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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHELLIE LAVETTE DAVIS,

APPELLANT

APPELLATE CASE NO 2018-000366

INITIAL REPLY BRIEF OF APPELLANT

GARY H JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

Respondent asserts appellant's citation and interpretation of State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015) is "bizarre." Brief of Rep. 3. It would only be "bizarre" had appellant ignored a case dealing with the exact same statute and presenting similar factual circumstances. Contrary to the respondent's attempt to re-write the trial court's order and recast appellant's argument, here the lower court misinterpreted the holding in Hawes by discounting "aged" instances of marital misconduct and improperly focusing on instances that were within the timeframe of the underlying homicide.

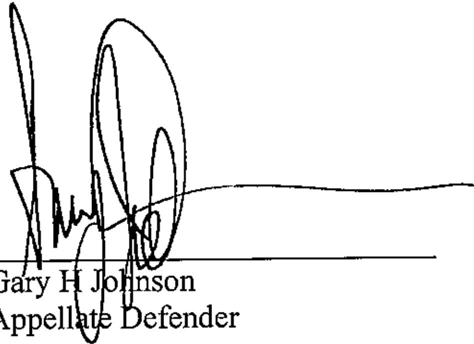
Our Supreme Court in Hawes has provided guidance to the lower courts in addressing cases that involve some evidence of mutual domestic violence over the course of a long marriage under S.C. Code Ann. § 16-25-90 (2004). Appellant does not assert Hawes mandates such a finding (as respondent portrays), only that the trial court must view the history of the marriage when there are allegations of mutual acts of domestic violence. Here, the error of the trial court was finding credible evidence had been presented of a "tumultuous relationship with scattered instances of domestic abuse, in multiple formats, occurring on both sides of the relationship" but denying appellant had "presented sufficient credible evidence to meet her burden to establish a history of criminal domestic violence such that § 16-25-20 is triggered." Order p. 9.

As noted in appellant's brief before this Court, the lower court's holding contradicts the guidance provided in Hawes. Appellant does not contend that Hawes mandates a finding under S.C. Code Ann. § 16-25-90 (2004) when there is a long history of domestic abuse during a marriage. Rather, Hawes clearly dictates that the lower court must consider such a long history in making that determination. In the present case, the lower court discounted the "scattered"

instances of domestic abuse. This interpretation of the scope of S.C. Code Ann. § 16-25-90 (2004), by both the lower court and respondent, is contrary to our Supreme Court's acknowledgement of the recurring impact of domestic violence. "A battered woman suffers from 'learned helplessness' as the 'repeated batterings, like electrical shocks, diminish the woman's motivation to respond.'" Robinson v. State, 308 S.C. 74, 77, 417 S.E.2d 88, 90 (1992). The trial court misinterpreted the impact of these past instances of violence and the nature of domestic abuse. Respondent makes the same error in its brief to this Court. As noted in Hawes, being an "aggressor" at times would not disqualify application of S.C. Code Ann. § 16-25-90. As noted in Robinson, past instances of domestic violence create "learned helplessness" that causes submission to the violence and are no less important than "contemporaneous" events closer in time to the retaliatory event.

CONCLUSION

Respondent's assertion that this argument is "patently meritless" turns a blind eye on the impact of domestic violence and reflects an attitude that the Legislature, through S.C. Code Ann. § 16-25-90, has attempted to change. The lower court, as argued in appellant's brief, failed to properly apply its factual findings to S.C. Code Ann. § 16-25-90 and should be reversed.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2026.