>
> ROSE BELL: [inaudible]
>
> APPELLANT: I thought me and him had talked about it not, nothing coming to me.

Appellant then turned to another matter he wanted to discuss on the call.

> APPELLANT: Okay, and I don't know if you ever tried to send me any, um, money for the canteen, but it has not shown up yet
>
> ROSE BELL: No.
>
> APPELLANT: You have not.
>
> ROSE BELL: I don't know how to do that.
>
> . . . .
>
> APPELLANT: Uh, okay. Um, I mean it's, you can call [inaudible], I'd appreciate it, you know – the canteen, you only get, you get to order until Wednesday morning,
>
> ROSE BELL: Um-hmm.
>
> APPELLANT: Wednesday morning at 8 o'clock and they deliver it on Thursday.
>
> ROSE BELL: Right.
>
> APPELLANT: So, since I didn't have any money this morning, I'm not going to get anything tomorrow. Other than what I had in my pocket, I didn't have anything since I got here, so.
>
> ROSE BELL: [Inaudible] I understand.
>
> APPELLANT: I know you do, I know you do, and you know I'm not hustling you for money, I just, um, you know, I try, when I tried to call just to even see if I needed to respond to [the lawyer] or any of that—I can write him a free letter, but again, I don't have any money to call anybody and if you gotta buy stamps they give you two free a month—

> ROSE BELL: Yeah.
>
> APPELLANT: —or something, you know, so I'm. To help me help you, you know how that goes, so I can get in touch and let your lawyer know, yeah, I got the notification, let y'all take care of it kind of thing—I sure could, I mean, could you put a hundred instead of fifty?

Appellant told his mother that she could transfer some money into his account through an online system. She was still hesitant, saying she did not know how to do so. Eventually, Appellant became impatient.

> APPELLANT: Three weeks, Rose. Three weeks you been telling me every, you know I hate to try to bust your chops—
>
> ROSE BELL: I didn't tell you anything.
>
> APPELLANT: You told me you were going to put money on it three weeks ago. I mean, you told me again last week, and I'm just telling you that.
>
> ROSE BELL: No, I haven't told you anything, because I'm not promising you anything.
>
> APPELLANT: Well, then I'll tell you right now, I promise you this will be the last time I call.
>
> ROSE BELL: Okay, that's fine.
>
> AUTOMATED VOICE: Goodbye.

(State's Exh. 92).

At trial, Appellant made a motion in limine to exclude a recording of the jail call. Appellant argued that the recording was obtained in violation of his Fourth Amendment rights. (R. p. 50, ll. 21–25). Appellant also argued that the call was irrelevant. (R. p. 56, l. 24 – p. 57, l. 17). Finally, Appellant argued that the call was character evidence—meant to show that he had been "mean to his mom"—and that even if it was relevant, the call was more prejudicial than probative under Rule 403 of the South Carolina Rules of Evidence. (R. p. 57, l. 23–p. 58, l. 13).

The State countered that the call was relevant because part of the state's theory was that Appellant was spoiled, and that the call could be probative as to motive because of the discussion of the will. (R. p. 58, l. 14–p. 59, l. 16). The trial court ruled the recording conditionally admissible. (R. p. 60, ll. 2–24). When the State tried to enter the phone call into evidence, Appellant objected again. (R. p. 275, ll. 11–12). After hearing from the attorneys, the trial court maintained its prior ruling allowing the recording to be admitted. (R. p. 276, ll. 23–25).

Several friends and associates of Mr. Bell also testified at trial.

Larry Bowers would frequently visit the Bells. (R. p. 294, l. 19–22). His visits because less frequent after Appellant moved back into the house; Bowers "didn't appreciate the way [Appellant] treated them." (R. p. 294, l. 23–p. 295, l. 8). Bowers acknowledged that he did not see mistreatment, "just the results of it." (R. p. 295, ll. 11–14). Bowers also asked Jim Bell to give him the revolver because of Bowers' concerns about Appellant. (R. p. 296, l. 11–p. 297, l. 5). Like other witnesses, Bowers said he never heard Jim Bell screaming in pain. (R. p. 298, ll. 17–25).

Janette Mizzel, who cleaned Mr. Bell's home, recalled an incident two or three weeks before the shooting. (R. p. 301, ll. 8–16, p. 303, l. 22–p. 304, l. 1). She said she found Jim Bell lying on the concrete outside the house and asked what happened. (R. p. 305, ll. 4–6). Jason was standing nearby. (R. p. 305, ll. 7–17). Jim Bell said, "that bastard knocked me down." (R. p. 306, l. 10). Mizzel said the only people present at that time were Jim Bell, Appellant, and her. (R. p. 306, ll. 11–14). She said that she once asked Jim Bell to remove the bullets from his revolver, "[b]ecause I was getting scared for him and Rose's life." (R. p. 308, ll. 6–18). Mizzel never heard Jim Bell scream in pain. (R. p. 308, l. 24–p. 309, l. 7).

The jury also heard from Dr. Eric Watson, who was Jim Bell's primary care physician. (R. p. 353, ll. 7–19). While Jim Bell did have pulmonary fibrosis—and the condition would have ultimately killed him—Dr. Watson said it would not have caused him significant pain at the time of his death. (R. p. 354, ll. 1–3; p. 354, ll. 22–24; p. 355, ll. 16–19). Dr. Watson said Jim Bell had experienced some pain in his shoulder and had taken pain medications in August 2019. (R. p. 356, l. 23–p. 357, l. 6). But to Dr. Watson's knowledge, Jim Bell was not on pain medication at the time of his death. (R. p. 358, ll. 2–3). Dr. Watson saw nothing that indicated to him that Jim Bell was considering suicide. (R. p. 359, l. 19–p. 360, l. 1).

Likewise, Rose Bell—who met Jim Bell at camp in high school and had been married to him for more than 50 years—said her husband would not have considered suicide. (R. p. 366, ll. 12–14; p. 366, ll. 16–17; p. 368, ll. 16–19). She also said he never screamed in pain. (R. p. 367, ll. 4–15). As to the phone call from the jail, Rose Bell said she believed Appellant tried to call her again sometime after that call, but she would not accept the charges. (R. p. 369, ll. 6–13).

The state also presented the testimony of Virginia Richards, who was qualified as an expert in forensic pathology. (R. p. 399, l. 24–p. 400, l. 5). Over objection, she testified that the toxicology report on Mr. Bell indicated that no medications were present in his body when he died. (R. p. 405, l. 22–p. 407, ll. 11). After the jury had left the courtroom, the court allowed Appellant to place on the record his objection—previously made in a sidebar—that Richards' testimony about the toxicology report violated Appellant's rights under the Confrontation Clause. (R. p. 425, l. 6–p. 426, l. 5). The court repeated that it had overruled the objection. (R. p. 426, ll. 6–12).

In discussions about jury charges, Appellant argued that the court should instruct the jury on voluntary manslaughter. (R. p. 430, l. 13–p. 431, l. 16). Appellant argued that the killing was

done without malice, and that Appellant acted under the heat of passion because he heard his father screaming in pain the day before. *Id.*

The trial court declined to include a charge for manslaughter. (R. p. 432, ll. 16–18). The court held that even if Jim Bell's screams could have been provocation, Appellant had sufficient time to cool off before killing his father. (R. p. 433, l. 2–p. 434, l. 10).

During deliberations, the jury asked about the definition of malice. (R. p. 490, ll. 22–24). The judge recharged the jury with his murder instruction. (R. p. 490, l. 24–p. 491, l. 6; R. p. 491, l. 24–p. 493, l. 4).

The jury ultimately found Appellant guilty of murder. (R. p. 493, ll. 20–24). The court sentenced Appellant to life imprisonment. (R. p. 506, ll. 9–11). This appeal follows.

STANDARD OF REVIEW

This Court's "standard of review in criminal cases is limited to correcting errors of law." *State v. Green*, 436 S.C. 492, 494, 872 S.E.2d 869 (Ct. App. 2022). When considering whether the trial court should have instructed the jury on a lesser-included offense, this Court considers whether "the evidence in the record is such that the jury could have found the defendant guilty of the lesser offense instead of the crime charged." *State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690–91 (Ct. App. 2011). As to evidentiary rulings, they are "within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

ARGUMENT

I. The trial court properly declined to give an instruction for manslaughter because the evidence at the trial did not support a conviction on voluntary manslaughter rather than murder.

Appellant argues on appeal that the trial court should have instructed the jury on manslaughter because the killing of his father was without malice. Appellant also argues on appeal that the crime he was actually guilty of was assisting his father's suicide. These arguments are incorrect; Appellant's killing of his father did not constitute manslaughter, but murder.

A. Under South Carolina law, Appellant cannot show the necessary elements for a charge of voluntary manslaughter.

First, as Appellant all but concedes in his brief, his actions in this case do not fit under our state's well-established law regarding the elements of voluntary manslaughter. Instead, Appellant asks this Court to ignore those traditional elements in favor of a more inclusive view of a killing without malice. Contrary to Appellant's argument, a killing in the heat of passion brought on by legal provocation is not a species of the lack of malice; it is the test for determining the lack of malice.

Our courts have already dismissed Appellant's implicit contention that some sort of ill will is required for malice to exist.

> In its popular sense, the term "malice" conveys the meaning of hatred, ill-will, or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.

State v. Judge, 208 S.C. 497, 505–06, 38 S.E.2d 715, 719–20 (1946) (quoting a source identified as "29 C.J. 1084"). *See also* In re *Tracy B.*, 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010) ("In the context of murder, malice does not require ill-will toward the individual injured, but rather it signifies 'a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.'" (quoting *State v. Mouzon,* 231 S.C. 655, 662, 99 S.E.2d 672, 675–76 (1957))).

"Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Payne*, 434 S.C. 121, 135, 862 S.E.2d 81, 88 (Ct. App. 2021) (quoting *State v. Smith*, 391 S.C. 408, 412–13, 706 S.E.2d 12, 14 (2011)). It is the connection between the two—legal provocation and heat of passion—that mitigates a murder and reduces it to manslaughter. *See id.* at 137, 862 S.E.2d at 89 ("Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation." (quoting *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010))); *Starnes*, 388 S.C. at 596, 698 S.E.2d at 608 ("We have consistently held that both heat of passion and sufficient legal provocation must be present at the time of the killing. A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." (citation omitted)).

In sum, South Carolina courts look for a sufficiently provocative act producing "an uncontrollable impulse to do violence." *Id.* at 590, 698 S.E.2d at 609. This is what Appellant cannot show in this case.

First, Appellant would be required to show not just a provocation, but that his father provoked him. *See State v. Locklair*, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000) ("Provocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation."). Furthermore, the act must be

sufficiently egregious to qualify as legal provocation—most human interactions will not do. *See State v. Hernandez*, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) ("Neither the exercise of a legal right nor a victim's attempts to resist or defend himself from crime constitute sufficient legal provocation."); *State v. Holland*, 385 S.C. 159, 166, 682 S.E.2d 898, 902 (Ct. App. 2009) ("Mere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon." (cleaned up) (quoting *State v. Rogers,* 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996))).

The only act of Jim Bell's that Appellant could argue legally provoked him was the act of screaming in pain. But screams—even disturbing ones—are not the stuff of legal provocation and certainly should not give a patient's family the ability to kill him or her, then have the charges reduced to manslaughter.

Appellant has also failed to show that, under any interpretation of the evidence produced at trial, he acted in the heat of passion; to the contrary, his own statement to investigators disproves the idea.

Like provocation, the heat of passion is not a trivial matter. It requires a state of mind that "need not dethrone reason entirely, or shut out knowledge and volition," but still "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Pittman*, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007) (quoting *State v. Cole,* 338 S.C. 97, 99, 525 S.E.2d 511, 513 (2000)).

Even once the heat of passion has been triggered, voluntary manslaughter does not create an unlimited invitation to kill the provocateur at a time of one's choosing. If a defendant has time to "cool off," then the defendant is no longer acting in the heat of passion. *See Hernandez*, 386

S.C. at 661, 690 S.E.2d at 585 ("However, even when a person's passion is 'sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter.'" (quoting *State v. Knoten,* 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001))).

While Respondent has not found any South Carolina law dealing specifically with whether a "mercy killing" qualifies as voluntary manslaughter—and Appellant has offered none—other states' courts have wrestled with similar theories and largely dismissed them. Even an advocate for reducing the charges faced by defendants for "non-voluntary" euthanasia has observed that no such doctrine currently exists. *See* Michael Buchhandler-Raphael, *Compassionate Homicide*, 98 WASH. U. L. REV. 189, 195 (2020) ("[N]o existing criminal defense recognizes compassion as grounds for mitigating murder charges to manslaughter. Moreover, the law generally rejects the idea that actors' purportedly beneficial motive for committing compassionate homicide diminishes the scope of their criminal responsibility." (footnote omitted)).

For example, in *State v. Forrest*, the Supreme Court of North Carolina faced a situation that strongly resembles the current case. There, the court held that a son who killed his terminally-ill father in the hospital did not act under the heat of passion in response to a legal provocation. *See Forrest*, 362 S.E.2d 252, 253–54, 256 (N.C. 1987).[1] The court rejected the argument that "where a defendant kills a loved one in order to end the deceased's suffering, adequate provocation to negate malice is necessarily present." *Id.* at 256. Furthermore, the Forrest court noted that the son in that case had indicated that he had thought out his course of action before killing his father. *Id.*

---

[1] The jury in Forrest had been charged with voluntary manslaughter, but the jury convicted him of first-degree murder. *See id.* at 254.

Here, like the defendant in *Forrest*, Appellant was capable of reflection. Appellant described in detail his cool reflection—the crying, praying, and thought he undertook as he decided whether to kill his father. Appellant talked about needing to work up the courage to shoot Mr. Bell. But someone who has to work up the courage to do violence is not under an uncontrollable urge to do violence; that is why they have to work themselves up.

As a result, Appellant cannot satisfy the test for voluntary manslaughter long followed in South Carolina. He instead asks this Court to rewrite the law of voluntary manslaughter through statutory interpretation. The history of South Carolina's law of murder, though, shows that the long history of voluntary manslaughter undermines any effort to accept Appellant's invitation.

B. There is no basis in the history of South Carolina's law of murder for Appellant's theory that voluntary manslaughter is a product of mere jurisprudence.

Appellant advances the novel legal theory that because the state's statutes do not explicitly include the requirements of legal provocation or heat of passion for manslaughter, those limitations are "judge-made law" that do not restrain the statute. Appellant's argument is undermined by the history of murder law.

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (West). On the other hand, the law defines manslaughter as "the unlawful killing of another without malice, express or implied[.]" S.C. Code Ann. § 16-3-50 (West).

Contrary to Appellant's attempt to distinguish between malice and the elements of manslaughter in South Carolina, the two have long been understood as equivalents. The state's elements of manslaughter are how to determine whether malice exists, not the other way around—and history bears that out.

For example, as our supreme court held nearly 130 years ago, "[t]he very essence of manslaughter is that tenderness of the law in judging our fellow men when influenced by sudden heat and passion while smarting under reasonable provocation, *thus negativing the existence of malice*." *State v. Richardson*, 47 S.C. 18, 24 S.E. 1028, 1029 (1896) (emphasis added). Even when the court decided *Richardson*, the idea that a reduction of a killing from murder to manslaughter required a heat of passion triggered by a legal provocation was nothing new; it had been stated at least 60 years earlier. *See State v. Ferguson*, 20 S.C.L. (2 Hill) 619, 621–22 (S.C. App. L. & Eq. 1835) ("The distinction between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart, and framed in compassion to the passions and frailties which belong to and are inseparable from our natures. . . . Passion arising out of even imaginary wrongs, frequently gets the ascendancy of distempered minds, and even those that are better regulated are sometimes carried away by the ordinary 'ills which flesh is heir to.'").

This idea did not come from a legal innovation; instead, it was in keeping with an understanding of manslaughter that went back to the legal system of England.

> In seventeenth-century England, courts began to accept the notion that certain heat-of-passion killings lacked the "malice aforethought" necessary for murder and thus were not subject to the death penalty, then obligatory for murder. . . . At common law, only a few kinds of provocations were adjudged sufficient to excuse the killer's state of passion and reduce the killing to manslaughter.

Tom Stacy, *Changing Paradigms in the Law of Homicide*, 62 OHIO ST. L.J. 1007, 1021–22 (2001). *See also* William H. Coldiron, *Historical Development of Manslaughter*, 38 KY. L.J. 527, 544 (1950) ("Whether there is mitigation other than provocation does not concern us here since it seems to be a new idea in the law[.] There is nothing in the early writings and cases on the subject of

manslaughter which indicate to the writer that such a problem was even considered before the early part of the twentieth century[.]").[2]

As a result, there is no reason to believe that the framers of any of South Carolina's malice murder statutes were working under the belief that there were multiple other ways to negate malice other than the heat of passion under sufficient legal provocation.

C. Appellant's crimes do not fit the definition of assisted suicide.

Appellant argues that rather than be prosecuted for murder, he should have been prosecuted under the state's ban on assisted suicide. Appellant's argument contradicts the text of the statute.

South Carolina's law on assisted suicide defines a crime that occurs under two circumstances: one, that a person "by force or duress intentionally causes the other person to commit or attempt to commit suicide," § 16-3-1090(B)(1) (West); or two, that the individual know that someone is planning to commit suicide and either "provides the physical means by which the other person commits or attempts to commit suicide; or . . . participates in a physical act by which the other person commits or attempts to commit suicide," § 16-3-1090(B)(2) (West). The law also defines suicide as "the act or instance of taking one's life voluntarily and intentionally." § 16-3-1090(A)(2) (West).

Of course, Appellant did not aid Jim Bell in committing suicide because Jim Bell did not commit suicide and could not have attempted to commit suicide; he was asleep. While there is a scarcity of South Carolina authority on this law—beyond an unpublished federal case and a case from the Southern District of West Virginia dealing with extradition—the text of the statute is clear

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[2] This article, which counsel could not find in a database, is instead available at https://uknowledge.uky.edu/klj/vol38/iss4/2/.

and unambiguous. Assisting suicide requires there to be a suicide in which the defendant is assisting.[3]

Again, courts in other states have turned aside arguments that Appellant's actions would constitute a violation of restrictions on assisted suicide. One influential rule was crafted by the Oregon Supreme Court in *State v. Bouse*. The *Bouse* court was considering a statute that made it manslaughter to "procure another to commit self-murder, or assist another in the commission thereof." *State v. Bouse*, 264 P.2d 800, 807 (Or. 1953). There, in the course of interpreting the statute, the court held:

> [W]here a person actually performs, or actively assists in performing, the overt act resulting in death, such as shooting or stabbing the victim, administering the poison, or holding one under water until death takes place by drowning, his act constitutes murder, and it is wholly immaterial whether this act is committed pursuant to an agreement with the victim, such as a mutual suicide pact.

Bouse, 264 P.2d at 812 (Or. 1953), *overruled on other grounds by State v. Fischer*, 376 P.2d 418 (Or. 1962), and *State v. Brewton*, 395 P.2d 874 (Or. 1964). *See also People v. Matlock*, 336 P.2d 505, 511 (Cal. 1959) (applying *Bouse* to a case before it); *Edinburgh v. State*, 896 P.2d 1176, 1180 (Okla. Ct. Crim. App. 1995) ("[W]here the defendant only furnishes the means by which the victim kills herself, he has merely assisted suicide. But, where the defendant proximately causes the defendant's death he can be held liable for homicide."); *State v. Sexson*, 869 P.2d 301, 304, (N.M. Ct. App. 1994) (finding, in the case of an uncompleted suicide pact, that second-degree murder and assisted suicide statute did not govern the same behavior because "[t]he wrongful act

[3] Appellant also cites to statutes in Florida and Alaska defining assisted suicide as manslaughter. Even if Appellant were guilty of committing assisted suicide—he is not—Appellant was tried in South Carolina, not Florida or Alaska, and South Carolina's assisted suicide statute is the one at issue.

triggering criminal liability for the offense of assisting suicide is 'aiding another' in the taking of his or her life," which is "intended to mean providing the means to commit suicide, not actively performing the act which results in death"); *Goodin v. State*, 726 S.W.2d 956, 958 (Tex. App. 1987) ("We believe the aiding suicide statute encompasses action which indirectly contributes to another's voluntary suicide, such as providing access to poison or a gun. We do not believe that this offense includes action on the part of an accused which directly causes the death of another, even if done at the deceased's request."), *aff'd,* 750 S.W.2d 789 (Tex. Crim. App. 1988).

There is nothing in South Carolina law that Respondent is aware of—and nothing that Appellant has shown—that should lead the courts of this state to make a different determination. Instead, Appellant asks this Court to invent from whole cloth a new species of manslaughter that is contrary to our law, contrary to history, and contrary to the path taken by other states. This Court should decline that invitation and affirm Appellant's conviction.

II. The trial court correctly admitted a phone call that did not violate the state's prohibition on character evidence, that provided probative evidence about Appellant's relationship with his parents, and that did not have improper prejudicial impact.

Appellant argues that the phone call between Appellant and his mother when Appellant was in jail should not have been allowed because it was evidence of bad character. He also cursorily argues that the evidence violates Rule 403's prohibition that evidence must be excluded if it is substantially more prejudicial than probative. The latter argument may very well be abandoned; both are meritless.

Appellant seems to be specifically objecting to the evidence under Rule 404(b). That rule deals with evidence of other bad acts of a defendant with the primary goal of proving character. *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). However, Rule 404(b) has a familiar exception; the other bad acts of a defendant may be admitted into evidence "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.* That is why the State argued for admission of the call in this case.

First, Appellant continues to argue that the phone call did not show anything about Appellant's understanding of the will, other than that he knew he was excluded. This is an extremely generous reading of the record.

> JASON BELL: And, um, I honestly, as you, I, I don't, I've never seen the will before, I don't know if I'm actually, I was left anything in it or if I'm not in it all So I did want to know—
>
> MS. BELL: No.
>
> JASON BELL: —(a) am I in it at all?

The first substantive question Jason Bell asked in the phone call, after having received a letter from his mother's attorney regarding the will, was whether he was in it. Appellant only then

acknowledged that he did not believe he was getting anything from the will. Additionally, the identity of the "he" spoken of in the phone call is not clear, and it certainly does not definitively prove that the Appellant did not have a motive for committing murder based on his understanding that he was not in the will.

The evidence is also probative of motive in other ways. The State at trial argued that it was trying to show that the opponent was spoiled. In other words, the State was trying to show the dynamics in the household between Appellant and his parents, and how they might have played into his motivation to take his father's life. In that sense, the evidence was relevant not because of Appellant's unspecified "meanness" toward his mother, but of the tensions inside the household that led up to the fatal shots. It did not show that Appellant had the propensity to murder one of his parents, but it indicated that relations were perhaps not as sanguine as Appellant implied. *See State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998) ("The term 'character' refers to a generalized description of a person's disposition or a general trait such as honesty, temperance or peacefulness. Generally speaking, character refers to an aspect of an individual's personality which is usually described in evidentiary law as a 'propensity.'" (quoting *State v. Smith,* 617 N.E.2d 1160, 1169 (Ohio Ct. App. 2d Dist. 1992))); *cf. State v. Plyler*, 275 S.C. 291, 296, 270 S.E.2d 126, 128 (1980) ("Evidence of previous difficulties or ill feelings between the accused and the victim and of facts showing the cause of such difficulties or ill will is admissible on the question of motives where there is some connection of cause and effect between the evidence and the crime." (quoting 40 C.J.S., Homicide, Section 228)).

Secondly, the danger of unfair prejudice—which is what our courts look for in weighing potential violations of Rule 403, SCRE—did not substantially outweigh the probative value of giving the jury an understanding of Appellant's relationship with his parents.

Appellant appears to have abandoned this argument on appeal. Other than a brief citation to Rule 403 itself, Appellant offers no authority on this point—simply a paragraph with a rule statement, followed by a series of assertions about the evidence's probative value and its prejudicial effect. *See State v. Lindsey*, 394 S.C. 354, 364, 714 S.E.2d 554, 559 (Ct. App. 2011) (stating, in parenthetical, that *State v. Howard*[4] stands for the proposition that an "argument [was] abandoned when defendant failed to cite any authority in specific support of his assertion that the trial court erred in denying his motion for a mistrial").

In any event, any unfair prejudice—and Respondent contends there is none—could not *substantially outweigh* its probative value. *See* Rule 403, SCRE.

When our courts are searching for unfair prejudice, they do not go hunting for anything that might make a defendant look bad. Rather, they are looking for something that—unconnected to the probative value it might have—is intended to rouse the jury against the defendant. Rule 403 is a safeguard against ad hominem justice. *See Johnson v. State*, 433 S.C. 550, 558–59, 860 S.E.2d 696, 701 (Ct. App. 2021) ("In criminal cases, the term 'unfair prejudice' 'speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt *on a ground different from proof specific to the offense charged*." (emphasis added) (quoting *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)). As this Court held in *Johnson*:

> Probative evidence always prejudices the opposing party by building a case against them; however, Rule 403 only forbids "unfair prejudice," and its balancing test enables the trial court to temper the risk that evidence will exert such a pull on the jurors' emotions that it overwhelms their ability to rationally and impartially weigh the evidence and apply the law to the facts.

Id. at 559, 860 S.E.2d at 701.

[4] 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009).

For example, in *White*, this Court allowed admission of a phone call from jail when the contents indicated the defendant's guilt. *See State v. White*, 437 S.C. 490, 493–94, 879 S.E.2d 21, 22–23 (Ct. App. 2022). There, the defendant's girlfriend misinformed him that an autopsy of the victim had concluded that the victim died because of a car crash, rather than a gunshot wound that the defendant had inflicted, prompting the defendant to celebrate. *See id.* In considering the potential for unfair prejudice, this Court distinguished the case before it from *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). Among the distinctions that the court found was that the call in *White* did not raise the same danger of unfair prejudice as the evidence in *King* because the profanity captured on the recording was casual and there were no racial slurs or references to bad acts prior to the phone call.

The same is true here. Like the call in *White*, the phone call at issue in this case does not contain a surplus of profanity. It does not appear to contain any profanity at all. There are no racial slurs, and the exhibit played for the jury excised a reference to Appellant's prior imprisonment.

While the jury likely did not like the disrespect that Appellant showed to his mother, the idea that it manipulated jurors to the extent that it "overwhelm[ed] their ability to rationally and impartially weigh the evidence and apply the law to the facts" is baseless. It seems highly unlikely that the jury would convict the defendant of murder because he was not polite to his mother. However, to the extent that the jury used the conversation on the audio to inform their view of the relationship between Appellant and his parents—and what that might have indicated about his motive for killing his father—the evidence was properly admitted.

Finally, any error here is without a doubt harmless. As explained above, even if the Appellant's own stated motive is to be believed, it does not excuse his commission of murder or

reduce it to manslaughter. A phone conversation covering less than six minutes that contradicts a self-serving defense that does not even properly serve Appellant, as part of a four-day trial, is not an error that could reasonably have affected the jury's decision.

For these reasons, this Court should affirm Appellant's conviction.

III. Even if the trial court erred in admitting the toxicology report, that error was without a doubt harmless when Appellant's own account of killing his father does not show the necessary legal provocation or heat of passion for manslaughter.

In his final issue, Appellant argues that the trial court erred in admitting the forensic pathologist's testimony about Jim Bell's toxicology results. Even if that is the case, any error was without a doubt harmless.

Appellant argues that the pathologist's reference to the toxicology report—showing the lack of medication, in Jim Bell's system—is contrary to our supreme court's decision in *State v. Brewer*, 438 S.C. 37, 42, 52–54, 882 S.E.2d 156, 158, 164–65 (2022) (holding that the testimony of a pathologist who relied on tests by a private laboratory to help conclude that a child had died from "acute oxycodone toxicity" was improperly admitted).

"A violation of [a] defendant's Sixth Amendment right to confront [a] witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." *State v. McCray*, 413 S.C. 76, 91, 773 S.E.2d 914, 922 (Ct. App. 2015) (alteration in original) (quoting *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013)). In assessing harmless error, the court should consider "whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Id.* (quoting *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012)).

For reasons both evidentiary and legally, the error here was harmless. First, there was already ample evidence in the record to indicate that Jim Bell had not been prescribed pain medication in the days leading up to his death; his primary care physician testified as much. Likewise, other witnesses testified to their understanding that Mr. Bell was not in excruciating pain in his final weeks. The pathologist's testimony was cumulative.

Second, even if there had been pain medication in Jim Bell's system, it would not have provided sufficient evidence of manslaughter. As discussed above, the pain that Jim Bell purportedly suffered would not reduce the charge to manslaughter in any event, because even if Jim Bell *was* in immense pain, and he *did* require painkillers because of that, and that pain is what *did* prompt Appellant to kill his father—the defendant did not commit manslaughter, but murder.

For that reason, this Court should affirm Appellant's conviction.

CONCLUSION

Appellant was convicted of murder, rather than manslaughter, because that was the crime he committed. Nothing in the law of murder, nothing in the admission of Appellant's phone call to his mother, and nothing in the testimony of the pathologist concerning the toxicology results alters that. This Court should affirm Appellant's conviction.

Respectfully Submitted,

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March 25, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Heath P. Tayor, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JASON BARRY BELL,

APPELLANT.

Appellate Case No. 2023-001326

PROOF OF SERVICE

I, **R. Brandon Larrabee**, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, David A. Alexander, Esq., via email today, March 25, 2025 to dalexander@sccid.sc.gov, and to his assistant at cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 25th day of March, 2025.

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