

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

The Honorable R. Scott Sprouse, Circuit Court Judge

Re.: State of South Carolina v. Bobby Joe Arflin
Case No.: 2015-001900

The State of South Carolina,

Respondent,

v.

Bobby Joe Arflin,

Appellant.

FINAL BRIEF OF APPELLANT
BOBBY JOE ARFLIN

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STATEMENT OF ISSUE ON APPEAL

1. The Court erred when it denied Defendant's right to introduce evidence of the victim's prior Criminal Domestic Violence arrest in rebuttal to the State's character evidence.

STATEMENT OF THE CASE

On August 18, 2015, a pre-trial hearing was held in the matter of the *State of South Carolina v. Bobby Joe Arflin*. The following week, beginning August 24, 2015, the trial under the same case caption began. The jurors were qualified, selected, and sworn. A *Jackson v. Denno* hearing was held. And then Bobby Joy Arflin stood trial on the charges of Murder, Possession of a Weapon during the Commission of a Violent Crime, and three counts (3x) of Solicitation of a Felony (Kidnapping).

At the end of the week, Bobby Joe Arflin was found guilty of all counts as sentenced as follows: On the charge of Murder (count one on indictment number 2014-GS-04-00426), Mr. Arflin was ordered confined to the Department of Corrections for a term of 30 years; on the charge of Possession of a Weapon during the Commission of a Violent Crime (count two on indictment number 2014-GS-04-00426), Mr. Arflin was ordered confined to the Department of Corrections for a term of 5 years to run *concurrent* with the 30 year sentence; on indictment number 2014-GS-04-00340 for Solicitation of a Felony (Kidnapping), Mr. Arflin was sentenced to 10 years in the Department of Corrections *consecutive* to his previous sentences; on the remaining two indictments 2014-GS-04-00341 and 2014-GS-04-00342 each for Solicitation of a Felony (Kidnapping), Mr. Arflin was sentenced to 10 years each with these sentences ordered to run *concurrent* with indictment no 2014-GS-04-00340. In short, Mr. Arflin was sentenced to 40 years in the Department of Corrections for these offenses. (ROA., pp. 1023-1024) Immediately thereafter, Mr. Arflin timely filed this notice of appeal.

STATEMENT OF THE FACTS

There is no dispute that Bobby Joe Arflin (hereinafter "Bobby") killed Jody Powell (hereinafter "Jody"). There is no dispute that Bobby shot Jody. There is no dispute that Bobby shot twice. The dispute at trial centered on whether the shooting was justifiable self-defense or murder.

On December 11, 2013, Bobby Joe Arflin ran some errands around the house, fed his cats, and met his wife of 43 years for more errands and dinner. (ROA., p. 252, ll. 10-19) After dinner, Bobby and his wife went to AnMed and walked a few laps around the track. (ROA. p. 860, ll. 17-23) Following their walk, Bobby visited with his mother who is in her eighties as he did every Wednesday night. (ROA., p. 252, ll. 20-24) It was a normal day. Bobby drove home. His wife, Sheila, was already home. (ROA., p. 253, ll. 1-2)

When he turned onto Williamson Drive, where he lived, it was about 8:30 p.m. (ROA. p. 253, ll. 3-4) The drive is a country road. (ROA. p. 862, ll. 1-3) It was pitch dark outside. Williamson Drive has no street lights and it was December. (ROA., p. 253, ll. 8-11) There was a big truck parked on the road. (ROA., p. 253, ll. 4-5) It was a full-size four-wheel drive GMC pick-up truck. (ROA. p. 862, ll. 6-10) The truck belonged to Jody Powell. (ROA., p. 254, ll. 9-10) Jody Powell was the boyfriend of Brenda Masters, a Williamson, and was attending a party for Brenda Masters' niece at 122 Williamson Drive, Anderson, South Carolina. (ROA. p. 247, ll. 9-13) To get to his house, Bobby had to pass Jody's truck. (ROA., p. 253, ll. 12-13) Williamson Drive is only 16 feet wide. (ROA., p. 253, l. 19) Rather than knock on any doors to get the truck moved, Bobby tried to go around the truck. (ROA., p. 253, ll. 19-22) Bobby's home was at the end of Williamson Drive, which is a dead-end road. (ROA., pp. 253-254, ll. 19-25 – ll. 1-5)

Bobby and his wife Sheila Arflin lived at the end of this dead-end road on the left-hand side. (ROA. p. 858, ll. 17-21) Three to four generations of Williamsons live on Williamson Drive. (ROA. 859, ll. 8-13) There have been issues in the past, including parking in the road, between Bobby, his wife Sheila, and the Williamsons. (ROA. p. 859, ll. 14-23) Bobby was driving a full-size red Dodge Pick-up truck. (ROA. pp. 254 & 862, ll. 8-9 & ll. 11-12) (ROA. p. 247, ll. 21-22) He tried to go around the other truck. (ROA. p. 254, ll. 7-9) Both trucks had extended mirrors and Bobby clipped Jody's silver truck. (ROA. p. 254, ll. 9-12) (ROA. p. 247, ll. 22-23) Bobby decided to back up to see what kind of damage had been done. (ROA., p. 254, ll. 16-20) While backing up, Bobby's truck hit the corner of Jody's truck. (ROA. p. 254, ll. 20-23) Bobby's right side mirror had been knocked in by the collision and he had been unable to see out that side when he tried to back up. (ROA. p. 863, ll. 10-23) He was unable to see out his rearview mirror because he had a full size camper cover on the back of his truck. (ROA. p. 864 ll. 2-7)

Bobby had a gun in his truck. (ROA. p. 865, ll. 6-10) He carried the gun because his truck was a high mileage truck prone to breaking down. (ROA. p. 865, ll. 11-19) With his poor health, the gun provided him protection if he ever needed it. (ROA. p. 865, ll. 14-19)

Bobby collected his cell phone and the gun he carried. (ROA. p. 865, ll. 23-24) He immediately called 911. (ROA. p. 255, l. 1) He reported, "There's been an accident. Can you come?" (ROA. p. 255, ll. 2-3) Bobby reported hitting the mirror of the other truck and backing into it when he tried to assess the damage. (ROA. p. 866, ll. 20-25) While he was on the phone reporting the accident, people start to come out of the Williamson home. (ROA. p. 867, ll. 1-5) Bobby told them that he had hit someone's

truck. (ROA. p. 867, ll. 10-13) Two people went back into the Williamson house and told Jody that his truck had been hit. (ROA. p. 867, ll. 14-18) Jody came out while Bobby was still on the phone with 911. (ROA. p. 867, ll. 19-25) During this time, Jody went to his truck with another individual and Bobby heard them saying they were going to "kick my ass." (ROA. p. 869, ll. 7-11) The 911 operator asks, "Is anyone hurt?" (ROA. p. 255, ll. 4-5) Bobby replied, "No, not yet." (ROA. p. 255, l. 5) Bobby had heard Jody murmuring that Jody was going to kick his "ass". (ROA. p. 869, ll. 16-21) Because of previous issues with the Williamsons, Bobby was afraid. (ROA. p. 870, ll. 4-8) Bobby saw Jody rummage through his console and saw him hand something to James Madison, the individual who had first come out. (ROA. p. 870, ll. 18-25)

Bobby testified: "I was afraid that something bad was fixing to happen. I could – you know, I could tell that the owner of the pickup truck, Mr. Powell, was agitated, seriously agitated, and he had already come back towards me. I had already heard him and if you listen to the 911 tape, you hear me say, 'That would be me.' He was asking me if I was the SOB the *[sic]* lived down at the end in that doublewide and was that the truck that belonged to the SOB that lived there in that doublewide. I once said, 'That would be me,' and the second time I said, 'Yes, that's me.'" (ROA. p. 871, ll. 9-19) Bobby told 911, "You might want to hurry." (ROA. p. 871, ll. 7-19)

Brenda Masters, Jody's girlfriend, came out and asked Bobby if he was on the phone with the police. (ROA. p. 871, ll. 23-25) Bobby replied that he had called the police. (ROA. p. 872, ll. 1-5) Bobby tried to explain what happened to Jody, but Jody appeared more and more agitated. (ROA. p. 872, ll. 9-25) Jody called Bobby an SOB and a stupid bastard, and an ignorant bastard. (ROA. p. 873, ll. 1-4) Jody threatened to

“whoop” Bobby “ass”. (ROA. p. 873, ll. 4-5) Forty-one year old Jody was much younger than Bobby who “was totally afraid of what could possibly happen.” (ROA. p. 874) (ROA. p. 248, ll. 12-13)

At some point Jody came in Bobby’s direction and there was physical contact. (ROA. p. 875, ll. 23-25) Bobby could not get past Jody. (ROA. p. 876, ll. 3-6) Brenda Masters came out as Jody knocked Bobby backwards and she told Jody to let the police handle it. (ROA. p. 876, ll. 17-24) At some point Bobby told Jody to “Stay away from me, Boy.” (ROA. p. 878, ll. 1-2) But Jody approached again. (ROA. p. 878, ll. 5-7) Bobby told Jody repeatedly that he was not going to fight him. (ROA. p. 878, ll. 7-12) But, according to Bobby, Jody hit him and Bobby fired his gun. (ROA. p. 878, ll. 17-23) Bobby does not remember firing two shots, but admits he had two empty cartridges. (ROA. p. 880, ll. 4-6) It all happened within seconds. (ROA. p. 881, ll. 7-11)

Bobby did not flee the scene. (ROA. p. 884, ll. 12-13) He stayed by his truck and waited for the police. (ROA. p. 884, ll. 14-20) Upon seeing the blue lights, Bobby closed the door to his truck and laid his gun up on the hood of his truck. (ROA. p. 884, ll. 21-24) Bobby complied with law enforcement upon their arrival. (ROA. p. 884, ll. 7-8) He submitted to GSR testing, photographs, gave a blood sample, and a buccal swab. (ROA. p. 886, ll. 7-16)

Bobby Arflin remained in jail from December 11, 2013 until his trial and conviction. While awaiting trial, he shared a cell with Roy Lawrence. The two of them shared a cell at the Anderson County Detention Center for a brief period. (ROA. p. 889, ll. 7-15) Bobby had various cell mates while in the Detention Center. (ROA. p. 889, ll. 16-20) No other cell mate aside from Roy Lawrence ever accused Bobby of any wrong

doing of any kind. (ROA., p. 889, ll. 21-24) While sharing a cell, the two were housed together 22 hours a day. (ROA., p. 890, ll. 14-16)

Roy Lawrence who goes by the name "Wolf" testified he "knows how the system works." (ROA., p. 751, ll. 3-6 & p. 752, ll. 5-8) He possesses a lengthy rap sheet including convictions for forgery, armed robbery, and grand larceny. (ROA. p. 752, ll. 9-20) By his own admission, he "did 20 years in prison... got out in 2002... and did nine years parole..." (ROA. p. 752, ll. 21-23) Mr. Lawrence at the time of trial had a pending Criminal Sexual Conduct charge with a seven-year old victim. (ROA., p. 752, ll. 24-25 – p. 753, l. 1) He faced a mandatory 25 years to life and mandatory registry as a sex offender. (ROA. p. 753, ll. 2-8)

Mr. Lawrence testified that while in the Detention Center he came to know Bobby. He maintained that Bobby told him about his case saying Bobby said, "... he ran into somebody's car or vehicle and seemed like the whole neighborhood came after him, and he had a confrontation with the guy, the guy pushed him in the chest and he shot him." (ROA., p. 738, ll. 2-10) When asked if Bobby talked to him about the witnesses in his case, Mr. Lawrence said he did and that Bobby "... talked about three homes... and drew out a map for me." (ROA., p. 738, ll. 18-21) Mr. Lawrence testified that Bobby gave him a note and a map with three names on the note: Brenda Williamson Masters, Larry Williamson, and James Paul Madison and asked him to kidnap those witnesses. (ROA. pp. 738 – 741) In return for the kidnapping, Bobby was to give Mr. Lawrence three and a half acres and a trailer. (ROA., pp. 741-732)

Mr. Lawrence testified that he thought about this plot and then called his brother-in-law to tell him about it. His brother-in-law referred him to law enforcement who then

told Mr. Lawrence if he heard from Bobby to contact them. (ROA., pp. 743-745) But Mr. Lawrence never heard from Bobby. Bobby did not initiate a call with Mr. Lawrence. Bobby never sent Mr. Lawrence a letter, and he never put Mr. Lawrence on his visitation list. (ROA., p. 774, ll. 19-23) Rather Mr. Lawrence asked another inmate to have Bobby call him. (ROA. p. 745, ll. 1-25) (ROA. p. 757) He testified that Bobby was supposed to send him a letter with further instructions that he never received. (ROA. p. 747) Nor was a letter ever found. (ROA. p. 758) Over Defense counsel's objection, the Court did not allow defense counsel to cross-examine Mr. Lawrence about Bobby's inability to follow through with any deal as a wrongful death suit had earlier been filed against him with a writ of attachment to his land that made giving any of it to Mr. Lawrence an impossibility. (ROA. pp. 759-767)

On cross-examination it was clear that Mr. Lawrence suffered from a host of health issues that would have prevented any kidnapping of three people by him. (ROA. p. 755) Further, it was clear that this conversation between Mr. Lawrence and Bobby took place in November 2014 and that no trial date had been set and the "plan" was for Mr. Lawrence to hold them until trial which was ultimately held in August of 2015. (ROA. p. 756)

Bobby Arflin was born on July 25, 1952 and was 61 years old at the time of the shooting. (ROA. p. 856, ll. 22-25) He married his wife Sheila in 1972 when she was 18 and he was 19 years old. (ROA p. 826, ll. 8-22) Bobby and Sheila started living on Williamson Drive in 1975. (ROA. p. 826, ll. 23-25) The road did not have a name at that time, but the Wiliamsons brought a petition for the road to be named Williamson Drive, and the Arflins signed it. (ROA. pp. 826-827, ll. 25 & ll. 1-10) Bobby has a GED, and

neither he nor his wife had ever been arrested until December 11, 2013 when Bobby was arrested following this shooting incident. (ROA. p. 857, ll. 1-14) For nearly 35 years, Bobby worked as a diesel mechanic. (ROA. p. 857, ll. 15-16)

In 2013, Bobby suffered from cancer, diabetes, kidney disease, neuropathy in both feet, busted cartilages in both knees, and arthritis in his knees, ankles, hips, mid, lower, and upper back, shoulder, elbows and wrists. (ROA. pp. 857-858, ll. 22-25 & 1-5) Bobby's eyesight suffered as a result of the diabetes and from years of work as a diesel mechanic. (ROA. p. 858, ll. 5-8) His argument at trial was self-defense.

The night began on Williamson road with a birthday party and James Madison explained most of the actors as follows: James "Jamie" Madison testified that he lived on Williamson Drive. (ROA. p. 262, 15-20) He added that his mother-in-law, father-in-law and a man named Larry lived across the street. (ROA., p. 262, ll. 24-25) Larry is Jamie's wife's uncle. (ROA., p. 263, ll. 2-3) He explained that Brenda Masters, his sister-in-law, lived next door. (ROA., p. 263, ll. 5-10) He detailed how the Williamsons were all related and how they lived within walking distance of one another. (ROA. p. 263)

There was a birthday party for a niece. The party was at Jamie's in-law's home across the street. (ROA. p. 264, ll. 24-25) At some point Jody Powell arrived. (ROA., p. 265, ll. 23-25) Jody was Brenda's boyfriend. (ROA., p. 266, ll. 5-6) Around 8:30 p.m. that night Bobby Arflin clips Jody's truck with his own truck. An argument between the two ensues. Bobby has shot Jody. Bobby has maintained the shooting was in self-defense.

ARGUMENT

A. Standard of Appellate Review

In criminal cases, the Court reviews errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The Court is bound by the trial court's factual findings unless there are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). In review, the Court is limited to determining whether the trial court abused its discretion. *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). The Court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

B. The Trial Court Erred When It Excluded Evidence of the Victim's Arrest for Criminal Domestic Violence.

1. Standard of Review Concerning the Exclusion of Evidence

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 632 S.E.2d 845 (2004). "An abuse of discretion occurs when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support." *State v. McEachern*, 731 S.E.2d 604, 609 (Ct. App. 2012) citing, *State v. Morris*, 656 S.E.2d 359, 368 (2008).

As expanded upon below, because the State questioned one of its witnesses on re-direct examination concerning whether the Victim had the character trait of peacefulness, Mr. Arflin was entitled under the common law of South Carolina to present the jury with

rebuttal evidence that the Victim was capable of reacting violently when angered. That rebuttal evidence consisted of the testimony of Kerri Powell, the Victim's former wife, concerning the Victim slapping her on July 18, 2009 with sufficient force to knock her to the ground, and the testimony of Anderson County Deputy Sherriff Brian L. Lewis about his investigation of the Victim slapping Ms. Powell and his arrest of the Victim for criminal domestic violence as a result. The trial court did not allow the introduction of either Ms. Powell's testimony or Deputy Lewis' testimony and the trial court did not allow Mr. Arflin's counsel to ask the State's witness, who testified that he had never seen the Victim fight anyone, about the CDV arrest on re-cross examination. By refusing to allow the introduction of Mr. Arflin's rebuttal evidence, the trial court abused its discretion. Moreover, Mr. Arflin was prejudiced by the exclusion of evidence concerning the Victim's arrest for the CDV and nature of the CDV. Therefore, Mr. Arflin's conviction should be reversed and the case remanded for a new trial.

Prior to trial, the State moved to exclude the testimony of Ms. Powell and Deputy Lewis. The trial court allowed Mr. Arflin to proffer the testimony of both Ms. Powell and Deputy Lewis.

Relying on the incident report he prepared soon after his arrest of the Victim, Deputy Lewis testified in his proffer that Ms. Powell told him she and the victim had had a bad argument the day before the incident, and she had left the marital residence. (ROA. p. 97, ll. 20-21) According to Ms. Powell, she came back home the next day, and she and the Victim had another argument about a cell phone bill. (ROA. p. 97, ll. 20-24) Ms. Powell told Deputy Lewis the argument escalated, and she went to gather a few things to leave again. (ROA. p. 98, ll. 3-9) The Victim followed Ms. Powell to the bedroom and

then followed her into the bathroom. (ROA. p. 98, ll. 7-10) In the bathroom, Ms. Powell began to yell at the Victim and at that time the Victim slapped her on the left side of her face with sufficient force to knock Ms. Powell to the ground. (ROA. p. 98, ll. 11-14) According to Ms. Powell, after the Victim slapped her, she got her things, left the house, went to a friend's house and called 911. (ROA. p. 98, ll. 15-17)

Deputy Lewis asked Ms. Powell for a written statement. (ROA. p. 98, ll. 18-20) However, Ms. Powell would not do so. (*Id.*) Deputy Lewis photograph Ms. Powell's face. (ROA. p. 98, l. 20) He then went to the marital residence and spoke with the Victim who did not deny striking Ms. Powell. (ROA. p. 98, ll. 21-22) Deputy Lewis placed the Victim under arrest. (ROA. p. 98, ll. 22-23)

Ms. Powell testified that the Victim "had never done anything like that to me before[]" and that is was "very out of character for him." (ROA. p. 101, ll. 21-22, 24-25) She "begged" Deputy Lewis not to arrest the Victim. (ROA. p. 102, l. 5) Ms. Powell also testified that the Victim was athletic, that he worked out, and was muscular. (ROA. p. 103, ll 8-11)

The trial court granted the State's motion and excluded the testimony of both Deputy Lewis and Ms. Powell.

At trial, the State called James Madison. (ROA. p. 262) During redirect examination of Mr. Madison, the State asked him, "Did you ever see him [the Victim] fight someone?" (ROA. p. 328, l. 20) Mr. Madison responded, "No ma'am." (ROA. p. 328, l. 21) The State then asked Mr. Madison, "[u]ntil he died, did you ever see him [the Victim] fight someone." (ROA. p. 328, l. 22) Mr. Madison responded, "No ma'am." (ROA. p. 328, l 22)

Owing to the State's questions to Mr. Madison about whether he had ever seen the Victim fight someone, during re-cross examination of Mr. Madison, counsel for Mr. Arflin sought to question Mr. Madison about the CDV arrest, which resulted from the Victim slapping his then wife on the left side of her face with such force that the blow knocked her to the ground. However, prior to asking Mr. Madison about the CDV arrest, Mr. Arflin's counsel requested a bench conference, and the conference was held outside of the presence of the jury. (ROA. pp. 332-336)

During the bench conference, Mr. Arflin's counsel argued that by questioning Mr. Madison concerning whether he had ever seen the victim fight someone, the State had opened the door such that counsel could question Mr. Madison about the CDV. (ROA. pp. 332-334) More specifically, Mr. Arflin's counsel argued to the trial court that "the prosecution cannot go in front of a jury and paint this perfect picture of ... [the victim]. He doesn't fight, he doesn't argue, has no issues, when there has been an arrest for CDV. Against a woman." (ROA. p. 333, ll. 12-15.)

In response the State argued that the CDV arrest was not admissible because it did not meet the requirements for admission of other acts of violence on the part of the victim as articulated in *State v. Day*, 535 S.E. 2d 431 (2000).¹ Mr. Arflin's counsel stated in

¹ According to *State v. Day*,

In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.

reply that Mr. Arflin was “not trying to get ... [in the CDV arrest] under character evidence. This is rebutting ... [the State’s] opening of the door. .. You can’t put up evidence and have someone say ‘No, he doesn’t fight,’ when you know good and well there’s been an arrest for him hitting a woman.” (ROA. p. 334, ll. 15-23)

However, the trial court maintained its pretrial ruling excluding evidence of the CDV and the trial court “noted for the record” Mr. Arflin’s counsel’s objection to the court’s ruling on the ground that the State had opened the door to the admission of the CDV. (ROA. p. 336, ll. 8-10) The trial court committed reversible error by excluding evidence of the CDV.

In South Carolina it is settled that “[w]hen a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.” *State v. McEachern*, 731 S.E.2d at 610 citing *State v. Jackson*, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005). In the present matter, by eliciting testimony from Mr. Madison that he had never seen the Victim fight before, the State introduced evidence of the Victim’s alleged character trait of peacefulness through that testimony. Mr. Arflin, therefore, was entitled to introduce the testimony of Deputy Lewis concerning the Victim’s slapping his wife in a fit of anger and his resulting arrest for CDV as well as to question Mr. Madison in the presence of the jury about whether he knew that the Victim had been arrested for CDV. In sum, it was an error of law for the trial court to preclude introduction of evidence concerning the CDV and therefore, the

535 S.E. 2d at 436 (citations omitted).

trial court abused its discretion by doing so. Mr. Arflin is entitled to a reversal of his conviction and a new trial.

C. Mr. Arflin Was Prejudiced By the Exclusion of Evidence Concerning the CDV.

Based on the re-direct testimony of Mr. Madison, the jury was left with the impression that the Victim was a peaceful man who Mr. Madison had never seen get involved in a fight in the two years he had known the victim. However, the alleged trait of peacefulness is belied by the Victim slapping his wife with such force that it knocked her to the ground and his subsequent arrest for criminal domestic violence. Indeed, the incident illustrates that when sufficiently provoked, the Victim was capable of physical violence. More importantly, the CDV shows the Victim could become so angered that he would physically assault someone weaker than he - a woman - and even more troubling, his own wife. Furthermore, while it may be out of the ordinary for the Victim, the testimony of both Deputy Brian L. Lewis and Kerri Powell about the CDV clearly show the Victim would resort to violence when angered.

Moreover, when the evidence presented at trial is considered as a whole, it is clear that exclusion of the Victim's arrest for CDV prejudiced Mr. Arflin. More specifically, Bobby Arflin was 61 at the time of the incident. (ROA. p. 856, ll. 22-25) He had worked his entire adult life as a diesel mechanic. (ROA. p. 857, ll. 15-18) In 2013, Mr. Arflin had battled cancer, suffered from diabetes, kidney disease, and neuropathy in both feet and the front portion of his lower legs. (ROA. p. 857, ll. 22-25 thru p. 858, l. 1) Further, Mr. Arflin had "busted cartilages in both knees." (ROA. p. 858, ll. 1-2) He had arthritis in his hips and mid, lower and upper back, in his shoulder, elbows, and wrists. (ROA. p. 858, ll.

3-5) He had a large hernia. (ROA. p. 311, ll. 20-23) And his eyesight suffered as a result of the diabetes. (ROA. p. 858, ll. 5-8)

In stark contrast, the Victim was young - 41 years old at the time of the incident. (ROA. p. 652, ll. 22-23) He worked as a UPS driver delivering packages. (ROA. p. 347, ll. 11-13) The Victim worked out and was physically fit. (ROA. p. 306, ll. 8-13) (Defendant's Exhibit No. 1, ROA, p. 322 & Supplemental ROA, p. 1)

During trial, Mr. Arflin presented evidence that Victim was the aggressor. That evidence was when the Victim first came out his girlfriend said, "The cops have already been called. Let them handle it." (ROA. p. 310, ll. 20-24) The incident occurred at night around 8:40 p.m. (ROA. p. 43-45) It was pitch dark outside. (ROA. p. 44-48) The Victim had a phone in his hand. (ROA. p. 311, ll. 12-18) And that the Victim "kind of pushed him [Mr. Arflin] back" (ROA. p. 276, ll. 9-10) Indeed, Mr. James Madison told 911 that the Victim confronted Mr. Arflin on the road. (ROA. p. 313, ll. 18-25 through ROA. p. 314, ll. 1-18) When asked if he or the Victim said anything about "kicking [Mr. Arflin's] ass", James Madison said he had not said that, but if the Victim did, he did not hear him. (ROA. p. 328, ll. 20-25 through p. 329, ll. 1-3)

Mr. Arflin and the Victim met, the Victim said, "Oh I heard all about you." (ROA. p. 310, ll. 4-7) The Victim had recently purchased the truck that Mr. Arflin had swiped in the accident. (ROA. p. 310, ll. 8-10) And the Victim said, "This was not an accident. This was deliberate. You, [Mr. Arflin] would never have backed into this had it not been deliberate." (ROA. p. 310, ll. 11-15) Mr. Arflin was already on the phone with 911 when the Victim came out of the house. (ROA. p. 320, ll. 17-19) The Victim clearly had adopted the Williamsons' negative view of Mr. Arflin. (ROA. p. 310, ll. 16-19)

The CDV supports the evidence that the Victim was the aggressor. Furthermore, the evidence of the CDV rebuts the testimony of Mr. Madison that the Victim possessed the character trait of peacefulness. Specifically, Mr. Madison was asked,

Q: "Did you ever see him [the Victim] fight someone?"

A: "No, ma'am."

Q: Until he [the Victim] died, did you ever see him fight someone?"

A: "No, ma'am." (ROA. p. 328, ll. 20-23)

Brenda Masters, the Victim's girlfriend, testified that when she went back outside she saw, "[The Victim] and Mr. Arflin in each other's faces." (ROA. p. 350, ll. 18-20)

And that their voices were raised. (ROA. p. 350, ll. 21-22) Her testimony explains why the Victim was so angry. The victim "couldn't understand him – he could understand him

knocking the side mirror off, but he couldn't understand him backing back into it and hitting his truck again. (ROA. p. 350, ll. 23-25 through p. 351, ll. 1-2) She continued,

"They were really close." (ROA. p. 351, l. 5) When asked what she did, Ms. Masters

responded, "I tried to go up in between them and, you know, just calm the situation, tell them that it's okay, that he's – you know, Mr. Arflin had already called the police. They

were on their way." (ROA. p. 351, ll. 23-25 through p. 352, l. 1) When asked if she heard

what the Victim said to Mr. Arflin, Ms. Masters testified, "He just – he just told him [Mr.

Arflin] he had heard stories about him. He didn't – he never knew him. He had only

heard stores about how mean and hateful he was. And he could see now what a mean

person he was." (ROA. p. 352, ll. 7-10) When asked if the Victim touched Mr. Arflin,

Ms. Masters responded, "He just barely pushed [Mr. Arflin]. (ROA. p. 352, ll. 14-15)

The cross-examination of Ms. Masters went as follows:

Q: Now, I believe you told this jury that [the Victim] had just gotten this truck and that he had been told stories about how evil [Mr. Arflin] was; is that right?

A: Yeah, what a mean man he was.

Q: And that he was – [the Victim] had come out, and I think you said was about, what, and inch apart in each other's faces?

A: After I had came [sic] back out the second time.

Q: And you're telling this jury that [the Victim] just barely pushed him?

A: Yes.

Q: Do you remember the night this occurred, when you gave your statement at the hospital, saying that Jody came out and confronted [Mr. Arflin]?

A: He came out and, yeah, asked him.

Q: Well, you used the word "confront," though. What does confront mean to you?

A: Was asking him if he had hit his truck.

Q: Do you remember saying the night of the statement, the night that this occurred, that Jody was cussing [Mr. Arflin]. ...

Q: Okay, Now, you also said, didn't you, that you had to get in between them but you weren't talking to [Mr. Arflin]. You just told the jury and you said that night that you were talking to [the Victim], saying, "He's already called the police. Let the police handle it"; is that right?

A: I was going in to try to get in between both of them.

Q: But you were facing [the Victim] trying to talk him down because he kept insisting this was deliberate; is that correct?"

A: He never said that. He [the Victim] just couldn't understand – he way just trying to understand. It looked deliberate. He was trying to understand. He could see [Mr. Arflin] knocking the mirror off. He didn't understand [Mr. Arflin] backing back into it and hitting it again. (ROA. pp. 362-364)

Mr. Arflin's wife Sheila Arflin testified that she received a phone call from Mr. Arflin at 8:42 p.m. the night of December 11, 2013. (ROA. p. 833, ll. 19-21). During that call, Mr. Arflin told Sheila, "he was trying to get home and he hit the neighbor's truck. And he – the neighbor come out hollering at him and hit him." (ROA. p. 834, ll. 1-3). When asked where was he hit, Shelia responded, "In the jaw.) (ROA. p. 834, ll. 4-5) The Mr. Arlin told his wife he had shot the Victim and Mr. Arflin went out to the scene. (ROA. p. 834, ll. 6-10)

Mr. Arflin's brother Billy Arflin testified that after the incident Mr. Arflin told him, "that he had accidentally hit a truck, that he had called the police and overheard somebody say, 'I'm going to knock the piss out of you.' In the conversation and said that immediately when he hung up the phone from calling the police, they hit him or he was hit." (ROA. p. 848, ll. 2-8)

Mr. Arflin also took the stand and testified that the Victim approached him. (ROA. p. 875, ll. 23-25) Mr. Arflin said the Victim "jumped in front of me and actually crossed his arms and thrust into my chest." (ROA. p. 876, ll. 1-2) Mr. Arflin continued that he could not get passed the Victim. (ROA. p. 876, ll. 3-6) The Victim's girlfriend, Benda Masters, came out and told the Victim to "Let the police handle it." (ROA. p. 876, ll. 15-24) Mr. Arflin explained that there were three people out there to his one. There was the Victim, James Madison, and Brenda Masters. (ROA. p. 877, ll. 11-25)

Mr. Arflin was blocked from going to his truck and the Victim had struck his lower jaw. (ROA. p. 877). Mr. Arflin said he told the Victim to “Stay away from me, Boy”... and “I’m not going to fight you.” (ROA. p. 878, ll. 1-2 and ll. 11-12) Then upon being hit, when the Victim came towards Mr. Arflin, Mr. Arflin fired. (ROA. p. 878, ll. 18-22)

Mr. Arflin had no prior record. His wife testified that neither she nor Mr. Arflin had ever even been arrested before. (ROA. p. 830, ll. 9-11) At 61, Mr. Arflin had lived a clean, law-abiding life. That was not true of the Victim. Not only had he been arrested for Criminal Domestic Violence, but he admitted to striking his former wife. Mr. Arflin was entitled to rebut the testimony of Mr. Madison with evidence of the CDV, which would have been introduced through Deputy Lewis. Precluding the testimony of Deputy Lewis prejudiced Mr. Arflin. Consequently, Plaintiff is entitled to reversal of his conviction and to a new trial.

D. Exclusion of Evidence Concerning the Victim’s CDV Does Not Constitute Harmless Error.

Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict. *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. *Arnold v. State*, 309 S.C. 157, 172, *State v. Bryant*, 633 S.E.2d 152, 156 (2006) 420 S.E.2d.834, 842 (1992); *see also State v. Bryant*, 633 S.E.2d 152, 156 (2006) (an error is harmless if it did not reasonably affect the result of the trial).

In the instant matter, the evidence is clear that Mr. Arflin lived a good life. He had never been arrested. Old age and poor health had slowed him. Issues with the neighbors popped up here and there. But a minor traffic accident led to an altercation that ended in death of the Victim and prison for Bobby Joe Arflin. In a matter of seconds, Bobby Joe Arflin's life went from law-abiding citizen to murderer. The words and actions made in those few minutes demand careful review and scrutiny.

The evidence at trial showed that Mr. Arflin was a peaceable man. The same was not true for the Victim. He was arrested for and admitted to striking his former wife when the two were married. This evidence should have been admitted as rebuttal evidence when the State opened the door to character evidence of the Victim through the testimony of Mr. Madison.

As discussed above, under the law of South Carolina, when the State presented evidence through Mr. Madison's testimony that the victim had the trait of peacefulness, Mr. Arflin had the right to introduce evidence to rebut that testimony – even if the evidence would have been incompetent or irrelevant had it been offered initially. *See State v. McEachern, supra*. Therefore it was an error of law, and thus an abuse of discretion, for the trial court to exclude evidence of the CDV. Moreover, that error was not harmless.

In the face of the evidence as a whole as outlined above, exclusion of the CDV arrest reasonably affected the result of the trial. In sum, that evidence showed the younger, stronger Victim was the aggressor, and that Mr. Arflin had been physically confronted and threatened by the Victim before Mr. Arflin shot him. That evidence should have been sufficient to support Mr. Arflin's claim of self-defense. However,

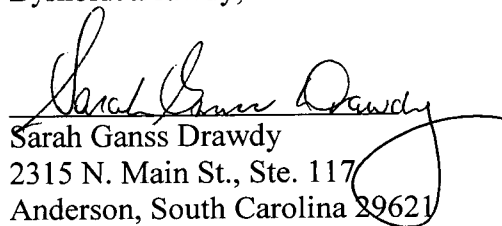
through Mr. Madison's testimony, the jury heard that the Victim would not fight – was peaceable. Therefore, it is reasonable to assume that the verdict would have been different if the jury had heard evidence about the CDV and consequently, that the Victim had the capacity to become violent when angered. The error of excluding evidence of the CDV was not harmless. The verdict, therefore, must be reversed and Mr. Arflin granted a new trial.

CONCLUSION

For the foregoing reasons, the guilty verdict on the Murder charge should be overturned and the case remanded for a new trial.

Respectfully submitted,

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