The South Carolina Court of Appeals

The State, Respondent,

v.

Nick Russell Evangelista, Appellant.

Appellate Case No. 2018-000448

The Honorable Deadre L. Jefferson
Beaufort County
Trial Court Case No. 2014GS0701787

Motion of Appellant

This Court of Appeals issued an Order dismissing this matter on March 20, 2018 and stated the grounds for the dismissal were that Appellant had not timely filed his Appeal. Appellant received that Order on March 23, 2018.

The Appellant filed his Notice of Intent to Appeal in a timely manner. Once Appellant received the Order of Dismissal, Appellant made inquiry with the administrative officers who were charged with the filing of the Notice of Intent to Appeal and all documents as directed by the Appellant's attorney. After inquiry, it appears to Appellant that there were dates referenced in the Notice of Intent to Appeal that were reflected in attached documentation which apparently did not get properly enclosed in the mailing documents by administrative staff at the Beaufort County Public Defender's Office.

As stated in his Original Notice of Intent to Appeal, Appellant was tried and convicted December 11, 2017 through December 14, 2017. Appellant was sentenced on December 14,

2017. Now comes the Appellant to state specifically and clearly without reference to attachments, Appellant's attorney at trial, Trasi Campbell, 14th Judicial Circuit Chief Defender Violent Crimes Division, filed all post-trial motions timely with the Honorable Deadre L. Jefferson. Appellant filed his Motion for New Trial and Motion for Reconsideration of Sentence and Motion for Sentencing in Accord with Parole Eligibility as directed in South Carolina Code of Laws 16-25-90 on December 15, 2017. Argument on the Motions was made via Memorandum by both the Defendant and the State. The Honorable Deadre L. Jefferson did not require nor did the Defendant or the State require hearings on the record for the purposes of the post-trial motions. The Honorable Deadre L. Jefferson filed her Order Denying Defendant's Motion for Reconsideration of Sentence on February 5, 2018. At that time, there were two (2) remaining Motions which had not been ruled on by the Court. The Honorable Deadre L. Jefferson filed her Order Denying Defendant's Motion for New Trial and her Order Denying Defendant's Motion for Parole Eligibility Sentencing Under 16-25-90 on March 5, 2018. Appellant immediately filed his Notice of Intent to Appeal in a timely manner on March 9, 2018. All post-trial Motions and Orders are attached hereto to document the timely filing of all post-trial Motions as required by law and the timely filing of Appellant's Notice of Intent to Appeal. For these grounds stated herein and by reference to the attached documents, post-trial Motions and post-trial Orders, Appellant seeks and moves this Court of Appeals to reinstate his original Notice of Intent to Appeal as being, in fact, timely made.

Appellant So Moves This Court.

Trasi Campbell
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Beaufort, SC

March 23, 2018

cc:
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Hunter Phelan Swanson, Esquire
Robert Mitchell Dudek, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Nick Russell Evangelista, Appellant.

Appellate Case No. 2018-000448

The Honorable Deadre L. Jefferson
Beaufort County
Trial Court Case No. 2014GS0701787

PROOF OF SERVICE

I certify that I have served the MOTION OF APPELLANT on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 23rd, 2018, addressed to Respondent's attorney of record, Hunter Swanson, Esq., Post Office Box 1880, Bluffton, South Carolina 29910.

I further certify that I have served the MOTION OF APPELLANT on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 23rd 2018, addressed to Alan McCrory Wilson, Esquire and John Benjamin Aplin, Esquire, Post Office Box 11549, Columbia, South Carolina 29211.

Trasi Campbell

Trasi Campbell, Esquire
14th Judicial Circuit
Chief Defender
Violent Crimes Division
Attorney for Appellant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
	)	
STATE OF SOUTH CAROLINA	)	INDICTMENT NO(S). 2014GS0701787
	)	
	)	
versus	)	
	)	NOTICE OF MOTION AND MOTION FOR
NICK EVANGELISTA,	)	NEW TRIAL PURSUANT TO RULE 29
	)	
Defendant.	)	
	)	

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
2014 DEC 15 PM 3:15

TO: HUNTER P. SWANSON, ASSISTANT SOLICITOR, 14TH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that Defendant through his undersigned counsel will move before this Honorable Court, as soon as counsel can be heard, for a new trial pursuant to South Carolina Rule of Criminal Procedure 29, on the following grounds:

1. The Court erred in finding that the Defendant was not entitled to the protections afforded to him by South Carolina law under the Protection of Persons and Property Act.
2. The Court erred in admitting the Defendant's statements to law enforcement which were taken from him in violation of the law regarding the Defendant's right to counsel, valid Miranda warnings and other matters related to the Defendant's rights under the 5th Amendment and the 6th Amendment rights.
3. The Court erred in failing to exclude evidence that was in violation of SCRE 404b and Lyle.
4. The Court erred in failing to grant Defendant's Motion for Directed Verdict.
5. The Court erred in failing to grant Defendant's Motion for a Mistrial.
6. The Court erred in denying the Defendant the full and fair and thorough presentation of evidence which was relevant and probative as to the Defendant's state of mind.
7. The evidence presented by the State of South Carolina did not support the verdict.

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Delores Green

Respectfully submitted,

Trasi Campbell
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Beaufort, South Carolina
December 15, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT NOS:
COUNTY OF BEAUFORT) 2014GS0701787

STATE OF SOUTH CAROLINA)
)
vs.)
)
NICK EVANGELISTA,)
Defendant.)
)

DEFENDANT'S MOTION FOR RECONSIDERATION OF SENTENCE AND OTHER POST TRIAL MOTIONS

JERRI ANN ROSEBEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT
2017 DEC 15 PM 1:

NOW COMES THE DEFENDANT, NICK EVANGELISTA, who hereby asks this Honorable Court to reconsider his sentence in the above captioned matter. Defendant asks to be heard further on the matter of sentencing in this matter.

Further, Defendant directs this Honorable Court to the provisions of 16-25-90, SC Code of Laws, and hereby requests that this Honorable Court conduct a hearing to fully comply with the requirements of that provision of the law. The Defendant presented evidence at trial and the Court admitted testimony at trial on the Defendant's assertion that he was a battered person at the hands of a household member. The Court accepted Dr. Lois Veronen as an expert in the field of battered persons and interpersonal violence and now the Defendant seeks the protections afforded him by 16-25-90.

Respectfully submitted,

Trasi Campbell
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Beaufort, South Carolina
12-15, 2017

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Delores Green

STATE OF SOUTH CAROLINA	)	FOURTEENTH JUDICIAL CIRCUIT
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	INDICTMENT NO.: 2014GS0701787
STATE OF SOUTH CAROLINA,	)	
	)	
versus	)	
	)	
	)	DEFENDANT'S MEMORANDUM IN SUPPORT
NICK EVANGELISTA,	)	OF REQUESTED POST TRIAL HEARING AS
Defendant.	)	REQUIRED BY SC CODE 16-25-90
	)	

The Defendant, by and through his undersigned counsel, hereby submits his Memorandum of Law in Support of his requested hearing on SC Code 16-25-90.

The Defendant was tried and convicted by a Beaufort County jury December 11 through December 14, 2017 on the above captioned indictment for Murder. The Defendant was sentenced by the Circuit Court to a term of 45 years in prison on December 14, 2017. The Defendant, after sentencing and within the time period allotted to the Defendant by Rule 29 timely filed his Motion to Reconsider Sentence and Other Post Trial Motions and his Motion for New Trial on December 15, 2017.

The Defendant specifically requests that this Honorable Court conduct a hearing in accord with the dictates of SC Code 16-25-90 as soon as this matter may be heard along with Defendant's other properly and timely filed post-trial motions. The Defendant directs this Honorable Court to the following statutory law and case law.

Pursuant to § 16-25-90,

SECTION 16-25-90. Parole eligibility as affected by evidence of domestic violence suffered at hands of householdmember.

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere 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, nolo contendere to, or was convicted of an offense against the household member, or in post- conviction proceedings pertaining to the plea or conviction, 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. This section shall not affect the provisions of Section 17-27-45.

HISTORY: 1995 Act No. 7, Part I Section 14; 1998 Act No. 401, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

Thus, a person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence, as defined in S.C.Code Ann. § 16–25–20 (2003), suffered at the hands of the household member. Such a history must be proven by a **preponderance[392 S.C. 4] of the evidence**. *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000).

The Defendant notes that mere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant is aware that the evidence presented must persuade the judge by presenting proof which leads the trier of fact to **find that the existence of the contested fact is more probable than its nonexistence**. *Id.* at 253–54, 540 S.E.2d at 101–02 (citing 2 *McCormick on Evidence* § 339 (5th ed.1999)). Moreover, use of the term "credible evidence" indicates the legislature intended the defendant's evidence to

be, in fact, trustworthy, not simply plausible. *Id.* at 253, 540 S.E.2d at 101. Thus, the Defendant herein must persuade the judge his evidence is trustworthy and reliable.

Further, the Defendant directs this Court to the standards and rulings in State v. Hawes, 411 SC 188 (2015). On appeal, the State contended the court of appeals erred in affirming the trial court because the trial court failed to exercise discretion. The South Carolina Supreme Court said, "We agree, although we see no meaningful difference in the legislature's use of the "shall be eligible" language in the prior version of the statute and the "is eligible" language in the statute in effect when Hawes killed his wife. The Hawes Court further instructed that "under either iteration of the statute, the trial court must exercise discretion based on the evidence presented, consistent with the legislature's intended reach of section 16–25–90. Here, it is apparent the trial court believed its discretion was constrained by the "shall be" language. That perceived limitation of discretion is reflected in the trial court's belief that it was "compelled" to find in favor of Hawes. The trial court further stated that the "use of the word 'shall' in the statute notes mandatory, not precatory, language so that, **if the court were to find a credible history of domestic violence suffered at the hands of the victim, the court is required to authorize application of the statute.**" In Hawes, the trial court considered the history of violence between the parties and found Hawes "has proven himself to be the recipient of a history of domestic violence by [the victim]." That finding alone, according to the trial court, mandated early parole eligibility for Hawes. The Hawes Court directed the trial judge to conduct the appropriate hearing using the correct standard of proof and

application of the statute. And, in the end, the trial judge found that the defendant in that case had presented trustworthy and credible evidence of battering and domestic violence and abuse at the hands of his victim. The Defendant in the instant case notes that Dr. Lois Veronen was the expert used by the defendant in Hawes for his hearing in accord with 16-25-90.

In sum and in support of his postion that he is entitled to the protections and rights under 16-25-90, the Defendant, in the instant case, respectfully directs this Honorable Court to the record of his case at trial and asks for the requisite hearing on that record at trial as it relates to the dictates of 16-25-90.

Specifically, in the instant case, the Defendant contends that he presented credible evidence from many different sources from which this Court could and should find that the Defendant presented credible evidence of battering and domestic violence against him at the hands of the victim in his case. First, the Defendant presented the testimony of two (2) BCSO Deputies who determined that the victim was the primary aggressor and upon investigation of the facts and circumstances surrounding their interactions with the Defendant and the victim on the occasions of the Defendant's calls to 911 for help made informed and correct decisions to arrest the victim for domestic abuse against the Defendant on two (2) separate occasions. Second, the Defendant presented the testimony of several witnesses who saw the physical evidence of the battering upon and about the face, head, and ears of the Defendant. Some of these witnesses were the recipients of an email that Defendant sent to them in 2013 detailing the battering and the abuse and the threats to his life and the lives of his children. Third, the Defendant presented the testimony of Defendant's

attorney who saw the evidence of the physical battering upon the Defendant's person. Fourth, the Defendant presented the expert testimony of Dr. Lois Veronen, an expert in the field of inter-personal violence and Battered Person Syndrome, who was qualified as an expert by the Court and testified that the Defendant was a Battered Person and suffered domestic violence at the hands of the victim and provided the Court with sufficient testimony so that the Court instructed the jury on Battered Person Syndrome. And, lastly, the Defendant presented his own testimony as to the years of battering and domestic abuse at the hands of the victim in this case along with photographic evidence of such battering and domestic abuse.

In conclusion, the Defendant seeks the protections and rights accorded to him by SC Code 16-25-90 and respectfully requests that this Honorable Court conduct a hearing on these matters at the Court's earliest convenience.

Trasi Campbell
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Beaufort, South Carolina
12/19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Case No(s): 2014-GS-07-1787
	)	
State of South Carolina,	)	
	)	
	)	**ORDER DENYING DEFENDANT'S**
v.	)	**MOTION FOR A NEW TRIAL**
	)	
	)	
Nick Evangelista,	)	
	)	
Defendant.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
State's counsel:	Hunter Swanson, Esq. & Mary Jones, Esq.
Defendant's counsel:	Trasi Campbell, Esq. & James Bell, Esq.
Date of Trial:	December 11, 2017 – December 14, 2017
Court Reporter:	Karen Andersen

THIS MATTER is before the Court on Defendant's Motion for New Trial filed with the Beaufort County Clerk of Court on December 15, 2017 and received by the Court on December 18, 2017.[1] A trial by jury was held from December 11, 2017 until December 14, 2017 at which time Defendant Nick Evangelista was found guilty of Murder in violation of S.C. Code Ann. § 16-3-10 (1976), as amended. The Court sentenced the Defendant to the South Carolina Department of Corrections for a period of forty-five (45) years.[2] The Defendant was present at trial and sentencing and represented by Trasi Campbell, Esq and James Bell, Esq. of the Public Defender's Office. Hunter Swanson, Esq. and Mary Jones, Esq. were also present on behalf of the State of South Carolina.

[1] Defendant's Motion for New Trial was timely filed and served upon the Court. See Rule 29, SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.").

[2] The offense of Murder is classified as a most serious and violent felony which carries a mandatory minimum term of imprisonment of thirty years to life pursuant to S.C. Code Ann. § 16-3-20

1 of 15

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendant moves for a new trial pursuant to South Carolina Rule of Criminal Procedure 29, which provides in relevant part:

> Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence . . . The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term . . . The motion may, in the discretion off the court, be determined on briefs filed by the parties without oral argument.

"The grant or refusal of a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of discretion." State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007); see also State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993). Defendant asserts seven, independent grounds for a new trial in his motion. The Court contemporaneously ruled on each and every one of these grounds at trial, and thus denies Defendant's Motion for a New Trial in its entirety in accordance with its previous rulings.[3] However, in an abundance of caution, the Court will address the merits of each of Defendant's arguments in the ensuing Order.

A. Protection of Persons and Property Act

The Defendant first argues that the Court erred in finding that he was not entitled to the protections afforded to him by South Carolina law under the Protection of Persons and Property Act. The Protection of Persons and Property Act provides immunity from criminal prosecution to an individual who uses deadly force against an attacker in his home or another place where he has a right to be. See S.C. Code Ann. § 16-11-440(A)-(C); § 16-11-450. However, the Act provides that deadly force may only be used if the person "reasonably believes it is necessary to prevent

[3] The Court incorporates its contemporaneous trial rulings as if stated verbatim herein.

great bodily injury to himself or another person or to prevent the commission of a violent crime." See S.C. Code Ann. § 16-11-440(C).

A claim of immunity under the Act requires a pretrial determination by the circuit court. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). The proper standard for the court to use in determining immunity is a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 709 S.E.2d 661 (2011). The person seeking immunity must show, by a preponderance of the evidence, that he was justified in the use of deadly force when he killed the victim. See State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016). In other words, the defendant must establish the elements of self-defense, save the duty to retreat, in order to prevail on a claim for immunity under the Protection of Persons and Property Act. See State v. Scott, 420 S.C. 108, 800 S.E.2d 793 (Ct. App. 2017). Absent a showing that a defendant has been attacked, a request for immunity, which would excuse the duty to retreat, must fail, and a defendant must present his evidence of self-defense to a jury. Id. at 114, 800 S.E.2d at 796.

The Court conducted a pre-trial hearing on Defendant's Motion to Bar Prosecution on December 11, 2017. At this hearing, the Defendant argued that he used deadly force to protect himself against violence, death threats, and acts of aggression by the victim on the night of the killing. Defendant contended that his use of deadly force was reasonable because the victim threatened and attacked him that night and on prior occasions. The State responded by arguing that Defendant was not justified in using deadly force against the victim as there was no evidence to suggest that the victim was exerting force or otherwise attacking the Defendant at or about the time of the killing. At the very least, the State contends that the evidence creates a factual dispute as to self-defense for the jury to determine.

The Court contemporaneously ruled on the Motion to Bar Prosecution in open court on December 11, 2017. At that time, the Court ruled the Defendant failed to meet his burden by a preponderance of proof to establish he was justified in the use of deadly force against the victim. To the contrary, the Court found the record contains no convincing evidence that deadly force was necessary as there is no evidence that the victim was armed, nor is there any evidence that the Defendant was in any imminent danger of death or serious bodily injury or of a reasonable belief that he was in was in any imminent danger of death or serious bodily injury. Moreover, the evidence indicated that the victim was naked and defenseless. The evidence also revealed that there was a disproportion between the victim and the defendant in terms of size and strength. Lastly, the Court notes that the evidence presented at the hearing, including Defendant's own testimony, created a factual dispute as to the events of August 26, 2014 that mandated determination by the jury. The Court finds no basis to alter its decision to deny the Defendant's Motion to Bar Prosecution and proceed to trial on December 11, 2017, and thus denies Defendant's Motion for a New Trial on this basis.

B. Admission of Defendant Statements to Law Enforcement - Jackson v. Denno

The Defendant then argues that the Court erred in admitting two out-of-court statements made by the Defendant to law enforcement officers. The defense made a pre-trial motion to exclude these statements at trial on the basis that they were made while Defendant was in police custody and without a valid *Miranda* warning, and, thus, involuntary.

A defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to the submission of such statements to the jury. Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774 (1964); see also State v. Fortner, 226 S.C. 223, 226–27, 222 S.E.2d 508, 510 (1976) ("[A defendant] is entitled to a reliable

determination as to the voluntariness of his confession by a tribunal other than the jury charged with deciding his guilt or innocence."). In South Carolina, the trial judge makes this initial determination of voluntariness. Fortner, 226 S.C. at 226–27, 222 S.E.2d at 510. The trial judge is required to hold an *in camera* hearing with the parties whereby it considers the following factors: (1) whether the defendant was in custody;[4] (2) whether the statements in question are incriminating, and (3) whether the statements were voluntary. See State v. Silver, 314 S.C. 483, 485, 431 S.E.2d 250, 251 (1993). The trial judge must examine the totality of circumstances surrounding the statement to determine whether admission is warranted. State v. Creech, 314 S.C. 76, 84, 441 S.E.2d 635, 639 (Ct. App. 1993).

Accordingly, the Court conducted a Jackson v. Denno hearing, on December 11, 2017 to rule on the admissibility of Defendant's statements to law enforcement. The evidence presented revealed that Defendant made two, separate statements to law enforcement officers in which he confessed to killing the victim. The first of these statements was made to Escambia County Sheriff's deputies on October 1, 2014 after the Defendant was picked up on a federal fugitive warrant in Pensacola Beach, Florida. The testimony of these deputies reveals that Defendant initiated contact by requesting to speak with officers upon arrest, and, and thereafter confessed to the crime while in the backseat of a patrol car. The second statement at issue was also made on October 1, 2014, however, this statement was made during the course of an interview with the Defendant at the Escambia County Sheriff's Office. The Defendant confessed to killing the victim, post Miranda, in this interview as well.

[4] A defendant need not show custody to be entitled to a Jackson v. Denno hearing on the voluntariness of the statement. Custody is only one factor to be considered in determining voluntariness. See State v. Silver, 314 S.C. 483, 485, 431 S.E.2d 250, 251 (1993).

At the hearing, the Defendant objected to the admissibility of both of these statements on the basis that the first statement was made during an "interrogation" where officers failed to issue a *Miranda* warning to Defendant, and that, as a result, the second statement is tainted by the original failure to give the *Miranda* warning. In response, the State contends both statements were freely and voluntarily given by the Defendant, and, are thus both admissible under South Carolina law. The State asserts the officers' had no duty to *Mirandize* the Defendant upon their initial contact. Therefore, any alleged failure was not fatal to the admissibility of the first statement. They further assert the Defendant initiated the statement of his own volition and accord absent any interrogation by the officers. The State likewise advocated for the admissibility of the second statement on the basis that it, too, was freely and voluntarily given by the Defendant, and even more significantly, was given after the Defendant was *Mirandized.* At the conclusion of the hearing, the Court took the motions and arguments of counsel under advisement.

The Court issued a ruling as to the admissibility of the first statement on December 12, 2017. In its ruling, which is incorporated by reference herein, the Court found that the first statement at issue was admissible at trial despite the absence of *Miranda* warnings to the Defendant. While the Court recognized that Defendant was in custody of law enforcement while in the patrol car, the Court found that an interrogation did not ensue. The statements were initiated by the Defendant and made at his own peril, so to speak. The evidence reveals that Defendant requested to speak with the police, initiated conversation with the deputies in the patrol car, and voluntarily offered information about the crime. The deputies did not ask Defendant specific or incriminating questions about the crime at any point in time. The deputies were therefore not required to give Defendant a *Miranda* warning. *Miranda* is only triggered when law enforcement embarks upon a course of conduct, through an interrogation or otherwise, where they seek to elicit

incriminating information about a defendant that is adverse to his interests and will be used against him. The Court also notes that while in the nature of a "confession" the Defendant's statements to police were self-serving in nature in an attempt to create a defense for his conduct.

The Court issued a ruling as to the second statement at issue on December 11, 2017. The Court held that the second statement was clearly admissible. After all, this statement was elicited by Escambia County Sheriff's deputies pursuant to a valid *Miranda* warning. Defendant gave this statement freely and voluntarily and was in possession of his mental faculties at the time of the statement. Moreover, the Court found that this second statement was in no way "tainted" by the officers' failure to issue a *Miranda* warning to Defendant before he made his first voluntary statement to law enforcement. In so ruling, the Court relied upon State v. Campbell, which provides that "an initial failure to administer *Miranda* warnings before a statement is given does not taint a subsequent statement, made after a suspect has been fully advised of and has waived his *Miranda* rights, when both statements are voluntary." 287 S.C. 377, 379, 339 S.E.2d 109, 110 (1985).

The Court stands by both of its rulings regarding the admissibility of Defendant's confessions, and incorporates its rulings, by reference, into this Order in their entirety.

C. Admission of Character Evidence under Rule 404(b)

The Defendant further contends that the Court erred by allowing the State to use the contents of Defendant's cell phone records, namely internet searches and text messages, to question Defendant during cross-examination. Defendant argues that this evidence was admitted in violation of South Carolina Rule of Evidence 404(b) and State v. Lyle.

Rule 404(b), SCRE, provides that "[e]vidence of other crimes, wrongs, acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may,

however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake, accident, or intent." That is to say, evidence of a defendant's prior crimes or other bad acts is not admissible to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan, or (5) the identity of the perpetrator. State v. Lyles, 125 S.C. 406, 118 S.E. 803 (1923). The evidence of the crime or bad act must be established by clear and convincing evidence in order to be admissible. State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009). Moreover, "[t]he bad act must logically relate to the crime with which the defendant has been charged." State v. Gillian, 360 S.C. 433, 444, 602 S.E.2d 62, 68 (Ct. App. 2004). Thus, "the trial court must gauge the logical relevancy of the evidence to the particular purpose for which it is sought to be introduced, and if the prior bad act evidence is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime." Id. Regardless of admissibility under Rule 404(b), the trial judge must nevertheless exclude the evidence if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Id. The trial judge is given wide discretion in ruling on the admissibility of character evidence under Rule 404(b). See Lyle, 379 S.C. at 338, 665 S.Ed.2d at 206.

The Defense filed a pre-trial motion to exclude the contents of Defendant's cell phone pursuant to Rule 404(b) and State v. Lyle on the basis that it would be more prejudicial than probative to admit this evidence. Defendant renewed this objection at trial when the State sought to elicit testimony from Defendant through use of his cell phone records. The State argued that the contents of the cell phone were admissible because they divulge Defendant's state of mind after the killing. The records specifically reveal that Defendant searched the internet for female escorts in Pensacola

Beach, Florida shortly after the killing, and that he exchanged text messages and even met up with one of these escorts. The State also argued that admission of the cell phone records was proper under Rule 404(b) because the records demonstrate Defendant's intent and motive for killing the victim. While the State did not seek to admit the records themselves, it did ask the Court to allow for cross-examination based on information contained in the records.

Upon careful and deliberate consideration of the arguments of counsel and the applicable law, the Court ruled as to the admissibility of the cell phone evidence on December 13, 2017. Pursuant to the Court's ruling, the State was permitted to utilize very limited portions of information contained in the cell phone records to cross-examine the Defendant. The Court recognized that it was necessary for the State to refer to information contained in the cell phone records in order to elicit testimony about the Defendant's state of mind at the time of the killing, especially since Defendant testified that he was a domestic abuse victim who was verbally and physically abused by the victim on direct examination. Because Defendant "opened the door" on direct, the Court found that the State was entitled to introduce contemporaneous evidence directly refuting statements made by Defendant as to his state of mind. The cell phone records do just that; indeed, these records reveal that Defendant sought the companionship of female escorts online and even made arrangements to meet an escort in person after the killing, despite testifying that he was bereft and suicidal. In so ruling, the Court noted that Rule 404(b) was not applicable to its decision because the State did not plan to elicit testimony about Defendant's purported "crimes" or "bad acts" referenced in the records, namely the solicitation of prescription drugs without a prescription. The Court's decision to allow cross-examination on the cell phone records was limited in scope and based solely on the State impeaching the Defendant's testimony where he put his state of mind in issue. The Court further ruled that since credibility was a central issue the probative value of the

evidence was not outweighed by any potential for prejudice. The Court stands by this decision and incorporates its ruling on the record as if stated verbatim herein.

D. Directed Verdict

The Defendant asserts that the Court erred in denying the defense's motion for a directed verdict. At the close of the State's case-in-chief on December 13, 2017, the Defendant made a Motion for Directed Verdict on the grounds that the State failed to meet its burden of proof as to the cause and manner of death of the victim due to lack of medical evidence. Defendant claimed that the conclusions and findings contained in the victim's preliminary and final autopsy reports are not medically sound because they are based solely on the Defendant's statement to law enforcement that he had placed bubble wrap over the victim's face and smothered her. The Defendant's contend that the medical examiner, Dr. Nick Batalis, was unable to determine a cause of death until after he spoke to law enforcement officers, and learned that Defendant had confessed to smothering the victim. The State, however, disputed this interpretation of the medical evidence, and instead argued that the medical examiner's determination as to mode and manner of death was made after consideration of all of the evidence available to him, including the confessions and the physical evidence at the crime scene. The medical examiner ultimately concluded that the victim had died as a result of smothering and that the manner of death was, therefore, homicide. The victim's body was in the early stages of decomposition during the autopsy; the medical examiner was nevertheless able to note the presence of bruises, abrasions, scrapes and scars on the victim's body.

Rule 19 of the South Carolina Rules of Criminal Procedure governs the issuance of directed verdicts at criminal trials. It states that the court, on its own motion or on that of the defendant, shall direct a verdict in the defendant's favor on any offense charged in the indictment after the

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evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. Rule 19, SCRCrimP. Upon a motion for directed verdict, the trial court is concerned with the existence of the evidence and not its weight. State v. Wakefield, 323 S.C. 189, 197, 473 S.E.2d 831, 835 (Ct. App. 1996). "This evidence is viewed in the light most favorable to the State to determine whether there is any evidence, either direct or circumstantial which reasonably tends to prove the guilt of the accused, or from which guilt may be fairly and logically deduced." State v. Pippin, 359 S.C. 322, 328, 597 S.E.2d 831, 834 (Ct. App. 2004) citing State v. Creech, 314 S.C. 76, 83, 441 S.E.2d 635, 638 (Ct. App. 1993). It is the duty of the trial judge to submit the case to the jury when there is any substantial evidence, either direct or circumstantial, which reasonably tends to prove the defendant's guilt. Id. at 329, 597 S.E.2d at 834. The trial judge should, however, grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." Id.

The Court subsequently denied the Motion for a Directed Verdict after hearing arguments from the parties on December 13, 2017. The Court found that there was ample evidence, both direct and circumstantial, that the Defendant committed the unlawful killing of the victim with malice aforethought. The Defendant admitted to smothering the victim with bubble wrap in two different statements to law enforcement, and these statements are corroborated by the physical evidence at the scene as well as the testimony of the medical examiner, Dr. Nick Batalis. At this stage of trial the Court is concerned with the existence or non-existence of evidence and not its weight. The Court is not the finder of fact. The direct and substantial circumstantial evidence presented by the State reasonably tends to prove the Defendant's guilt, and, as such, this case must

be decided by the jury. See Pippin, 359 S.C. at 328, 597 S.E.2d at 834. The Court, thus, stands by its decision to allow this matter to proceed to the jury, and incorporates its justifications for doing so, made on the record, into the instant Order.[5]

E. Mistrial

The Defense likewise contends that the trial court erred in denying the defense's motion for a mistrial. The Defendant moved for a mistrial on December 12, 2017 after the State's witness, Officer James Frydryhowicz, testified that he and another officer conducted a traffic stop on Defendant's vehicle in Pensacola, Florida in October of 2014, and that he was aware that Defendant had "some other history" at the time of the stop. Defendant argued that the Officer's reference to "some other history" improperly alluded to Defendant being under investigation for other pending criminal matters. The State objected to Defendant's request for a mistrial on the basis that the witness did not characterize Defendant's history as criminal in nature during his testimony.

"The grant or denial of a motion for mistrial lies within the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion." City of Columbia v. Wilson, 324 S.C. 459, 464, 478 S.E.2d 88, 90 (Ct. App. 1996). The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes stated into the record by the trial judge. State v. Thompson, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003). The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect cannot be removed by a curative instruction or other like methods. See State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). "A mistrial should only be granted when absolutely necessary, and a defendant

[5] The Defendant renewed its Motion for Directed Verdict at the close of his case-in-chief on December 14, 2017. The Court incorporated its previous ruling of December 13, 2017, and denied Defendant's renewed Motion for Directed Verdict on December 14, 2017 finding there was both direct and substantial circumstantial evidence reasonably tending to prove the Defendant's guilt.

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must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002).The burden is on the movant to demonstrate error and resulting prejudice in order to justify a mistrial. Id.

The Court denied the Defendant's Motion for a Mistrial on December 12, 2017, upon concluding that the witness's statement regarding Defendant's history was benign. The statement did not make reference to Defendant having a prior criminal history nor did it make reference to Defendant's character, and, as such, was not prejudicial to the Defendant. In the most liberal light the statement made reference to the Defendant's outstanding warrant for which he was picked up on in Florida. However, in an abundance of caution, the Court gave the jury a curative instruction to disregard the last question and witness's answer and to give the question and response absolutely no consideration during their deliberations. This directive by the Court was sufficient to ensure that the Defendant was not prejudiced by the witness's answer. Indeed, "a curative instruction to disregard incompetent evidence and not consider it during deliberation is deemed to have cured any alleged error in its admission." State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005). Because the Court's curative instruction cured any error regarding improper testimony by Officer Frydryhowicz, the Court stands by its decision to deny the Defendant's Motion for Mistrial.

F. Admission of Evidence as to Defendant's State of Mind

The Defense then argues that he is entitled to a new trial because "the Court erred in denying the Defendant the full and fair and thorough presentation of evidence which was relevant and probative as to the Defendant's state of mind." This basis for a new trial lacks sufficient specificity to warrant a response. The Defendant fails to identify specific testimony or evidence which he believes was erroneously excluded by the Court in his Motion for a New Trial. The Court cannot

respond appropriately to vague, generalized grounds, nor can the Court entertain vague grounds as the basis for a new trial. The Court would essentially have to comb through a week-long trial record for each and every reference to state of mind, of which there were many which may or may not have been preserved for review, in order to adequately address Defendant's argument. To ask the Court to perform this arduous task without a good faith basis is inappropriate and a waste of judicial resources. Nevertheless, in an abundance of caution, the Court incorporates each and every one of its trial rulings as to state of mind into this Order as if stated verbatim herein.

G. Evidence Does Not Support the Verdict

Lastly, the Defendant argues that the evidence presented by the State of South Carolina does not support the verdict. The jury in this case issued a verdict of Guilty on the charge of Murder on December 14, 2017. Defendant contests this verdict in the instant Motion for New Trial. In criminal cases, such as this one, a motion for new trial is the only post-trial motion available for a defendant to challenge the verdict. See State v. Follin, 352 S.C. 235, 258, 573 S.E.2d 812, 824 (Ct. App. 2002) ("In criminal matters, a motion for a new trial is the only available post-trial motion addressing the sufficiency of the evidence"); see also State v. Taylor, 348 S.C. 152, 158, 558 S.E.2d 917, 919 (Ct. App. 2001) ("A motion for judgment notwithstanding the verdict is not recognized in this state."). "It is well-settled that the grant or refusal of a new trial is within the sound discretion of the trial judge." State v. Simmons, 279 S.C. 165, 303 S.E.2d 857 (1983). The Court may grant a new trial where there is no evidence to support a conviction. See State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993) (citation omitted). "However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." Prince, 316 S.C. at 63, 447 S.E.2d at 181.

The Court, in its discretion, hereby denies Defendant's Motion for a New Trial on the basis that the evidence presented by the State clearly supports the jury's verdict of guilty. There was ample direct and substantial circumstantial evidence presented at trial that the Defendant committed an unlawful killing with malice aforethought. Defendant admitted to killing the victim under oath during his direct examination at trial. Defendant also admitted to smothering the victim with bubble wrap in two different statements to law enforcement. Defendant further confessed to killing the victim in his personal journal where he wrote "I took the life of a good and beautiful person." Physical evidence found at the scene, including the victim's decomposing body and the murder weapon with the victim's DNA, corroborate the Defendant's statements. It was therefore reasonable, given this evidence including any evidence of self-defense, for the jury to convict the Defendant of Murder.

CONCLUSION

Having fully considered the Defendant's Motion for a New Trial, the State's response, and the record as well as the South Carolina Rules of Evidence and pertinent South Carolina case law, the Court respectfully **DENIES** the Defendant's Motion for a New Trial.[6]

IT IS SO ORDERED!

Hon. Deadra L. Jefferson

February 27, 2018
Charleston, South Carolina
At Chambers

[6] This motion has been determined on briefs filed by the parties without oral argument, pursuant to SCRCrimP, Rule 29(a).

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Case No(s): 2014-GS-07-1787
	)	
State of South Carolina,	)	
	)	
	)	**ORDER DENYING DEFENDANT'S**
v.	)	**REQUEST FOR PAROLE ELIGIBILTY**
	)	
	)	
Nick Evangelista,	)	
	)	
Defendant.	)	

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BEAUFORT COUNTY, SC
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
State's counsel:	Hunter Swanson, Esq.
	Mary Jones, Esq.
Defendant's counsel:	Trasi Campbell, Esq.
	James Bell, Esq.
Date of Trial:	December 11, 2017 – December 14, 2017
Court Reporter:	Karen Andersen

THIS MATTER is before the Court on Defendant's Motion for Parole Eligibility filed with the Beaufort County Clerk of Court on December 15, 2017 and received by the Court on December 18, 2017.[1] Defendant initially came before the Court on December 11, 2017 for a trial on the charge of Murder. The Defendant was present for the entirety of the trial and represented by Trasi Campbell, Esq. and James Bell, Esq. Hunter Swanson, Esq. and Mary Jones, Esq. appeared on behalf of the State of South Carolina.

PROCEDURAL HISTORY

The case proceeded to a jury trial from December 11, 2017 to December 14, 2017 at the Beaufort County Courthouse in Beaufort, South Carolina. On December 14, 2017, the jury found

[1] Defendant's motion was timely filed and served upon the Court. See Rule 29, SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.").

the Defendant guilty of Murder. The penalty for the crime of Murder in South Carolina is either death or a mandatory minimum term of imprisonment for thirty years to life, without parole. See S.C. Code Ann. §16-3-20. In accordance with South Carolina law, the Court sentenced the Defendant to confinement in the South Carolina Department of Corrections for a period of forty-five (45) years with credit for time served to be calculated and applied by the Department of Corrections pursuant to S.C. Code Ann. §24-13-40.

Subsequently, the Defendant filed this post-trial motion requesting a hearing as to Defendant's parole eligibility pursuant to S.C. Code Ann. §16-25-90. The State filed a Memorandum in Opposition to Defendant's request for a parole eligibility hearing on December 21, 2017. On January 2, 2017 the Court conducted a phone conference with Hunter Swanson, Esq. and Trasi Campbell, Esq. regarding Defendant's request for a post-trial hearing. Counsel informed the Court that a post-trial hearing was unnecessary as the evidence relevant to Defendant's parole eligibility was fully presented at trial and is, thus, a part of the record. As a result the parties consented to the Court rendering its decision as to the Defendant's parole eligibility based upon the evidence in the record, the parties written memoranda and applicable precedent pursuant to S.C. Code Ann. §16-25-90.

LAW

S.C. Code Ann. § 16-25-90 states that "an inmate who was convicted of, or pled guilty or nolo contendere 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, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings related to the plea or conviction, presented credible evidence of a history of criminal domestic violence,

as provided in Section 16-25-20,[2] suffered at the hands of a household member." A defendant who relies upon Section 16-25-90 must prove a history of domestic violence from the victim by a preponderance of the evidence in order to be eligible for statutory early parole. See State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 102 (2000). In other words, "mere production of evidence does not automatically result in earlier parole eligibility; the defendant must instead persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence." See State v. Blackwell-Selim, 392 S.C. 1, 3, 707 S.E.2d 426, 428 (2011). Therefore, the use of the term "credible evidence" in the statute indicates that the legislature intended the defendant's evidence to be trustworthy, not simply plausible. Id. "The defendant must persuade the judge that [his] evidence is reliable." Id. The judge must, in turn, make specific findings of fact as to why the Defendant is or not is eligible for parole. See id. at 4, 707 S.E.2d at 428.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendant, Nick Evangelista, seeks early parole pursuant to S.C. Code Ann. § 16-25-90 contending he presented credible evidence at trial of domestic violence against him by the victim who was his live-in girlfriend. In support thereof, the Defendant argues that he personally presented evidence of the physical and verbal abuse he sustained from the victim during his testimony at trial. Defendant contends that his testimony is corroborated by the testimony of the following defense witnesses: (1) Dr. Lois Veronen, an expert in the field of battered person syndrome; (2) Dudley Ruffalo, Esq., a criminal defense attorney who previously represented Defendant on a charge of Criminal Domestic Violence; (3) Deputy Eric Ricker, an officer with the

[2] Section 16-25-20 of the South Carolina Code of Laws states: "[i]t is unlawful to: (1) cause physical harm or injury to person's own household member; (2) offer or attempt to cause physical harm of injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril."

Beaufort County Sheriff's Office who responded to a domestic violence call at Defendant's residence on July 4, 2013; (4) Deputy Adam Paul with Berkeley County Sheriff's Office who responded to a domestic violence call at Defendant's residence on March 1, 2014; (5) Sara Louise Cotter, a former co-worker of Defendant at Optim Healthcare; (6) Julie Bhuiyan, a former co-worker of Defendant at Optim Healthcare; and (7) Mike Malvassio, a personal friend of the Defendant. In response, the State argues that the Defendant is not entitled to parole eligibility because he did not present credible evidence at trial that he was the victim of domestic abuse at the hands of the victim. The State maintains that the evidence presented by Defendant is not credible because the Defendant himself is not credible as is demonstrated by his self-serving testimony at trial as well as the numerous false statements he made to law enforcement, co-workers, and friends prior to and during the course of this pending litigation.

It is, thus, the duty of the Court to evaluate the evidence presented by both parties and determine whether the Defendant has credibly proven that his version of events was more likely than not. See Grooms, 343 S.C. at 253, 540 S.E.2d at 102. In discharging this duty, the Court finds that the Defendant has failed to prove, by a preponderance of the evidence, that he suffered a history of criminal domestic violence at the hands of the victim. This decision by the Court is based on the credibility, believability, bias, interest, and prejudice of the witnesses who testified at trial regarding the alleged criminal domestic violence.

The credibility of the Defendant carries the most weight in this case as the Defendant was the only witness to any alleged criminal domestic violence between himself and the victim. In that regard this Court finds that the Defendant lacks veracity and is not a particularly credible or trustworthy witness given his propensity for dishonesty and contradiction. It was revealed at trial that Defendant made several contradictory and false statements to law enforcement officers,

colleagues, and friends prior to and during the pendency of this litigation. For example, during cross-examination, Defendant testified that he initially told officers that he placed bubble wrap over the victim's face because he wanted her to stop breathing, but that on another occasion he told officers that he smothered the victim with bubble wrap because he wanted her to stop talking and screaming lest she disturb the neighbors. In another instance, Defendant admitted to fabricating a family health emergency to explain his absence from work to his colleagues after he killed the victim and fled the state. And, in perhaps the most significant and telling contradiction of all, Defendant testified at trial that he loved the victim and wanted to care for her, yet in the same breath admitted to violently killing the victim by smothering her with bubble wrap, abandoning her naked body, and fleeing to Florida in her car.

This testimony completely erodes the Defendant's credibility, which is significant because the bulk of the evidence regarding "criminal domestic violence" was introduced by and through the Defendant's own testimony or incidents he relayed to others. In fact, Defendant, by his own admission, was the only witness present during any alleged incidents of domestic violence between the Defendant and the victim. Any testimony given by Defendant on the subject is inherently self-serving because it bolsters Defendant's claim that he acted in his own defense against his perception of imminent death or serious bodily injury on the night he killed the victim. It is ultimately biased, and, thus, cannot alone be considered dispositive of whether Defendant suffered criminal domestic violence at the hands of the victim.

However, no other witness proffered by the State or Defense testified to having personally observed the victim abusing or battering the Defendant. The testimony provided by co-workers, acquaintances, and even police officers as to the alleged abuse suffered by Defendant is all based on second-hand information received from the Defendant, and, is thus, self-serving hearsay. The

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testimony of Defendant's expert, Dr. Veronen, is likewise unreliable as she, too, acquired the majority of her information about the relationship between the victim and the Defendant from the Defendant himself, without input from the victim.

Defendant failed to present any evidence that the minor injuries he sustained were caused by the victim. While Defendant testified that he sustained injuries to his neck, face, forearm, and right ear during the violent attacks by victim, there were no eyewitnesses to these purported attacks. Furthermore, those persons who observed and/or interacted with the Defendant following these "attacks" noted only minor scrapes and scratches on Defendant's neck and face. The only information made available to these witnesses about the injuries was provided by the Defendant. The Defendant also failed to present any medical evidence to substantiate or document his accounts of being hit, scratched, and beaten by the victim, which, also calls into question the credibility of his claim that he suffered extensive physical harm at the hands of the victim.

Considering the totality of evidence presented at trial and discussed herein, the Court hereby concludes that the Defendant is not eligible for early parole pursuant to S.C. Code Ann. § 16-25-90. Section 16-25-90 requires the Defendant to present "credible evidence of a history of criminal domestic violence suffered at the hands of a household member." The evidence presented by Defendant at trial lacked veracity and was not credible and certainly did not prove that the Defendant suffered a history of criminal domestic violence at the hands of the victim by a preponderance of the evidence. To the contrary, the evidence introduced at trial actually indicates that the Defendant was the principal aggressor in a volatile and tumultuous relationship between the victim and Defendant. At best, the parties lived in a co-dependent verbal and physical mutually combative relationship fueled by their addictions. As such, Defendant is not entitled to the

protections and rights afforded to a battered household member with a history of domestic violence pursuant to S.C. Code Ann. § 16-25-90.

CONCLUSION

Having fully considered the Defendant's motion, the State's response, and the record as well as applicable South Carolina law, the Court respectfully **DENIES** the Defendant's Motion for Parole Eligibility.[3]

IT IS SO ORDERED!

Hon. Deadra L. Jefferson
Judge

February 26, 2018
Charleston, South Carolina
At Chambers

[3] This motion has been determined on briefs filed by the parties without oral argument, pursuant to SCRCrimP, Rule 29(a), and by agreement of the parties.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Case No(s): 2014-GS-07-1787
	)	
State of South Carolina,	)	
	)	
	)	**ORDER DENYING DEFENDANT'S**
v.	)	**MOTION FOR RECONSIDERATION**
	)	**OF SENTENCE**
	)	
Nick Evangelista,	)	
	)	
Defendant.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
State's counsel:	Hunter Swanson, Esq. & Mary Jones
Defendant's counsel:	Trasi Campbell, Esq. & James Bell
Date of Trial :	December 11, 2017 – December 14, 2017
Court Reporter:	Karen Andersen

THIS MATTER is before the Court on Defendant's Motion for Reconsideration of Sentence, filed with the Beaufort County Clerk of Court on December 15, 2017 and received by the Court on December 18, 2017.[1] Defendant initially came before the Court for a trial by jury on the charge of Murder on December 11, 2017. The case proceeded to trial from December 11, 2017 to December 14, 2017. Present at the trial were Hunter Swanson, Esq. and Mary Jones, Esq. on behalf of the State of South Carolina and Trasi Campbell, Esq. and James Bell, Esq. on behalf of the Defendant.

On December 14, 2017, the jury found Defendant guilty of Murder. Following the publication of the verdict, the Court conducted a sentencing hearing during which the Defendant was given the opportunity to present any mitigation. The Defendant's father made a statement on his behalf at that time. The State and the victim's children also made statements to the Court

[1] Defendant's Motion for Reconsideration of Sentence was timely filed and served upon the Court. See Rule 29, SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.").

regarding sentencing. After carefully considering the arguments of counsel, the victim impact statements, and the evidence presented at both the sentencing and trial, the Court sentenced the Defendant to confinement for a period of forty-five (45) years with credit for time served to be calculated and applied by the Department of Corrections pursuant to SC Code Ann. §24-15-30.

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." Hicks, 377 S.C. at 325, 659 S.E.2d at 500. The South Carolina Supreme Court has held, "it is proper for the trial judge, in open court, in the presence of the defendant, to inquire into any relevant facts in aggravation or mitigation of punishment," notably, "the fullest information possible concerning the defendant's life and characteristics." State v. Cantrell, 250 S.C. 376, 379–80, 158 S.E.2d 189, 191 (1967) (citing Williams v. People of State of New York, 337 U.S. 241, 69 S. Ct. 1079 (1949)).

This Court finds that the Defendant has outlined no sound reason for this Court to alter its sentence. The Defendant's Motion raises no new issues, nor proffers any arguments not considered by the court at the Defendant's sentencing. Having fully considered the Defendant's Motion for Reconsideration, the evidence presented at the hearing, as well as having fully reviewed the record and the various interests balanced by the Court at the time of the ruling, the Defendant's Motion for Reconsideration of Sentence is hereby **DENIED** pursuant to Rule 29, SCRCrimP.[2]

IT IS SO ORDERED.

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[2] This motion is disposed of without the necessity of a hearing and decided on the record and briefs and motions submitted by the parties. See Rule 29, SCRCrimP.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

January 29, 2018
Charleston, South Carolina
At Chambers

Office of the Public Defender
Fourteenth Judicial Circuit
Stephanie Smart-Gittings, Circuit Defender

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March 23, 2018

CERTIFIED MAIL
RETURN RECIEPT REQUESTED

Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: **MOTION OF APPELLANT**
State of South Carolina vs. Nick Evangelista
Appellate Case No. 2018-000448
Case No. 2014-GS-07-1787

Dear Sir/Madam:

Enclosed please find the Motion of Appellant and Certificate of Service regarding the above-referenced matter.

If you require anything further, please contact me.

Sincerely,

Trasi Campbell

Trasi Campbell, Esquire
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Enclosures
cc:
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Hunter Phelan Swanson, Esquire
Robert Mitchell Dudek, Esquire