THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals

Appeal from Greenwood County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

(S.C. Ct. App. Opinion No. 5001) (Filed July 18, 2012)
Appellate Case No 2011-189167

THE STATE OF SOUTH CAROLINA,

PETITIONER,

v.

ALONZO CRAIG HAWES,

RESPONDENT.

BRIEF OF RESPONDENT

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29649
(864) 538-4466

D. Kate Kendall
Assistant Public Defender, Eighth Circuit
P.O Box 174
Laurens, South Carolina 29360
(864) 984-8807

Attorneys for Respondent

Table of Contents

Table of Authorities

Cases

Statutes

Statement of Issue on *Certiorari*

Does the record support the trial court judge finding a history of domestic violence inflicted by the deceased against Alonzo Craig Hawes, entitling him to one-fourth parole eligibility pursuant to S.C. Code §16-25-90?

Statement of the Case

The Greenwood County Grand Jury charged Alonzo Craig Hawes with murder and possession of a firearm during the commission of a violent crime. R. 218-22. Mr. Hawes waived venue and pled guilty in Abbeville County to voluntary manslaughter and possession of a weapon during the commission of a violent crime before the Honorable Frank R. Addy, Jr. on January 6, 2011. R. 9-39. Sentencing was deferred to January 20, 2011 in Greenwood County. Judge Addy sentenced Mr. Hawes to twenty-two (22) years imprisonment for voluntary manslaughter and five (5) years imprisonment for possession of a weapon during the commission of a violent crime. The sentences are concurrent. R. 176, lines 2-16.

Also on January 20, 2011, Judge Addy heard testimony, pursuant to S.C. Code §16-25-90, to determine whether Mr. Hawes is entitled to parole eligibility after serving one-fourth of his sentence. He took the matter under advisement. R. 176, lines 17-21. By written order dated March 23, 2011, Judge Addy found §16-25-90 applicable and ordered one-fourth parole eligibility. R. 1-8. The State did not move to reconsider.

The State served a notice of appeal on March 30, 2011. The Court of Appeal affirmed the trial court on July 18, 2012. *State v. Hawes*, 399 S.C. 211, 213, 730 S.E.2d 904, 905 (Ct. App. 2012) (rehearing denied Aug. 23, 2012). On September 21, 2012, the State petitioned this Court for a writ of *certiorari* to review the Court of Appeals' opinion.

This Court granted the State's petition for writ of *certiorari*. The State served its brief on March 26, 2014. By letter dated April 4, 2014, this Court scheduled an oral argument for June 2014. This brief follows.

Statement of Facts

Mr. Hawes pled guilty to voluntary manslaughter regarding an incident on April 4, 2007 where his wife, Terry Hawes, was the decedent. R. 9-40. The trial court held a hearing to determine Mr. Hawes' parole eligibility pursuant to S.C. Code §16-25-90. At the hearing, Dr. Donna Schwartz-Watts, a forensic psychiatrist,[1] testified that Mr. and Ms. Hawes had a mutually violent relationship. R. 55, lines 1-7. The relationship included both documented and undocumented instances of violence where Mr. Hawes was the victim. R. 59, line 10 – 63, liens 6; Defendant's Ex. 4, 5, 7, R. 193-95, 197-99. Of the documented instances, Mr. and Ms. Hawes were both convicted in 1996 of criminal domestic violence in a cross warrant situation. Defendant's Ex. 4, R. 193. During an incident on November 2, 2006, Mr. Hawes notified the police that Ms. Hawes pulled a knife on him. R. 89-90; Defendant's Ex. 7, R. 197-99. Ms. Hawes was indicted on a separate incident in 2006 of criminal domestic violence, second offense, where Mr. Hawes was the victim. Defendant's Ex. 5, R. 194-95. At the time of Ms. Hawes' death, her 2006 indictment was still pending. *Id.*

In an unreported incident, Mr. Hawes disclosed to Dr. Schwartz-Watts that Ms. Hawes stabbed him in January 2007. Mr. Hawes' medical records corroborated that he received treatment for a puncture wound during that time. R. 60, line 1-11. Dr. Schwartz-Watts also testified regarding audio recordings of Mr. and Ms. Hawes, where both parties directed threats at each other. R. 65, line 15 – 67, line 25; Court Ex. 1. Dr. Schwartz-Watts concluded "in her uncontradicted expert opinion" that Mr. Hawes suffered from "[post traumatic stress disorder], borderline intellectual functioning and

[1] The trial court qualified Dr. Schwartz Watts as an expert in forensic psychiatry without objection from the State. R. 48-51; Defendant's Ex. 1, R. 179-87.

severe partner relational problems" at the time of the April 4, 2007 incident. R. 69, lines 9-23; Defendant's Ex. 2, R. 189-90; Order, R. 7.

The State presented testimony from Dr. Richard Frierson regarding previous competency evaluations of Mr. Hawes. R. 95-118. The State also presented Ms. Brittany Roundtree, the daughter of Ms. Hawes and stepdaughter of Mr. Hawes. Ms. Roundtree reluctantly testified that after her mother discovered an affair "she kind of flipped." Ms. Roundtree testified that Mr. Hawes was the primary instigator of conflict in the relationship after Ms. Hawes learned of an extramarital affair. R. 120-25.

Judge Addy issued an order granting Mr. Hawes parole eligibility pursuant to S.C. Code §16-25-90. In granting parole eligibility, the trial court relied upon the couple's history and testimony received at the sentencing hearing. The court noted the audio recordings "as endemic of a deeply dysfunctional relationship." Order, R. 2. The court did not make a finding that Mr. Hawes was the primary instigator of conflict between the two, but rather ***"both parties were primarily responsible for instigating arguments at different times."*** Order, R. 6 (emphasis added). The only witness to contend that Mr. Hawes was the primary instigator of conflict was Ms. Roundtree, where the trial court noted concern that her "presumably close relationship with the victim as opposed to [Mr. Hawes] had the potential to affect her testimony."[2] *Id.* After considering "the competent evidence of a mutually violent relationship and documented evidence of criminal

[2] Contrary to the trial court's findings of fact, the State relies extensively on Ms. Roundtree's testimony to contend that Mr. Hawes "was the primary aggressor." Brief of Petitioner, p. 3. An appellate court, however, may not "usurp the authority of the trial court by attempting to judge the credibility of witnesses. The determination of credibility must be left to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity." *State v. Cutro*, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998).

domestic violence between the parties" the court found that Mr. Hawes was eligible for parole pursuant to S.C. Code §16-25-90. Order, R. 7.

Applicable Legal Principles

> In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown. The appellate 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. Blackwell-Selim, 392 S.C. 1, 3, 707 S.E.2d 426, 427-28 (2011) (internal citations omitted).[3]

As part of larger criminal law reform in 1995, the General Assembly added S.C. Code §16-25-90 "so as to provide the time which must be served by an inmate who has presented evidence of criminal domestic violence in connection with their offense." 1995 Act No. 7.[4] The General Assembly thus determined that a person pleading guilty "to an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to . . . an offense against the household member . . . 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." S.C. Code Ann. §16-25-90.

There are only two reported cases interpreting S.C. Code §16-25-90. The first case held the defendant has the burden of proving the history of domestic violence by preponderance of the evidence, which is "proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence." *State v.*

---

[3] This Court decided Blackwell-Selim on March 21, 2011, while Judge Addy had this matter under advisement. Judge Addy considered this decision before issuing his order two days later. R. 1.

[4] Judge Addy recognized the comprehensive reform in his written order. R. 5 at fn. 5.

Grooms, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). The second case held, "The circuit court must make specific findings in ruling on parole eligibility or ineligibility under §16–25–90." *Blackwell-Selim*, 92 S.C. at 4, 707 S.E.2d at 428.

Argument

The Court of Appeals correctly held that the record supports the trial court judge finding a history of domestic violence inflicted by the deceased against Alonzo Craig Hawes and ordering one-fourth parole eligibility pursuant to S.C. Code §16-25-90.

Alonzo Craig Hawes, a vulnerable adult, is exactly the type of person our General Assembly intended to benefit from the special parole consideration authorized in S.C. Code §16-25-90. Mr. Hawes has a Full Scale IQ of 66, "placing him overall in the Extremely Low/Mentally Retarded range of Intellectual Functioning." R. 192. He also suffers from Post Traumatic Stress Syndrome (PTSD). R. 189. Ms. Hawes threatened to kill him, Court's Ex. 1 (tape recordings), and attacked him with a knife more than once. R. 59, line 10 – 60, line 23; 197-98.[5] The trial court judge correctly found that Ms. Hawes was a primary aggressor in the couples' relationship.

After explain why the State's arguments are not properly presented to this Court, Mr. Hawes will explain why the trial court's order complied with the statute and this Court's precedent. After that, Mr. Hawes will respond to the multiple arguments that the State squeezes under the umbrella of one general issue. Finally, in the event this Court accepts the Court of Appeals invitation "to specifically define 'a history'" of domestic violence, *Hawes*, 399 S.C. at 217, 730 S.E.2d at 907, Mr. Hawes will address that issue.

A. Error Preservation.

As a threshold matter, the State's arguments are not properly presented to the Court for review for two reasons: (1) the State's brief does not comply with Rule

[5] *See also Hawes*, 399 S.C. at 214 (fn. 1), 730 S.E.2d at 905 (fn. 1). As seen from the testimony of Brittney Roundtree, Ms. Hawes "kind of flipped" because Mr. Hawes was seeing another woman. *See* Brief of Petitioner, p. 4, 17. Ms. Hawes also threatened to kill the other woman. *See* Court's Ex. 1 (tape recordings).

208(b)(1)(B), SCACR, and (2) the State's arguments were not raised below and ruled on by the trial judge.

Rule 208(b)(1)(B) provides, "Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal." "When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is *reasonably clear* from an appellant's arguments. However, every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642-43 (2011) (internal citations and quotations omitted).

Here, the State's issue statement very generally asks whether "The Court of Appeals erred in affirming the trial court's determination Respondent was entitled to parole consideration under section 16-25-90," without suggesting any reason for the purported error. The State then tries to squeeze at least four separate issues into one argument: (1) the trial court did not consider the legislative intent, (2) the trial court failed to exercise ***any*** discretion in applying the statute, (3) the trial court erred by finding that Ms. Hawes was a primary aggressor in the couple's difficulties, and (4) this Court should judicially legislate a rule that the statute does not apply to mutually violent relationships. Thus, it is not entirely clear the basis for which the State asks this Court to intervene.

Despite the State purporting to present a single issue to that court, the Court of Appeals[6] addressed

> three issues on appeal: (1) the circuit court used the wrong definition of "a history" of CDV under section 16–25–90; (2) the court erroneously determined it was required to find Hawes presented a history of CDV based solely on his wife's 1996 CDV conviction and 2006 CDV indictment; and (3) the legislature did not intend section 16–25–90 to reduce an inmate's sentence when the CDV evidence presented demonstrated mutual domestic violence in which the inmate was the aggressor and primary instigator of the domestic violence.

State v. Hawes, 399 S.C. 211, 215, 730 S.E.2d 904, 906 (Ct. App. 2012). The Court of Appeals addressed these three issues despite noting, "It is questionable whether these issues are properly preserved and presented to this court." *Id.*

The specific arguments raised by the state on appeal, were not raised and ruled on by the trial court. "An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) ("[A]ll this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court."). At the hearing, the State asked the trial judge to consider certain evidence, the legislative intent of the statute, and the weight of the evidence presented. The trial judge did so, and the State did not move to reconsider the order. At the hearing, the State relied on the testimony of one witness and claimed

[6] The State's statement of issue on appeal to the Court of Appeals was merely, "The circuit court erred in finding section 16-25-90 of the South Carolina Code applicable under the circumstances of this case." Brief of Appellant, Court of Appeals, p. 1.

Mr. Hawes was the sole primary aggressor in the couple's relationship. When Judge Addy rejected this contention, the State did not move to reconsider. At the hearing, the State never argued that mutual domestic violence bars application of the statute, but it argues that position to this Court.

B. This Court should affirm because the trial court judge's order complied with the statute and this Court's precedent.

As required by *Blackwell-Selim*, *supra*, the trial court made specific findings of fact. The written order is eight pages long and thoroughly outlines the reasons for the court's decision. The trial judge's findings of fact are supported by prior court records, other documents, and witness testimony.

The trial court found that Mr. Hawes "and his wife had a tumultuous relationship at times. . . . In 1996 both [Mr. Hawes] and his wife were convicted of Criminal Domestic Violence in a cross warrant situation." When she died,[7] Ms. Hawes "had a pending indictment against her from an incident where [Mr. Hawes] was allegedly struck and kicked by" Ms. Hawes. Order, R. 2. *See also* Defendant's Ex. 4, 5, R. 193-95.[8] The trial court correctly attached legal significance to these court records. First, "[t]he 1996 incident did result in a conviction, so that incident was conclusively proven." Order, R.

[7] Additionally, the guilty plea itself was based on Ms. Hawes provoking Mr. Hawes. The Deputy Solicitor represented "an altercation ensued between the two of them." Defense counsel pointed out, "Mr. Hodges presented that there was an altercation that would be provocation" for voluntary manslaughter. R. 21, lines 13 – 22, line 25. *See also* report of Dr. Frierson, R. 204 (Mr. Hawes reported that the argument continued and le to a physical altercation, in which he reported being 'pushed' by his wife.").

[8] The trial court properly took judicial notice of these self-authenticating public records. Tr. 6-7. Rules 201 and 902, SCRE.

6. Second, the trial court correctly observed the indictment "demonstrates the grand jury's finding of probable cause to believe she committed this offense." Order, R. 2.

These two judicially documented incidents establish the necessary history of domestic violence. Section 16-25-90 requires "a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member." As spouses, Mr. and Ms. Hawes were household members. S.C. Code §16-25-10(1). The General Assembly considers one prior conviction of criminal domestic violence a sufficient history to enhance the penalty for subsequent convictions.[9] S.C. Code §16-2520(B). *See also* Subsection G, *infra.*

Although the indicted incident was not a conviction, the trial judge "noted that the standard for demonstrating probable cause [for grand jury indictment] is almost identical to that for proof by preponderance of the evidence." Order, R. 6 (fn. 6). *Compare Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) ("The standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.") *with Grooms,* 343 S.C. at 254 (fn. 5), 540 S.E.2d at 102 (fn. 5) ("The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence.").

The State, furthermore, is judicially estopped from claiming probable cause did not exist to charge Ms. Hawes with CDV. *State v. Geer,* 391 S.C. 179, 195, 705 S.E.2d 441, 449 (Ct. App. 2010) ("[S]o long as the prosecutor has probable cause to believe that

[9] Additionally, in any sentencing proceeding, one prior conviction is sufficient to constitute a prior criminal history.

the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."); *State v. Snowdon*, 371 S.C. 331, 334, 638 S.E.2d 91, 3 (Ct. App. 2006) ("Collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action."); *Doe v. Doe*, 346 S.C. 145, 150, 551 S.E.2d 257, 259 (2001) ("[A]ppellant, due to his conviction, is collaterally estopped from relitigating the issue of whether he abused his children in the civil proceeding against him."). *See also* Rule 3.8(a), RPC, Rule 407, SCACR.

The trial judge's order, therefore, is supported by other court proceedings where Ms. Hawes conduct was established by proof equal to or greater than the *Grooms* standard.

In addition to the court documents, the trial "court had the benefit of testimony, both from expert and lay witnesses, on the issue of the argumentative nature of the Defendant's and victim's relationship, and the role of violence in their relationship." Order, R. 2. The trial court "considered the report and testimony of Dr. Donna Schwartz-Watts which references a 'documented history of mutual physical abuse.'" Order, R. 3; Defendant's Ex. 2, R. 189. "Dr. Schwartz-Watts' report also outlined other incidents of violence involving the victim allegedly pulling a knife on one occasion and actually stabbing the Defendant on another." Dr. Schwartz-Watts' "uncontradicted expert opinion" was that Mr. Hawes suffered from "'PTSD, borderline intellectual functioning and severe partner relationship problems'" at the time of the incident. Order, R. 6-7; *See also* Defendant's Ex 2, R. 188-90.

An appellate court must affirm if there is "any evidence" to support the trial judge's ruling. Because the trial court judge's specific findings of fact are supported by evidence in the record, the Court of Appeals correctly affirmed the trial court. *Blackwell-Selim, supra.*

C. Contrary to the State's argument, the trial judge did consider the legislative intent of the statute.

During the hearing, the parties and the Court discussed the legislative intent of the statute. The Solicitor argued:

> [M]y presumption of the legislative intent of this statute is a situation kind of like the Farrah [Fawcett] burning bed type situation where someone is for a long period of time abused, has a history of abuse and then at the end of that does something that may not be on its face legally defensible but is understandable, given the pattern of abuse they have suffered.

R. 135, lines 5-13.

The trial judge asked the Solicitor, "So the statute is aimed at more of a mitigation of the actual sentence imposed, particularly [in] an involuntary [sic][10] manslaughter situation where there might be sufficient legal provocation . . . [and] heat of passion but not enough to excuse the homicide. Is that what you're saying?" R. 135, lines 14-20.

The solicitor countered:

> Right. I mean, I can think of a situation where a woman is abused for a number of years and then finally has had it and, you know, shoots the man in his sleep. Obviously, I mean, there is not, there is no self defense issue, no provocation issue, you know, I mean just kills someone in cold blood but it is understandable, given the history of

[10] The transcript should probably read "voluntary manslaughter" for three reasons: (1) voluntary manslaughter was the charge before the trial court, (2) the judge referenced the elements of that offense, and (3) involuntary manslaughter already has one-fourth parole eligibility.

> abuse and, you know, there is an opportunity there for the Court to mitigate in some way.[11]

R. 135, line 21 – 136, line 5.

But, the trial judge pressed the Solicitor, "If that were correct, however, Mr. Hodges, would this statute be superfluous in light of 17-23-170, which is the battered spouse syndrome defense?" The trial judge and Mr. Hawes agreed that, under the Solicitor's scenario, a person "could shoot someone in their sleep and it still be self defense under the battered woman syndrome." R. 137, lines 8-13. Mr. Hawes also pointed out the Battered Spouse Defense is a "complete defense" and "[t]he Legislature clearly wanted this [statute] to apply to somebody who was guilty beyond a reasonable doubt of murder." R. 138, lines 6-14.

The trial judge further addressed the legislative intent in his order. In paragraph one of the order, the judge noted, "Use of the term 'credible evidence' indicated the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible." R. 1-2 (citing *Blackwell-Selim*). Then, in paragraph nine of his order, as he had done during the hearing, the judge observed:

> I note that the Defendant in this case is not asserting the affirmative defense of Battered Spouse's Syndrome. *See* Section 17-23-170. I opine that the legislative intent behind Section 16-25-90 may well have been to permit some middle ground for those instances where there would be insufficient evidence of abuse to maintain a defense under 17-23-170, but were sufficient evidence of abuse may exist to mitigate somewhat the usual non-parole nature

[11] Both of the Solicitor's examples involved abuse by men towards women. There is an underlying bias that this statute should apply only to women and not to men. A study commissioned by the Department of Justice, however, reported, "About 1.3 million women and 835,000 men are physically assaulted by an intimate partner annually in the United States." *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women,* U.S. Department of Justice, 2000, p. 26.

> of a homicide sentence. Put differently, a defendant may possess sufficient evidence of a history of domestic violence to warrant mitigation of his incarceration by allowing him parole eligibility, but he may have insufficient violence to affirmatively assert the defense of Battered Spouse's Syndrome. Section 16-25-90 would make allowances for such circumstances.

In a footnote to this paragraph of the order, the trial judge "note[d] that the General Assembly passed the two sections of law as part of separate, but successive, subsections of the same act. *See* 1995 Act No. 7, Part I, Sections 14 and 15." R. 5.

As seen, the State did not move the trial judge to reconsider this order.

The Court of Appeals properly found "the circuit court specifically considered the legislative intent behind section 16–25–90 both in determining the definition it used for a history of CDV and in determining whether Hawes satisfied that definition." *Hawes*, 399 S.C. at 217, 730 S.E.2d at 907.

The State argues, "[T]he trial judge utilized an incorrect legislative intent in rendering its decision." The State asserts the trial court did "not properly consider the full extent of the legislative intent behind the statute." The State then argues:

> The clear legislative intent of section 16-25-90 is to provide mitigation of the sentence of someone who committed an offense against their household member after repeatedly suffering domestic violence at the hands of the victim. The statute is not intended to mitigate the sentence of an individual who, as the evidence in this case demonstrated, was the primary instigator and primary aggressor in the arguments that led to domestic violence. The legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who was what the primary aggressor an instigator in a relationship involving what could at best be defined as mutual violence.

Brief of Appellant, pp. 7-8. *But see* discussion in Subsection D, *infra*, regarding the issue of "primary aggressor." The State's argument, however, is without merit because

> [t]he primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (internal quotations and citations omitted). In *Nelson*, this Court looked to the statutory scheme of the criminal domestic violence statutes, which is precisely what Judge Addy did here when he rejected the Solicitor's argument that the statute should apply only to situations when a defendant is actually not guilty because of the Battered Spouse Syndrome. This Court has "addressed the relationship between the battered woman's syndrome and the law of self-defense as it is defined in South Carolina . . . in order to provide some guidance to members of the bench and bar. . . . [and found] that the unique perceptions of a defendant suffering from battered woman's syndrome are generally compatible with the law of this State regarding self-defense." *Robinson v. State*, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992). The Solicitor's argument to the contrary is not compatible with *Robinson*.

The State did not contest Judge's Addy's interpretation of the legislative scheme through a motion to reconsider. Nor do they now before this Court. Regardless, Judge Addy's analysis is correct, and this Court should affirm.

The expressed legislative intent of §16-25-90 is "to provide the time which must be served by an inmate who has presented evidence of criminal domestic violence in

connection with their offense." 1995 Act No. 7. The written order, accordingly, is consistent with the legislative intent.

D. Primary Aggressor.

The State's legislative intent argument seemingly pertains to Judge Addy's finding regarding both spouses being primary aggressors at various times.

During the hearing, the State attempted to establish that Mr. Hawes was *always* the primary aggressor of the couple's difficulties. The State called Brittany Roundtree, who is Ms. Hawes natural daughter and Mr. Hawes' stepdaughter. She lived in the home with both parties for about sixteen years from childhood until 2007. During that period, there were not a lot of problems between the two, "until she found about him and the other woman" and "she kind of flipped." Ms. Roundtree confirmed that Mr. Hawes did not commit any acts of violence against Ms. Hawes before the other woman entered the picture. Afterwards, Ms. Raoundtree testified Mr. Hawes would "sometimes" put his hand on Ms. Hawes. Under the pressure of the Solicitor's prompting, she very reluctantly agreed that Mr. Hawes was the primary aggressor in those situations. R. 121, line 1 – 125, line 17.

The Solicitor argued, "I think the testimony from Brittany Roundtree is quite significant because she was there for the duration of this relationship and . . . her perception was the violence came from the defendant." R. 134, line 25 – 135, line 5.

Mr. Hawes pointed out that the term "'primary aggressor' is a legal term and has significance which has been satisfied by the conviction and indictment on those instances." He also pointed out the term "primary aggressor" is not in the parole

eligibility statute. The trial court agreed with Mr. Hawes that "primary aggressor" is a "term of art" that appears in Title 16. R. 143, line 21 – 144, line 7.

The trial court addressed Ms. Roundtree's testimony in paragraph six of the written order. Judge Addy acknowledged Ms. Roundtree "stated that both the Defendant and victim fought often, but she stated that the Defendant was the primary instigator of the violence and/or primary instigator of the discord." R. 3. Judge Addy, however, made a credibility determination that Ms. Roundtree's "presumably closer relationship with the victim as opposed to the Defendant had the potential to affect her testimony." R. 6.

On appeal the State exclusively relies on Ms. Roundtree's testimony to argue that Mr. Hawes "was the primary instigator in regards to the arguments and problems," Brief of Appellant, p. 3, and contends he "was at best a mutual combatant, and at worst the primary cause of the domestic difficulties," *id.*, p. 8.

As seen, the trial court considered Ms. Roundtree's testimony, R. 3-4, but also made a credibility determination that her "presumably closer relationship with the victim as opposed to the Defendant had the potential to affect her testimony, R. 6. It is well settled that this Court may not "usurp the authority of the trial court by attempting to judge the credibility of witnesses. The determination of credibility must be left to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity." *State v. Cutro*, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998).

Implicitly accepting the trial court's credibility determination—as it must—the Court of Appeals actually included Ms. Roundtree's testimony in the list of Mr. Hawes' "evidence that he suffered criminal domestic violence (CDV) at the hands of his wife," noting that she testified that Mr. Hawes only "'sometimes' 'put his hand on' her mother."

Hawes, 399 S.C. at 213-14, 730 S.E.2d at 905-06. In fact, if the tables were reversed where Ms. Hawes was seeking the statutory parole eligibility, it is unlikely that Ms. Roundtree's testimony alone would satisfy this Court's mandates under *Grooms*.

E. The statute does not exclude parole eligibility for someone involved in a mutually violent relationship.

The trial court and parties also discussed the application of the statute to a mutual violent relationship during the hearing. Other than Mr. Roundtree's limited and vague testimony, the Solicitor did not address the mutual domestic violence.

Mr. Hawes' counsel, however, pointed out "[t]his statute does not . . . exclude mutual violence." He referenced two prior cases in the Eighth Judicial Circuit that "involved mutual domestic violence" where the special parole eligibility was granted. R. 137, lines 17-22.

The trial court relied on "the report and testimony of Dr. Schwartz-Watts which references a 'documented history of mutual physical abuse.'" The trial judge concluded that "there were times when both parties were primarily responsible for instigating the arguments." R. 3, 6, 7 (fn. 7).

The State did not ask the trial court to reconsider his order. The State raised this bar for the first time one appeal. The Court of Appeals, nonetheless, considered this issue and ruled:

> Finally, the State argues the legislature did not intend for section 16–25–90 to apply to someone like Hawes, whose evidence for application of the statute shows mutual domestic violence in which he was the aggressor as to most of the domestic violence. One witness testified that Hawes was the primary instigator of the violence. We agree that there was mutual violence between Hawes and his wife and that this evidence weighs against application of the section. However, that fact does not automatically preclude Hawes

> from obtaining relief under section 16–25–90. Rather, the mutual nature of the violence is one factor the court should consider in exercising its discretion to decide whether the defendant has proven a history of CDV such that he is entitled to early parole eligibility.
>
> The circuit court in this case did consider the mutual nature of the violence. The court specifically stated "that the statute makes no allowance or exception for cross-warrant situations in which both husband and wife are charged and convicted out of the same incident." Nevertheless, the court proceeded to "find it proper for the court to consider such circumstances in weighing the evidence presented." The court found Hawes and his wife's 1996 CDV convictions involved "a cross-warrant incident," "that there were times when both parties were primarily responsible for instigating the arguments," and "this is a close case ... [c]ertainly, [Hawes] was also responsible for several instances of domestic violence against his wife." After weighing this evidence that the State asserts the circuit court should consider, the court found Hawes proved a history of CDV suffered at the hands of his wife by a preponderance of the evidence. We find evidence to support the circuit court's decision and no error of law.

Hawes, 399 S.C. at 219-20, 730 S.E.2d at 908.

The Court of Appeals is correct for three reasons. First, the statute does not expressly exclude cases of mutual domestic violence. This penal statute must be construed in favor of the defendant and against the state. Second, the record supports the trial court's findings that Ms. Hawes was responsible for some of the parties' difficulties and was the primary instigator of some of the disputes. Third, taking the state's argument to its logical conclusion, proof of one instance of domestic violence by a defendant would defeat application of this statute to someone who otherwise proved suffering from a history of domestic violence. Surely, the General Assembly did not intend that result.

A court must abide by the plain meaning of the words of a statute. *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is

plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* 341 S.C. at 85, 533 S.E.2d at 581. When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

The Court of Appeals held that mutual domestic violence "does not automatically preclude Hawes from obtaining relief under section 16–25–90." *Hawes*, 399 S.C. at 219, 730 S.E.2d at 908. The State, however, urges this Court to rewrite the state and create an exception for mutual domestic violence that does not appear in the plain language of S.C. Code §16-25-90. Cert Petition, 6-8. The statute has no language to support that such an exception exists.

Further, no case law or legislative history indicates that the legislature intended such an exception. *See* 1995 Act No. 7, *Grooms*, and *Blackwell-Selim*, *supra*. If the legislature intended for a mutually violent relationship exception, then such language would exist within S.C. Code §16-25-90. To interpret that an exception exists absent any language or history to support it would be forcing a construction and expanding the statute's operation beyond its clear language. *State v. Locklair*, 341 S.C. 352, 366, 535 S.E.2d 420, 27 (2000) ("In construing statutes, words must be given their plain and ordinary meaning without resort to subtle or forced construction in attempt to expand the statute."). Therefore, where S.C. Code §16-25-90 language is clear and does not contain a mutually violent relationship exception, this Court of Appeals correctly affirmed the trial court's ruling.

Moreover, if an appellate court found that an ambiguity did exist regarding a mutually violent relationship exception, then the appellate court would still be bound to construe the statute in favor of Mr. Hawes. *See Hair v. State,* 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) (construing in favor of the defendant the ambiguity between parole statutes regarding parole eligibility). Therefore, the Court of Appeals properly affirmed the trial court's holding that Mr. Hawes is eligible for parole pursuant to S.C. Code §16-25-90.

F. As already seen, Judge Addy did not abuse his discretion, and the State's argument to the contrary must be rejected.

The Court of Appeals correctly observed, "The State's argument is essentially that it disagrees with the discretionary decision of the circuit court. However, in an appeal from a parole eligibility determination under section 16–25–90, we are not permitted to reverse the circuit court's factual findings when there is evidence to support them." *Hawes*, 399 S.C. at 218, 730 S.E.2d at 907-08 (citing *Blackwell–Selim,* 392 S.C. at 3, 707 S.E.2d at 427–28).

The State, nevertheless, continues to argue "the Court of Appeals erred in failing to find the trial court abused its discretion by not exercising ***any discretion*** in reaching its conclusion." Brief of Appellant, p. 9 (emphasis added). The record simply does not support this assertion.

The Court of Appeals observed, "The [trial] court discussed evidence it found weighed in favor of and against the application of section 16–25–90." *Hawes*, 399 S.C. at 218, 730 S.E.2d at 907. Thus, the State's assertion that the trial court did not exercise "***any discretion***" is not supported by the specific findings contained in the written order. *See Blackwell-Selim, supra.* In paragraphs two, three, four, and six of the written order,

the trial court reviewed the evidence presented at the hearing. Order, R. 2-4. In paragraph ten of the written order, the trial judge "discuss[es] first ***the facts which weigh against application of the section and the address[es] those facts which weigh in favor of [§]16-25-90's application***, mindful that the Defendant carries the burden of proving application by preponderance of the evidence." Order, R. 10-11 (emphasis added). The trial judge even discusses the relative weight of the evidence.

Rather than concluding one party was primarily responsible for instigating the couple's troubles, Judge Addy actually found "both parties were primarily responsible for instigating arguments at different times." Order, R. 6. In paragraph eleven of the written order, the trial court holds, "Viewing the record as a whole, I find that the Defendant has proven himself to be the recipient of a history of domestic violence by his wife, and he has met his burden of proof by the preponderance of the evidence." Order, R. 7.

In paragraph twelve of the written order, the trial judge adds, based on the "competent evidence," that "this court is compelled to find that the Defendant has met his burden of proof." Order, R. 7. After viewing the previous eleven paragraphs, it is simply not fair to the trial judge for the State to take this one phrase out of context and argue a failure to exercise discretion. Rather, viewing the entire order, it is clear the judge reviewed the whole record and found "competent evidence" Mr. Hawes suffered from domestic violence. Once the trial judge found the evidence to be "competent" or credible, he was obligated to make the appropriate statutory finding. *Grooms, supra.*

G. In the event this Court accepts the Court of Appeals invitation "to specifically define 'a history'" of domestic violence, *Hawes*, 399 S.C. at 217, 730 S.E.2d at 907, Mr. Hawes will address that issue.

During the hearing, the parties discussed the meaning of the term "history," which is not expressly defined in the statute. The Solicitor stated, "The statute talks about a history of domestic violence" and conceded ***"it doesn't seem to be an isolated incident in the span of this relationship."*** R. 134, lines 18-20 (emphasis added). Mr. Hawes contended, "[I]t just has to be a pattern, which would be two or more" instances. R. 138, lines 1-4. Judge Addy and Mr. Hawes discussed whether one prior incident would be sufficient to invoke the statute. Mr. Hawes pointed out "even under the most limited view of the evidence, we have proven more than that." R. 141, lines 8-24.

Mr. Hawes contended, "[I]t is very simple, you prove there is a history of domestic violence, your get this [special parole eligibility]. We proved there was a history of domestic violence, [Mr. Hawes] gets parole eligibility."[12] The Solicitor countered, "[I]t hinges on the definition of what is history" but never offered a definition and returned to the State's primary aggressor argument." R. 142, lines 2-18.

As seen, Judge Addy "[v]iewing the record as a whole" found Mr. Hawes "has proven himself to be the recipient of a history of domestic violence by his wife." R. 7.

---

[12] Mr. Hawes position is that the trial court has discretion in evaluating the credibility of the witnesses, but once the judge finds a credible history of violence, application of the statute becomes mandatory. Both the pre- and post-2003 versions of the statute are substantially identical and do not impact this analysis. The Court of Appeals noted that the trial court cited the wrong version of the statue. The court below observed, "We cannot discount the significance of the circuit court's use of the incorrect version of the statute. However, because the mistake was not raised to the circuit court, it was never given the opportunity to correct itself, and the error 'clearly is unpreserved' for our review on appeal." *Hawes*, 399 S.C. at 219, 730 S.E.2d at 908. Even after the Court of Appeals called this matter to the State's attention, the State does not assert it before this Court.

The Court of Appeals subsequently found the record contained "evidence to support the circuit court's ruling that Hawes proved a history of CDV under section 16–25–90." *Hawes*, 399 S.C. at 218, 730 S.E.2d at 908.

The Court of Appeals held:

> The circuit court specifically provided a definition of a history in its order which the State does not argue is incorrect on appeal. The court defined a history as follows:
>
> > For purposes of the case before me, the court interprets reference to "a history" to connote not only consideration of the number of prior instances of domestic violence, but also the relative severity of the various instances. In this way, the court may properly weigh the relative egregiousness of the conduct. Put another way, more serious or violent instances of criminal domestic violence would be entitled to substantially more consideration, even though fewer in number, than less egregious, but more frequent instances.
>
> The State did not challenge the circuit court's definition of a history in a motion to reconsider. On appeal, the State offered no definition in its brief. At oral argument, the State argued the definition of a history under section 16–25–90 was a "circumstance in which an individual is repeatedly the victim and not repeatedly the primary instigator of a series of violence—criminal domestic violence—at the hands of the victim."

The Court of Appeals "neither adopt[ed] nor reject[ed] the definition of a history used by the circuit court, nor that proposed by the State at oral argument." *Hawes*, 399 S.C. at 216-17, 730 S.E.2d at 906-07. The Court of Appeals then observed, "In some future case, this court or the supreme court may be required to specifically define 'a history' to resolve the controversy before the court. In this case, however, defining the term is not

necessary because we find the circuit court did precisely what the State contends it failed to do—it considered the legislative intent of section 16–25–90." *Id.*

Dictionary.com defines "history" as "a past notable for its important, unusual, or interesting events."[13] Although section 16-25-90 does not expressly define "history," that section does apply to "credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member." This Court first looks internally within section 16-25-20 to interpret its meaning. *Nelson, supra.* Section 16-25-20 considers one incident proven beyond a reasonable doubt "important" enough to increase the punishment for second and third offenses. Section 16-25-65, which also references 16-25-20, provides for enhancements when the incident involved the use of a deadly weapon or actual or threated serious bodily injury.

Turning to Judge Addy's definition of "history," he considered both the number and severity of the prior instances. Mr. Hawes satisfied both of these considerations. He proved multiple events, some of which involved Ms. Hawes attacking him with a knife.

If this Court takes this opportunity to define the term "history" for the purposes of section 16-25-90, then this Court should take into consideration the private nature of intimate partner violence. This Court implicitly recognized that in *Grooms* that trial courts do not have to accept non-convincing self-serving testimony. In cases like this one, where the defendant presents convincing evidence, this Court should also recognize the difficulty in proving each and every instance of intimate partner violence. In fact, Mr. Hawes case has more documentation of the domestic violence than normally exists in these cases. R. 62, line 12 – 63 line 6.

---

[13] http://dictionary.reference.com/browse/history?s=t (last viewed April 18, 2014).

Courts apply this statue infrequently as it is. This Court, therefore, should be careful not to legislate the statute into irrelevancy by setting the bar so high that no defendant could ever meet the criteria.

Conclusion

The record supports the trial court judge finding a history of domestic violence inflicted by the deceased against Mr. Hawes. This Court, therefore, should affirm the Court of Appeals.

Respectfully submitted,

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

D. Kate Kendall
Assistant Public Defender, 8th Circuit
P.O Box 174
Laurens, South Carolina 29360
(864) 984-8807

April 24, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
APR 28 2014
S.C. Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2011-189167

The State, Appellant

v.

Alonzo Craig Hawes, Respondent.

Certificate of Service

I certify that I have served a copy of the Brief of Respondent on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

William M. Blitch, Jr., Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

By: _____

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

April 24, 2014
Greenwood, South Carolina