STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2018-000366

State of South Carolina,

Respondent,

v.

Shellie L. Davis,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

APPELLANT'S STATEMENT OF THE ISSUE PRESENTED

Did the trial court err in denying battered spouse classification despite finding a history of domestic abuse, in multiple formats, occurring on both sides of the marital relationship following appellant's conviction for the murder of her husband?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED

The circuit court properly found Appellant failed to present sufficient credible evidence to satisfy her burden of proving, by a preponderance of the evidence, that she suffered a history of criminal domestic violence at the hands of the victim.

STANDARD OF REVIEW

"In criminal cases, this Court sits to review errors of law only and is 'bound by the trial court's factual findings unless they are clearly erroneous.'" *State v. Green*, 440 S.C. 292, 300, 890 S.E.2d 761, 765 (2023) (quoting *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001)). "On appeal, the reviewing court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." *State v. Quinn*, 430 S.C. 115, 123, 843 S.E.2d 355, 359 (2020). In particular, appellate courts "should accord great deference to trial court findings where matters of credibility are involved." *S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984).

ARGUMENT

The circuit court properly found Appellant failed to present sufficient credible evidence to satisfy her burden of proving, by a preponderance of the evidence, that she suffered a history of criminal domestic violence at the hands of the victim.

Following her 2014 conviction of murder for the killing of her estranged husband, Jermaine Davis ("Victim"), Appellant Shellie Davis sought early parole eligibility under S.C. Code Ann. section 16-25-90:

> [A]n inmate who was convicted of . . . an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate . . . presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

Section 16-25-20 provides, "(A) It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril." A "household member" is defined in section 16-25-10(3) as "(a) a spouse; (b) a former spouse; (c) persons who have a child in common; or (d) a male and female who are cohabiting or formerly have cohabited." There is no dispute that Appellant and Victim were "household members" as that term is defined in section 16-25-10(3).

On January 24, 2025,[1] the Honorable Walton J. McLeod, IV, issued an order denying Appellant's request for early parole eligibility. The order summarized the evidence and arguments of counsel presented at the July 29–30, 2024, evidentiary hearing. The order also reflected that Judge McLeod considered the transcript and exhibits from Appellant's trial, particularly noting

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[1] The lengthy procedural history of this issue is satisfactorily set forth in Appellant's "Statement of the Case." (App.Br.pp.2–3).

Appellant's personal journals. Judge McLeod found Appellant's journal entries "provide unique insight" and noted that, while the journals include a detailed account of Appellant's troubled relationship with Victim, they do not contain "any descriptive accounts of physical abuse." Ultimately, Judge McLeod found as follows:

> The Court is of the opinion that this was a tumultuous relationship with scattered instances of domestic abuse, in multiple formats, occurring on both sides of the relationship. However, in looking at the totality of the evidence, this court finds that [Appellant] has not presented sufficient credible evidence to meet her burden to establish a history of criminal domestic violence . . . .

(R. pp.1209-1217).

Appellant acknowledges that "the record supports the lower court's factual finding of domestic abuse and a tumultuous marriage." (App.Br.p.9). However, Appellant argues "the trial court's holding that 'scattered' domestic abuse over a long period of time was . . . insufficient to support qualification under S.C. Code Ann. § 16-25-90 is an error of law requiring reversal." (App.Br.p.9).

Appellant claims the circuit court "seemed to focus on the fact that the incidents described by the fact witnesses during the remand hearing all occurred years before the shooting death of [Victim]." (App.Br.p.21). However, the circuit court never purported to discount those incidents solely because of their age. Nevertheless, Appellant criticizes the circuit court for ignoring the "guidance" of *State v. Hawes*, 411 S.C. 188, 767 S.E.2d 707 (2015). According to Appellant, *Hawes* stands for the proposition that "a 'decade-long tumultuous relationship, which included instances of mutual combat[,]' did not preclude a finding under the statute." (App.Br.p.21) (quoting *Hawes*, 411 S.C. at 190, 767 S.E.2d at 708).

Appellant's reliance on *Hawes* is bizarre. Nobody in this case (or in *Hawes*, for that matter) ever claimed that "a decade-long tumultuous relationship [including] instances of mutual combat"

somehow *precludes* a finding of early parole eligibility under the statute. Rather, the issue is whether the existence of a "tumultuous relationship with scattered incidents of domestic abuse . . . on both sides" *compels* such a finding. Appellant argues that it does; *Hawes*, however, clearly holds that it does not. *See Hawes*, 411 S.C. at 190, 767 S.E.2d at 708 (holding the trial court erred in "conclud[ing] that it was 'compelled' to grant Hawes early parole eligibility" based solely on evidence that Hawes and his wife had a tumultuous relationship marked by violence on both sides). *Hawes* emphasizes that "the trial court must exercise discretion," and that this exercise of discretion is not constrained or limited by the terms of the statute. *Id.* at 191, 767 S.E.2d at 708. In *Hawes*, although the trial court expressly found that Hawes had "proven himself to be the recipient of a history of domestic violence" at the hands of his wife, the Supreme Court rejected the trial court's conclusion that "[t]hat fact alone . . . mandated early parole eligibility for Hawes." *Id.* Far from supporting Appellant's position, therefore, the holding of *Hawes* clearly refutes Appellant's argument that the circuit court in this case was somehow compelled to grant early parole eligibility merely because it acknowledged "scattered incidents of domestic abuse . . . on both sides."

Furthermore, contrary to Appellant's claim that the circuit court improperly "seemed to focus on" the age of the alleged incidents of abuse, the evidence that the circuit court "seemed to focus on" most intensely was Appellant's journal. The circuit court explicitly singled out the journal entries as giving "unique insight" into the nature of the relationship. The circuit court's reliance on the journal entries was clearly appropriate; it goes without saying that a person's private journal, written with no expectation of a judgmental audience, is especially likely to reflect an honest and forthright account of the author's life and relationships. In her journal, Appellant chronicled her frustrations with Victim in detail; she repeatedly complained of his adultery and his

abandonment of the family. However, the circuit court noted that the journal contained no mention of physical abuse by Victim. The conspicuous omission of such claims, from a document where Appellant clearly had no qualms about criticizing Victim's conduct, casts considerable doubt on the credibility of Appellant's other statements accusing Victim of physical violence. The circuit court justifiably gave great weight to this evidence. Tellingly, despite the circuit court's prominent discussion of the journal's role in its analysis, Appellant's 28-page Brief to this Court does not mention the journal a single time.[2]

Appellant next complains that the circuit court improperly discounted testimony from multiple witnesses who observed bruises on Appellant's body. Appellant acknowledges that the only evidence concerning "the cause of these later injuries" was Appellant's own statements to the observers, in which she blamed Victim for inflicting them;[3] nevertheless, because "the existence of the injuries was undisputed," Appellant appears to believe the circuit court was required to find the bruises were caused by Victim. (App.Br.p.22). This, of course, is a non-sequitur. The mere

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[2] In her Brief, Appellant extensively discusses testimony from the trial and the evidentiary hearing portraying her as a victim of emotional or mental abuse. Many of Appellant's witnesses portrayed Victim as a "controlling" and "manipulative" person prone to gaslighting or humiliating Appellant. Appellant also presented testimony that her personality and mental health had deteriorated as a result of her traumatic relationship with Victim. Without diminishing the seriousness of psychological abuse in a relationship, it must be remembered that section 16-25-90 only applies where a court finds "credible evidence of a history of *criminal domestic violence*, as provided in section 16-25-20." (emphasis added). As Appellant acknowledged during the 2024 evidentiary hearing, "the statute . . . is only concerned if it crosses the line into physical abuse." (R. p.1204, lines 21–22). *See* S.C. Code Ann. § 16-25-20(A) (prohibiting "*physical* harm or injury" against a household member) (emphasis added). While the circuit court acknowledged the evidence of non-physical abuse presented by Appellant, it properly based its analysis on whether Appellant had met her burden of proving "a history of criminal domestic violence," as opposed to other forms of abuse.

[3] The fact that Appellant finds it necessary to argue that the bruises could be attributed to Victim for reasons unrelated to Appellant's own self-serving statements is a tacit admission that the circuit court was justified in discounting her credibility.

existence of injuries does not necessarily imply anything about who, or even what, caused them. And even if all of Appellant's injuries had been reliably attributed to Victim, that alone would not prove that Victim was always the aggressor. There was evidence showing that at least one of the incidents where Victim used physical force against Appellant was in the context of Victim *defending himself* from Appellant's assault. Specifically, Officer Jesse Moon testified that he responded to a domestic disturbance call where Appellant claimed Victim grabbed her arm and forced her to the ground; however, upon further investigation, Moon determined that Appellant was the primary aggressor and learned that Appellant had deliberately taken Victim's phone during the incident while Victim was trying to call 911. (R. pp.1168–72). Victim told Moon Appellant had threatened to kill him while brandishing a metal bar, and Moon found a 30-inch metal bar at the scene. (R. p.1170; pp.1174–75). Moon noted that Appellant "did not appear to be fearful at all" during the incident. (R. p.1169, lines 17–21).

Even assuming Appellant's witnesses were telling the truth about seeing bruises on Appellant's body, the mere existence of the bruises tells us nothing about who caused them or the context in which they occurred. The circuit court arguably *could* have inferred that Victim inflicted the bruises by physically abusing Appellant, but it certainly was not required to make that inference. "Contrary to appellant's argument, § 16-25-90 requires the defendant to do more . . . than simply present evidence; she must persuade the trial judge her evidence is reliable." *State v. Grooms*, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000).

But even if Appellant had been able to persuade the circuit court that Victim caused the bruises, and that they exclusively resulted from Victim's aggression rather than Appellant's own violent actions, this would only have been cumulative evidence establishing something the circuit court already acknowledged to be true: that Appellant suffered "scattered incidents" of physical

abuse at the hands of Victim over the course of their thirteen-year relationship. Nevertheless—in the proper exercise of its discretion—the court found such "scattered incidents" did not constitute a "history of criminal domestic violence" warranting early parole eligibility under the statute. The circuit court's decision was well within its discretion, as *Hawes* makes clear.

Finally, Appellant argues the circuit court's conclusion is "at odds with our Supreme Court's acknowledgment of the recurring impact of domestic violence." Appellant cites *Robinson v. State*, 308 S.C. 74, 77, 417 S.E.2d 88, 90 (1992) for the proposition that "[a] battered woman suffers from 'learned helplessness' as the 'repeated batterings, like electrical shocks, diminish the woman's motivation to respond.'" Appellant claims the circuit court erred under *Robinson* by "misinterpret[ing] the impact of past instances of violence," which "are no less important [than] 'contemporaneous' events closer in time to the retaliatory event." (App.Br.pp.22–23).

This argument appears to be based on Appellant's belief that the circuit court's ruling depended on discounting past incidents of abuse merely due to their age. As already explained, the circuit court never claimed to be doing so. The circuit court's order acknowledged that there was evidence of several incidents where Victim was observed inflicting physical violence on Appellant, as well as incidents where witnesses observed bruises on Appellant's body which, according to Appellant, were caused by Victim. Nowhere does the circuit court purport to disregard or diminish any of these incidents solely on the basis of their age.

Nevertheless, nothing in *Robinson* requires a court to weigh years-old incidents of abuse as equivalent to contemporaneous abuse when determining whether a defendant is entitled to early parole eligibility for murdering a household member. Doubtlessly, any prior incidents of physical violence—however far removed from the crime at issue—may be *relevant* to determining if a "history of criminal domestic violence" has been shown. But the *weight* of that evidence is a

matter for the finder of fact to determine. "In criminal cases, this Court sits to review errors of law only and is 'bound by the trial court's factual findings unless they are clearly erroneous.'" *Green*, 440 S.C. at 300, 890 S.E.2d at 765 (quoting *Wilson*, 345 S.C. at 5–6, 545 S.E.2d at 829); *see also State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) (holding "the abuse of discretion standard of review does not allow this court to reweigh the evidence").

The circuit court acknowledged the evidence of prior violence committed by Victim; however, it also properly considered other evidence that was inconsistent with Appellant's "battered spouse" narrative. Specifically, the circuit court gave great weight to the fact that Appellant's personal journals (which she started in 2006, more than four years before the shooting of Victim) were conspicuously silent as to any physical abuse by Victim. The circuit court was justified in concluding, based on this evidence, that Appellant was not trapped in a relationship "where torture appears interminable and escape impossible." *Robinson*, 308 S.C. at 79, 417 S.E.2d at 91. There was plenty of other evidence to refute Appellant's narrative: the fact that, on at least one occasion, she had been determined to be the primary aggressor in a domestic violence incident; the evidence that Appellant often followed Victim to work events and "made a big scene"; and the evidence that Appellant once threatened "if she could not have [Victim,] no one could." Last but not least, the circumstances of the shooting itself bear no resemblance to the typical "battered spouse" killing. It was undisputed that Victim had moved *out* of Appellant's home and was residing at another house at the time of the murder. Appellant voluntarily drove to Victim's residence, armed herself, entered the residence, and killed him. Nothing about that series of events corresponds to the image of a battered woman who resorts to murder because she believes she "cannot escape her batterer." *Id.* at 76, 417 S.E.2d at 90.

Finally, it must be noted that the *Robinson* case had nothing to do with the application of

section 16-25-90; the only issue in *Robinson* was whether Robinson's counsel was ineffective for failing to present "battered woman" evidence in the context of a self-defense claim. Even on that limited issue, the *Robinson* court emphasized that its discussion was *obiter dictum*, not to be applied uncritically by the lower courts: "Our interpretation of the relationship between the battered woman's syndrome and self-defense is cursory, at best, and should not be construed as this Court's last word on the subject." *Robinson*, 308 S.C. at 80, 417 S.E.2d at 92. In short, Appellant argues that the circuit court, as finder of fact, somehow committed an "error of law" by weighing the evidence with (in Appellant's view) insufficient regard for non-binding dicta in a case that does not even purport to address the statute at issue. This argument is patently meritless.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the circuit court.

Respectfully submitted,

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PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the within Final Brief of Respondent, dated April 2, 2026, on Appellant by sending an electronic copy via email to Gary Johnson, Esquire, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 2nd day of April, 2026.

Susan Spencer

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