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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of General Sessions
The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000105

THE STATE,

Respondent,

v.

DESMOND LAMAR GREEN,

Petitioner.

BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF THE ISSUE

Whether the trial court abused its discretion by refusing to bifurcate Green's first-degree domestic violence trial.

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Petitioner Desmond Green for First-Degree Domestic Violence. S.C. Code §16-25-20 (B). This section requires the State to prove an act of violence against a household member plus at least one of the enumerated circumstances of aggravation. Green proceeded to trial on January 16–17, 2024, before the Honorable Jennifer B. McCoy and a jury. The only pertinent aggravating factor in this case was that Green had two prior convictions for domestic violence. See S.C. Code §16-25-20(B)(3). Green moved to bifurcate his trial, first requiring the State to prove the “harm or injury” element during an initial phase, and then prove the existence of the prior convictions at an additional proceeding. Judge McCoy denied the motion to bifurcate. Green was convicted as charged and sentenced to 10 years’ imprisonment, suspended on service of five years’ imprisonment followed by five years’ probation. Green appealed, and the court of appeals affirmed his conviction in an unpublished opinion. App. 28. This Court granted certiorari review on April 21, 2026.

FACTS

Green and the victim lived together with their five children. (R.p.77). On June 23, 2019, Green and the victim argued and Green began “pushing and choking” the victim. (R.p.80). The victim’s sister, who lived nearby, testified Green chased the victim into her yard and started “punching her in the back of the head.” (R.p.73). She testified the victim was covered in liquid and smelled like gasoline. (R.p.69). She called the police. A responding officer testified the victim was wet and smelled like lighter fluid, and he observed a bottle of lighter fluid by the house. (R.p.90–96). In his report, the officer wrote that he was told Green had thrown a bottle of lighter fluid at the victim. (R.p.104).

STANDARD OF REVIEW

The trial court's decision whether to bifurcate a criminal trial is reviewed for an abuse of discretion. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019).

ARGUMENT

The trial court properly refused to bifurcate Green’s domestic violence trial.

The trial court properly refused to bifurcate Green’s domestic violence trial because bifurcation is an exceptional procedure reserved for death penalty and child sex abuse cases. Further, even if bifurcation would not have resulted in a substantial expenditure in time or money in this case, bifurcation carries the risk of inefficiency and jury confusion in most DV cases because of the intricacies of the DV statute, which was “written for lawyers and judges, not for juries.” State v. Workman, 443 S.C. 369, 374, 905 S.E.2d 119, 121 (2024). This Court should affirm.

In the criminal context, bifurcation is an exceptional procedure originally reserved for death penalty cases. The legislature established the procedure by statute following a series of opinions by the United States Supreme Court addressing the constitutionality of the death penalty. See Gregg v. Georgia, 428 U.S. 153 (1976). Generally, “a bifurcated proceeding is not required in a non-capital case.” Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991). See also People v. Kembel, 524 P.3d 18, 25 (Colo. 2023) (discussing foreseeable pitfalls and “the potential for disruption of the orderly trial of criminal cases” in bifurcated proceedings).

There is one exception to this rule, established in State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). There, this Court held that in child sex abuse cases where the State must prove a prior criminal sexual conduct with a minor (CSCM) conviction as an element for first-degree CSCM, the trial court should bifurcate the

trial upon request. The court, while recognizing that “[t]wo-part jury trials are rare,” held that CSCM cases are exceptional “because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carries.” Cross at 478, 832 S.E.2d at 288.

In no other class of cases has this Court required bifurcation of a non-capital criminal trial. In State v. Benton, 338 S.C.151, 526 S.E.2d. 228 (2000), this Court held that bifurcation is not required in a first-degree burglary case where the element of aggravation is a record of two prior burglary convictions. Citing Spencer v. Texas, 385 U.S. 554 (1967), the court noted the deterrent purpose of statutes requiring proof of prior convictions as an element of the charged offense. The Cross court left this holding undisturbed, choosing instead to carve out an exception for CSCM cases.

Likewise, the court of appeals recently rejected an argument that a trial court abused its discretion by refusing to bifurcate the trial of a defendant accused of possession of a firearm by a person convicted of a violent crime. State v. Gleaton, 444 S.C. 394, 408, 906 S.E.2d 630, 637 (Ct. App. 2024). The court held that, even after Cross, bifurcation was not required because “Gleaton was neither on trial for a sex-related offense nor was his prior conviction related to a sex crime.” Id. at 410, 906 S.E.2d at 638.

Child sex abuse cases are the exception to the rule that bifurcation is not required in a non-capital criminal trial, even when prior convictions are an element of the charged offense. This Court should not create an additional exception for

domestic violence cases. Domestic violence does not carry the same stigma as child sexual abuse, which is uniquely associated with recidivism. McKune v. Lile, 536 U.S. 24, 33 (2002) (observing that sex offenders are “much more likely than any other type of offender to be rearrested for a new rape or sexual assault”). Because of the notorious recidivism of sex offenders and the public disgust associated with child sexual abuse, a defendant on trial for CSCM is much more likely to be unfairly prejudiced by the introduction of prior CSCM convictions than defendants charged with other offenses. Domestic violence is more like burglary in that while it is condemned by society, it does not invoke the degree of universal outrage and disgust associated with child sexual abuse. Further, while domestic violence offenders may reoffend, the propensity to commit domestic violence is not viewed as an immutable character trait as is pedophilia, a recognized personality disorder. Without the unique stigma associated with child sex crimes, limiting instructions and limitations on how the evidence is presented are sufficient to protect defendants from the danger of unfair prejudice.

Further, the complicated statutory structure of DV 1st creates problems not present in CSCM cases. In this case, the only pertinent aggravating factor was the existence of two prior convictions for domestic violence, a relatively straightforward circumstance of aggravation. But in other cases, the State will prove DV 1st by “stacking” unrelated aggravating factors to first elevate a DV 3rd to a DV 2nd, and then to elevate the DV 2nd to a DV 1st. The statutory structure will make it

difficult, if not impossible, to bifurcate many trials without fundamentally changing the jury's role or the elements of the offense.

For example, under §16-25-20(B)(5), the State can meet the elements of DV 1st by proving one of five unrelated aggravating factors was present while the defendant was “in the process of committing domestic violence in the second degree . . .” (emphasis added). To prove the predicate DV 2nd, the State will often need to first prove the defendant committed DV 3rd, plus one of the aggravating factors in §16-25-20(C). Where the defendant has a single prior DV conviction, the only way to reach DV 1st may be to first prove the existence of the prior conviction under §20(C)(3), establishing “domestic violence in the second degree,” and then an additional aggravating circumstance under §20(B)(2) or (5).

In the above scenario, the jury will not be able to properly assess whether the defendant's conduct meets the statutory elements in a bifurcated trial. This is an unacceptable result because “juries are required to render verdicts based on proof—or lack thereof—of the statutory elements of a DV offense.” Workman, 443 S.C. at 374, 905 S.E.2d at 121 (explaining trial court erred by not instructing jury on all elements of DV 2nd because this formed a potential basis for DV 1st conviction) (emphasis added).

While the potential for confusion cannot be completely avoided in domestic violence cases, to require bifurcation on a single element would make the process even more complicated and potentially confusing for the jury, especially when the State alleges multiple aggravating factors, pursues alternate theories, or relies on a

prior conviction to establish the predicate DV 2nd offense. See United States v. Manning, 151 F.4th 1144, 1151–53 (9th Cir. 2025) (discussing ways bifurcation could result in confusion or unduly restrict the jury’s role). The complicated statutory structure creates a difficult task for the trial court fashioning the verdict form to be used in a bifurcated trial and carries the potential for jury confusion when reaching a verdict and filling out the form. For example, a poorly-drafted verdict form may lead the jury to find the defendant “guilty” or “not guilty” before the jury even considers all the elements DV 1st, inviting double jeopardy arguments.

Courts may seek to avoid these problems by asking jurors to make mere factual findings on some elements, rather than a finding of guilt or innocence. This solution would come with its own problems, as special verdict forms have been criticized as harmful to defendants and contrary to the historic function of the jury. See United States v. Reed, 147 F.3d 1178, 1180 (9th Cir. 1998) (explaining piecemeal verdicts have potentially coercive effect on juries). Juries sit as the final arbiters of guilt or innocence, not as mere fact-finding bodies.

A rule requiring bifurcation of the prior conviction element would invite motions to bifurcate other elements, such as the existence of a protective order. S.C. Code §16-25-20(B)(2). Courts would be inundated with arguments for bifurcation as various as the potential theories of liability under the statute, leading to a significant drain on judicial resources and the potential for drawn-out, fractured presentations of evidence. This would not only destroy the efficiency of

the trial, it would lessen the probative force of the State's evidence. See Old Chief v. United States, 519 U.S. 172, 188 (1997) (discussing the value of narrative cohesiveness and explaining "the prosecution may fairly seek to place its evidence before the jurors . . . to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault"). Recognizing these significant costs, federal courts have overwhelmingly rejected bifurcation of criminal trials. Manning, 151 F.4th at 1154–55.

Finally, bifurcation of the prior conviction element would defeat the deterrent statutory purpose of the prior conviction element, even in a relatively straightforward case like this one. These costs are not justified absent the unique danger of unfair prejudice identified in Cross. In the DV context, bifurcation is simply a bad idea.

Regardless of which rule the Court adopts, any error would be harmless in this case. The jury was unlikely to base its verdict on Green's prior convictions because they occurred nearly ten years prior to this trial. (R.p.124). Green stipulated to the convictions, and the jury heard no details about the facts of those cases. See Benton, 338 S.C. at 156, 526 S.E.2d at 231 ("To ensure a defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should limit evidence to the prior burglary and/or housebreaking convictions Particular information regarding the prior crimes should not be admitted"). The trial court gave a proper limiting instruction. (R.p.158). Finally, there was uncontroverted evidence that Green chased the victim

into her sister's yard and punched her several times in the head. Green did nothing to cast any doubt on this testimony. Bifurcation would not have changed the result of the trial. See Workman, 443 S.C. at 377–78, 905 S.E.2d at 123 (discussing harmless error standard). This Court should affirm.

CONCLUSION

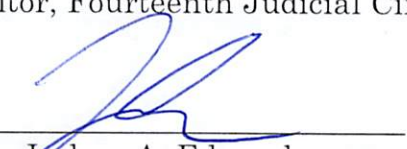
For all the foregoing reasons, this Court should affirm.

Respectfully submitted,

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