

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED

Jun 19 2020

S.C. SUPREME COURT

BOBBY JOE ARFLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001801

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 18-27, 2015	1
FINAL BRIEF OF APPELLANT	1018
FINAL BRIEF OF RESPONDENT	1044
<u>STATE V. ARFLIN</u> , 2017-UP-303 (S.C. CT. APP. FILED JULY 26, 2017).....	1068
REMITTITUR	1070
APPLICATION FOR POST-CONVICTION RELIEF	1071
RETURN.....	1078
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 12, 2019.....	1086
ORDER OF DISMISSAL.....	1125
INDICTMENTS	1139
SENTENCE SHEETS	1147

1 MS. WHITE: No, sir. I would like to make sure.
2 I think the end of it ends with, It's got to be proven
3 beyond a reasonable doubt anyway, but I would like for
4 that to be as part of that charge.

5 THE COURT: All right. Let me turn back to it
6 here.

7 MS. WHITE: I think it might be --

8 THE COURT: It's in there. Yes. It's in there.
9 It's at the beginning that it has to be disproven,
10 self-defense, by proof beyond a reasonable doubt.

11 So if you will get our jury.

12 (WHEREUPON, the jury entered open court at
13 4:43 p.m.)

14 THE COURT: All right. Ladies and gentlemen, I
15 have received your question regarding the law of
16 self-defense, and what I'm going to do is give you the
17 self-defense charge again and we'll proceed from there.

18 The defendant has raised the defense of
19 self-defense. Self-defense is a complete defense, and
20 if it is established, you must find the defendant not
21 guilty. The State has the burden of disproving
22 self-defense by proof beyond a reasonable doubt. If
23 you have a reasonable doubt of the defendant's guilt
24 after considering all of the evidence including the
25 evidence of self-defense, then you must find the

1 defendant not guilty. On the other hand, if you have
2 no reasonable doubt of the defendant's guilt after
3 considering all the evidence including the evidence of
4 self-defense, then you must find the defendant guilty.

5 The following elements are required to establish
6 self-defense: First, the defendant must be without
7 fault in bringing on the difficulty. If the
8 defendant's conduct was the type which was reasonably
9 calculated to and did provoke a deadly assault, the
10 defendant would be at fault in bringing on the
11 difficulty and would not be entitled to an acquittal
12 based on self-defense.

13 The second element of self-defense is that the
14 defendant was actually in imminent danger of death or
15 serious bodily injury or that the defendant actually
16 believed he was in imminent danger of death or serious
17 bodily injury. If the defendant was actually in
18 imminent danger, it must be shown that the
19 circumstances would have warranted a person of ordinary
20 firmness and courage to strike the fatal blow to
21 prevent death or serious bodily injury. If the
22 defendant believed he was in imminent danger of death
23 or serious bodily injury, it must be shown that a
24 reasonably prudent person of ordinary firmness and
25 courage would have had the same belief.

1 In deciding whether the defendant actually was or
2 believed he was in imminent danger of death or serious
3 bodily injury, you should consider all the facts and
4 circumstances surrounding the crime including the
5 physical condition and characteristics of the defendant
6 and the victim. The defendant does not to have show
7 that he actually was in danger. It is enough if the
8 defendant believed he was in imminent danger and a
9 reasonably prudent person of ordinary firmness and
10 courage would have had the same belief.

11 The defendant has the right to act on appearances,
12 even though the defendant's beliefs may have been
13 mistaken. It is for you to decide whether the
14 defendant's fear of immediate danger of death or
15 serious bodily injury was reasonable and would have
16 been felt by an ordinary person in the same situation.

17 Words accompanied by hostile acts may, depending
18 on the circumstances, establish self-defense. The
19 relative sizes, ages and weights of the defendant and
20 the victim may be considered in deciding the apparent
21 or actual need for force in self-defense and the amount
22 of force needed. Threats made by the victim may be
23 considered in determining whether the defendant
24 actually was or believed he was in imminent danger.

25 The final element under self-defense is that the

1 defendant had no other probable way to avoid danger of
2 death or serious bodily injury than to act as the
3 defendant did in this particular instance. The
4 defendant had no duty to retreat if by doing so the
5 danger of being killed or suffering a serious bodily
6 injury would increase.

7 Once the right to fire in self-defense arises, a
8 person is not required to wait until his adversary is
9 on equal terms in order to defend himself. He is not
10 required to risk serious injury. A person does not
11 have to wait until his assailant gets the drop on him.
12 He has the right to act under the law of
13 self-preservation and prevent his assailant from
14 getting the drop on him. The relative sizes, ages,
15 weights, health, number of potential adversaries,
16 lighting conditions and prior difficulties of the
17 defendant and victim may be considered in deciding the
18 apparent or actual need for force in self-defense and
19 the amount of force needed.

20 So those are the charges on self-defense. Now,
21 ladies and gentlemen, I'm going to ask you to return to
22 the jury room.

23 We can mark this question as a Court's exhibit.

24 (WHEREUPON, the jury exited open court at

25 4:48 p.m.)

1 THE COURT: Anything from the State?

2 THE COURT: Nothing from the State.

3 THE COURT: Anything from the defense?

4 MS. WHITE: No, sir.

5 THE COURT: All right. We will go back into
6 recess.

7 (Court in recess, pending verdict, from
8 4:49 p.m. until 4:59 p.m.)

9 THE COURT: All right. We have had another
10 question from the jury. And the question is: Can we
11 listen to Roy Lawrence, Exhibit Number 88.

12 So the jury has asked to rehear Exhibit 88, and my
13 inclination is just to bring them back in and replay
14 the tape.

15 THE CLERK: I have been informed, your Honor, by
16 the solicitor's office, if it please the Court, that I
17 can take the computer back to them. It has been
18 disabled from the Internet and I can take it. But
19 whatever you choose to do is fine with me.

20 THE COURT: It can be played in the jury room?

21 THE CLERK: Yes, sir. It won't have the speakers,
22 but it will have the speaker out of the actual --

23 MS. PRICE: Well, we can actually send those back
24 as well.

25 THE COURT: Okay. Well, if we have the technical

1 capability for them to listen to it in the jury room.

2 I don't like the evidence being separated, in other
3 words, having an exhibit out here. I want the evidence
4 to stay together.

5 Mr. Clerk, if you can do that and they can listen
6 to it in the jury room, I would prefer the evidence to
7 stay together.

8 THE CLERK: I'll go give it the college try and
9 see if I can get it.

10 THE COURT: Ms. White, if you would like to look
11 at the computer.

12 MS. WHITE: I was going to stand up and say are we
13 sure there's nothing from this case on there or I
14 mean --

15 THE COURT: You need to inspect the computer.

16 MS. WHITE: That gives me way too much whatever
17 because I don't know how to inspect a computer,
18 honestly. Computer illiterate is probably more my
19 speed.

20 MS. PRICE: Your Honor, our case management system
21 is now Internet based, and we have disabled the
22 Internet, so there's no way they could access anything.

23 THE COURT: Is there anything else on the
24 computer?

25 MS. PRICE: No, sir. I have all that material

1 myself.

2 THE COURT: Let me see the screen of the computer.

3 All right. It looks like there are some PDF files
4 saved on here, and out of an abundance of caution, I
5 don't want them looking at anything other than the
6 evidence in this case. Just bring them out here and
7 we'll let them listen to it out here.

8 MS. WHITE: I think it's like five or ten minutes.

9 THE COURT: I don't think it's that long either.
10 I don't like the evidence being separated, but there
11 are some saved files on that computer.

12 Ready to go?

13 Mr. Bailiff, you can bring our jury back.

14 (WHEREUPON, the jury entered open court at
15 5:11 p.m.)

16 THE COURT: All right. Ladies and gentlemen, I
17 have received your request to hear State's Exhibit
18 Number 88 replayed, so we have the computer set up and
19 they will replay that for you now.

20 (WHEREUPON, State's Exhibit 88 is being played
21 for the jury.

22 THE COURT: Ladies and gentlemen, I'm going to --

23 JURY FOREMAN: I have a question related to the
24 forms, and I was instructed to ask you, I guess.

25 THE COURT: Mr. Foreman, I'll allow you to ask the

1 question since both attorneys are here.

2 JURY FOREMAN: The indictment charges, are they
3 required to be filled out on the rear as far as the
4 guilty, not guilty?

5 THE COURT: Whatever your decision is. And you,
6 as Foreman, will sign the back of the indictment.

7 JURY FOREMAN: Sign these okay.

8 THE COURT: Based on what y'all decide.

9 JURY FOREMAN: As well as the other form?

10 THE COURT: Yes. Take that exhibit back with the
11 rest of them.

12 (WHEREUPON, the jury exited open court at
13 5:20 p.m.)

14 THE COURT: Anything from the State before we go
15 back into recess?

16 MS. PRICE: No, sir.

17 THE COURT: Anything from the defense?

18 MS. WHITE: No, sir.

19 THE CLERK: I do have a laptop that was issued to
20 me when we redid the computers downstairs that has
21 never been hooked up to anything. It doesn't have --

22 THE COURT: Well, isn't that the trend now, the
23 new courthouses, they have a player in the jury room to
24 avoid this kind of issue?

25 THE CLERK: Yes, sir.

State of South Carolina vs. Bobby Joe Arflin 2014-GS-04-00426; 2014-GS-04-00340-342
Verdict

1009ⁱ

1 THE COURT: So that might be -- that might be a
2 good investment to set that up.

3 THE CLERK: That will be my first thing Monday.
4 (Court in recess, pending verdict, from
5 5:21 p.m. until 5:34 p.m.)

6 THE COURT: I have been informed that we have a
7 verdict. So, Mr. Bailiff, if you will get our jury.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, the jury entered open court at
10 5:35 p.m.).

11 THE COURT: All right. Mr. Foreman, has the jury
12 reached a verdict?

13 JURY FOREMAN: Yes, your Honor.

14 THE COURT: Would you please hand that verdict to
15 the bailiff.

16 Let me see it.

17 Would you publish the verdict.

18 THE CLERK: If it please the Court. This is in
19 the Court of General Sessions, the State of South
20 Carolina, County of Anderson, Indictment Number
21 2014-GS-04-00426, 2015-GS-04-00340, 2015-GS-04-00341,
22 and 2015-GS-04-00342: This is the case of the State of
23 South Carolina versus Bobby Joe Arflin, defendant.
24 This is the verdict form.

25 As to Indictment Number 2014-GS-04-00426, murder,

1 we, the jury, unanimously find on Indictment Number
2 2014-GS-04-00426 that the defendant, Bobby Joe Arflin,
3 is guilty of murder.

4 Indictment Number 2014-GS-04-00426, possession of
5 a weapon during the commission of a violent crime, to
6 find the defendant guilty of possession of a weapon
7 during the commission of a violent crime, the defendant
8 must be found guilty of murder. We, the jury,
9 unanimously find on the Indictment Number
10 2014-GS-04-00426 that the defendant, Bobby Joe Arflin,
11 is guilty of possession of a weapon during the
12 commission of a violent crime.

13 Under Indictment Number 2015-GS-04-00340
14 solicitation, solicitation to commit a felony, we, the
15 jury, unanimously find on Indictment Number
16 2015-GS-04-00340 that the defendant, Bobby Joe Arflin,
17 is guilty of solicitation, solicitation to commit a
18 felony.

19 Indictment number 2015-GS-04-00341, solicitation,
20 solicitation to commit a felony, we, the jury,
21 unanimously find on indictment number 2015-GS-04-00341,
22 that the defendant, Bobby Joe Arflin, is guilty of
23 solicitation or solicitation to commit a felony.

24 Under Indictment Number 2015-GS-04-00342,
25 solicitation, solicitation to commit a felony, we, the

State of South Carolina vs. Bobby Joe Arflin 2014-GS-04-00426; 2014-GS-04-00340-342
Verdict

1011

1 jury, unanimously find on Indictment Number
2 2015-GS-04-00342 that the defendant, Bobby Joe Arflin,
3 is guilty of solicitation, solicitation to commit a
4 felony.

5 This is signed by the foreperson in Anderson,
6 South Carolina, dated today, August the 27th, 2015.

7 Members of the jury, if this is your verdict in
8 the jury room and now here in the courtroom, may I ask
9 you that you raise your hand.

10 Your Honor, all hands are raised.

11 THE COURT: Okay. Anything further from the jury
12 for the State?

13 MS. PRICE: No, sir, your Honor.

14 THE COURT: Anything from the defense?

15 MS. WHITE: Your Honor, I'd just ask for
16 individual polling.

17 THE COURT: Okay. Mr. Clerk.

18 THE CLERK: Ladies and gentlemen, I'm going to ask
19 that you tell us how you voted. I'm going to use your
20 jury number. If you don't remember your number, then
21 let me know and I can give you some assistance.

22 Juror Number 7.

23 JUROR NO. 7: Guilty. Guilty on all counts.

24 THE CLERK: Juror Number 32.

25 JUROR NO. 32: Guilty on all counts.

1 THE CLERK: Thank you.

2 Juror Number 34.

3 JUROR NO. 34: Guilty on all counts.

4 THE CLERK: Juror Number 68.

5 JUROR NO. 68: Guilty on all counts.

6 THE CLERK: Juror Number 70.

7 JUROR NO. 70: Guilty on all counts.

8 THE CLERK: Juror Number 71.

9 JUROR NO. 71: Guilty on all counts.

10 THE COURT: Juror Number 73.

11 JUROR NO. 73: Guilty on all counts.

12 THE CLERK: Juror Number 100.

13 JUROR NO. 100: Guilty on all counts.

14 THE CLERK: Juror Number 105.

15 JUROR NO. 105: Guilty on all counts.

16 THE CLERK: Juror Number 119.

17 JUROR NO 119: Guilty on all counts.

18 THE CLERK: And Juror 147.

19 JUROR NO. 147: Guilty on all counts.

20 THE CLERK: Your Honor, that's the 12 jurors.

21 THE COURT: Ladies and gentlemen, thank you for
22 your service. I'm going to have the bailiff take you
23 to the jury room one more time, and then you will be
24 dismissed from there. So very briefly, Mr. Bailiff.

25 MS. PRICE: Your Honor, may it please the Court.

1 THE CLERK: I did miss one. I'm sorry, your
2 Honor.

3 Juror 108.

4 JUROR NO. 108: Guilty on all counts.

5 THE CLERK: I apologize.

6 THE COURT: Thank you. Thank you for catching
7 that before I sent them out.

8 You can take the jury to the jury room.

9 (WHEREUPON, the jury exited open court at
10 5:41 p.m.)

11 THE COURT: Ms. Price and Ms. White, we'll let
12 them get out the door.

13 I understand you may have a number of people that
14 wish to say something at sentencing, so I'm going to
15 give you about five minutes to gather your thoughts and
16 what you'd like to present for sentencing. And we'll
17 be in recess for just a brief period and I'll be right
18 back and then we'll resume the sentencing.

19 MS. PRICE: Yes, sir.

20 (WHEREUPON, recess taken from 5:42 p.m.
21 to 5:49 p.m.).

22 THE COURT: We will begin.

23 Ms. Price, I'm going to allow the State to go
24 first, anyone that wishes to speak for sentencing
25 purposes, and then, Ms. White, I'll hear from you and

1 anyone you wish to present on your side.

2 MS. PRICE: Your Honor, may it please the Court.
3 The family of the victim is present and has been
4 present throughout the trial, but they do not wish to
5 be heard on sentencing.

6 THE COURT: All right. Thank you. What's the
7 State's position? Do you have anything?

8 MS. PRICE: Your Honor, the State's position is
9 life. This is a situation where this individual has
10 just been convicted of all of the counts that were
11 against him where he attempted to kidnap three
12 witnesses and committed murder.

13 With regard to any time period other than the life
14 sentence for murder, the maximum. And I believe law
15 enforcement, Detective Brent Simpson, who is the lead
16 investigator on this case, joins me in asking for the
17 maximum.

18 THE COURT: Thank you.

19 Ms. White.

20 MS. WHITE: Yes, sir. Your Honor, I think you
21 pretty much heard a whole lot in this case about
22 education and everything else. Let me just see, does
23 anybody from Bobby's family want to address the judge
24 at all? No? Okay.

25 Your Honor, they do not. I think you've heard

1 pretty much the basics about Mr. Arflin.

2 THE COURT: Does your client wish to say anything?

3 MS. WHITE: Your Honor, because of filing an
4 appeal, I have advised him not to speak at this time.

5 THE COURT: Okay.

6 Is there any prior record?

7 MS. PRICE: No, sir, your Honor.

8 THE COURT: What's the code section on the
9 solicitation for felony.

10 MS. PRICE: One moment, your Honor. It's actually
11 common law. It carries ten years.

12 THE COURT: Okay. All right. That's what I
13 thought, but I wanted to just verify.

14 MS. PRICE: Yes, sir.

15 THE COURT: Ms. White, you agree with that, that
16 it's --

17 MS. WHITE: Yes, sir.

18 THE COURT: This has been a long week in that we
19 have heard a story, a very tragic, tragic event.
20 There's no other way to describe this. I see two
21 families -- I see two families that have been here all
22 week, and they are permanently affected by what
23 happened on that evening. A young life was just taken
24 away and another life is permanently affected as well.

25 If there's nothing further, on 2014-GS-04-046,

1 defendant was convicted of murder. He will be confined
2 to the Department of Corrections for a term of
3 30 years.

4 On -- then on the same indictment, the possession
5 of a weapon during a violent crime charge, he will be
6 confined to the Department of Corrections for a term of
7 five years concurrent..

8 2014-GS-04-0340, defendant would be confined to
9 the Department of Corrections for a term of ten years
10 consecutive.

11 2015-GS-04-00341, be confined to the Department of
12 Corrections for a term of ten years concurrent.

13 And 2015-GS-04-00342, ten years concurrent.

14 That will adjourn our case. Good luck to you.

15 MS. WHITE: Thank you, Judge.

16 (WHEREUPON, the trial ended at 5:57 p.m.)

17 ***END OF REQUESTED TRANSCRIPT OF RECORD***
18
19
20
21
22
23
24
25

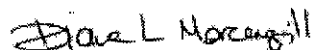
1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Anderson County, South
10 Carolina, on the 27th day of August 2015.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 November 25, 2015

16 

17 _____
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
In the 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

Sarah Ganss Drawdy
Attorney for Appellant
2315 N. Main St., Ste.117
Anderson, SC 29621
(864) 261-3977

RECEIVED

DEC 19 2016

SC Court of Appeals

Table of Contents and Cases

Statement of Issue on Appeal.....	p. 3
Statement of the Case	p. 4
Statement of Facts.....	p. 5
Standard of Review.....	p. 12
Argument	p. 12
Conclusion	p. 25

Cases

<i>Arnold v. State</i> , 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992).....	p. 22
<i>State v. Baccus</i> , 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).....	p. 12
<i>State v. Bryant</i> , 633 S.E.2d 152, 156 (2006).....	p.22
<i>State v. Day</i> , 535 S.E. 2d 431 (2000).....	pp. 15, 23
<i>State v. Douglas</i> , 632 S.E.2d 845 (2004).....	p. 12
<i>State v. Jackson</i> , 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005).....	p. 16
<i>State v. McEachern</i> , 731 S.E.2d 604, 609 (Ct. App. 2012).....	pp. 12, 16, 23
<i>State v. Mizzell</i> , 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002).....	p. 22
<i>State v. Morris</i> , 656 S.E.2d 359, 368 (2008).....	p. 12
<i>State v. Quattlebaum</i> , 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000).....	p. 12
<i>State v. Rochester</i> , 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990).....	p. 12
<i>State v. Sherard</i> , 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).....	p. 22
<i>State v. Wilson</i> , 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).....	p. 12

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 [REDACTED] 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 Williamses 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. Aflin] 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. Aflin 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. Aflin 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,

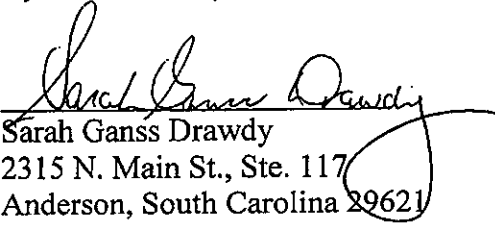
through Mr. Madison's testimony, the jury heard that the Victim would not fight – was peaceable. Therefore, it is reasonable to assume that the verdict would have been different if the jury had heard evidence about the CDV and consequently, that the Victim had the capacity to become violent when angered. 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,

Byrholdt Drawdy, LLC


Sarah Ganss Drawdy
2315 N. Main St., Ste. 117
Anderson, South Carolina 29621

Phone: (864) 261-3977

Fax: (864) 261-3978

Attorney for the Appellant

Bobby Joe Arflin

December 14, 2016

ORIGINAL

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Anderson County
R. Scott Sprouse, Circuit Court Judge

RECEIVED

DEC 20 2016

SC Court of Appeals

THE STATE,

Respondent,

v.

BOBBY JOE ARFLIN,

Appellant.

Appellate Case No. 2015-001900

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

CHRISTINA THEOS ADAMS
Solicitor, Tenth Judicial Circuit
P.O. Box 8002
Anderson, South Carolina 29622
(843) 915-5460

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL.....	1
RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT	
I.	
The trial court did not err in excluding evidence of the victim's prior arrest.....	11
Introduction.....	11
How the Issue Was Raised.....	11
Analysis.....	14
Standard of Review.....	14
Victim's Prior Arrest Not Relevant.....	15
Harmless Error.....	17
CONCLUSION.....	20
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases

<i>State v. Adcock</i> , 194 S.C. 234, 9 S.E.2d 730 (1940).....	15
<i>State v. Baccus</i> , 367 S.C. 41, 625 S.E.2d 216 (2006)	15
<i>State v. Day</i> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	17
<i>State v. Douglas</i> , 369 S.C. 424, 632 S.E.2d 845 (2006).....	15
<i>State v. Jackson</i> , 364 S.C. 329, 613 S.E.2d 374 (2005).....	15
<i>State v. Jennings</i> , 394 S.C. 473, 716 S.E.2d 91 (2011)	15
<i>State v. Langley</i> , 334 S.C. 643, 515 S.E.2d 98 (1999).....	16
<i>State v. Livingston</i> , 282 S.C. 1, 317 S.E.2d 129 (1984).....	18
<i>State v. Mitchell</i> , 286 S.C. 572, 336 S.E.2d 150 (1985)	18, 19
<i>State v. Page</i> , 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008).....	15
<i>State v. White</i> , 361 S.C. 407, 605 S.E.2d 540 (2004)	15, 16

Rules

Rule 401, SCORE.....	15
Rule 402, SCORE.....	15
Rule 404, SCORE.....	16, 17

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

- I. 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.

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

- I. Whether the trial court abused its discretion in excluding evidence of the victim's prior arrest where the arrest was not relevant, and the State did not open the door to the evidence but was presenting rebuttal evidence of the victim's good character after appellant first attacked the victim's character.

STATEMENT OF THE CASE

An Anderson County Grand Jury indicted appellant, Bobby Joe Arflin, for murder, possession of a weapon during the commission of a violent crime, and three counts of solicitation of a felony, specifically kidnapping. (R.pp.1-2; pp.9-10; pp.14-15; pp.19-20). Appellant proceeded to a jury trial on August 24, 2015 and was represented by Druanne Dykes White, Esquire, and Ashlea Morgan White, Esquire. (R.p.169). Lauren Davis Price, Esquire, and Catherine Townsend Huey, Esquire, of the Tenth Circuit Solicitor's Office represented the State. (R.pp.168-69).

The jury found appellant guilty of all charges on August 27, 2015. (R.p.1017, line 25-p.1019, line 6). The Honorable R. Scott Sprouse sentenced appellant to thirty (30) years' imprisonment for murder, a consecutive ten (10) years' imprisonment for one of the solicitation charges, and concurrent terms of five (5) years' imprisonment for the weapons charge and twenty (20) years' imprisonment for the remaining two solicitation charges. (R.p.1023, line 25-p.1024, line 13).

This appeal follows.

STATEMENT OF FACTS

On the evening of December 11, 2013, the deadly sound of gunfire tragically interrupted a young girl's birthday party in Anderson County. The victim, Jody Powell (Powell), was at the party for his girlfriend's eleven-year-old niece when appellant hit his pick-up truck. (R.p.264, lines 4-22; p.265, lines 4-7; p.387, line 12-p.388, line 19). The victim was inside with a group of adults when a child told them about the accident. (R.p.266, lines 17-23). James Madison (Madison) went outside first and saw appellant, who was also driving a pick-up, next to the vehicles, and spotted damage to the victim's truck, including a missing side mirror and caved-in front bumper. (R.p.267, lines 7-13; p.268, lines 2-23; p.268, line 24-p.269, line 7). The victim walked out, and both he and Madison walked to the trucks and saw appellant on the phone with 911 to report the accident. (R.p.270, lines 19-22, p.271, lines 10-25; p.349, line 23-p.350, line 7).

The victim asked appellant why he hit his truck and appellant told him it was in his way as he tried to drive down the street to his home.¹ (R.p.274, lines 14-22). Madison testified neither appellant nor the victim was acting aggressively; however, after the victim told appellant that although he had never met him, he had heard a lot about him, including that appellant was heartless, appellant "got up in [the victim's] face" and replied "he wasn't heartless, he was ruthless." (R.p.275, lines 6-25). The victim pushed appellant on his chest to get him to back away from him, appellant took a step back, and Madison testified appellant said, "I got something for you, big boy," pulled out a gun from behind his back, and fired a shot. (R.p.276,

¹ Appellant lived near the dead-end of Williamson Drive, which witnesses described as narrow, with ditches on both sides. (R.p.262, lines 15-23; p.376, line 21-p.377, line 12). However, measurements taken by law enforcement demonstrated the road was wide enough for both trucks to clear each other without bumping mirrors or touching in any way, and drivers could utilize the grassy shoulders that lined both sides of the road as well. (R.p.628, line 21-p.629, line 1; p.648, lines 10-19).

lines 9-18; p.277, lines 4-14). Madison stated the victim did not have a weapon and, when the victim saw the gun, he raised his hands. (R.p.277, lines 17-21). Madison testified appellant followed the victim as he ran away, and Madison saw the victim fall face down in a ditch and appellant shoot him again. (R.p.279, lines 7-13; p.279, line 20-p.280, line 3).

Madison ran inside the house to tell his wife to call 911.² (R.p.280, lines 12-20). After going back outside, Madison testified he saw the victim's girlfriend, Brenda Masters (Masters), in the ditch with the victim, begging appellant to, "Please, stop shooting." (R.p.280, lines 21-24; p.281, line 18-p.282, line 2). As Madison and Masters tried to save the victim, appellant moved his truck and waited for police. (R.p.282, lines 3-24; p.383, lines 9-18). Madison testified the victim never threatened appellant. (R.p.285, line 24-p.286, line 4).

Masters corroborated much of Madison's testimony. Masters testified she went outside prior to the shooting and heard the victim tell appellant he understood why appellant might have hit the truck's mirror, but could not understand why he backed up and hit it again. (R.p.350, line 23-p.351, line 2). Masters testified she saw appellant and the victim "in each other's faces" with their voices raised "a little," but stated the victim did not have a weapon and did not threaten appellant. (R.p.350, lines 18-22; p.353, lines 10-17). Masters testified she tried to calm the situation because law enforcement was on the way and she urged the men to let the sheriff's office handle it. (R.p.274, lines 3-13; p.351, line 20-p.352, line 4).

Masters testified the victim pushed appellant a little to get him out of his face, but the push was not even hard enough to cause appellant to fall back, then appellant told the victim, "I've got something for you, boy." (R.p.352, lines 14-24; p.353, lines 5-9; p.364, line 19).

² Tonya Williamson (Williamson) testified she was already on the phone with 911 to report the initial accident when she saw appellant shoot the victim, as it was dark outside and the flash from the muzzle lit up appellant's face. (R.p.392, lines 2-24). Williamson stated she heard a second shot as she ran toward the back of the house. (R.p.395, lines 10-22).

Masters stated appellant pulled out a gun, the victim put his hands up, "and then it just all happened so fast. He just shot." (R.p.353, lines 20-22). Masters testified she momentarily lost sight of the victim so she did not see him get shot the second time, but she heard him say, "Oh, my God. Oh, my God, I'm going to die." (R.p.353, line 24-p.355, line 4). The victim fell and started convulsing and Masters dropped to her knees in the ditch to figure out where the victim was shot. (R.p.355, lines 7-12). Masters testified appellant had followed the victim away from the trucks and was standing over him, with the gun pointed at him. (R.p.355, lines 15-25). Masters begged appellant "please, to stop shooting, don't shoot anymore." (R.p.356, lines 1-3). As Madison previously testified, appellant walked away to move his truck while Masters and Madison tried to save the victim. (R.p.356, line 15-p.357, line 3).

The victim was pronounced dead at the hospital. (R.p.448, lines 18-21). An autopsy later determined appellant shot the victim once in the shoulder and once in the back, near his hip. (R.p.651, line 20-p.652, line 2; p.652, line 24-p.653, line 2). The bullet severed an artery in the victim's shoulder; however, the pathologist testified the victim could have survived that wound with medical treatment. (R.p.653, lines 3-21; p.654, lines 5-10). The pathologist stated the wound to the victim's hip was fatal—the bullet entered the victim's hip and traveled through his body, tearing through a kidney, the liver, and a lung before exiting near the victim's arm pit. (R.p.654, line 11-p.655, line 2; p.659, lines 7-12). The pathologist corroborated earlier eyewitness testimony when he testified the gunshot wound to the hip came from behind, possibly as the victim was lying face down. (R.p.660, line 13-p.661, line 18).

Many of the first deputies to arrive at the shooting scene saw the victim in the ditch as his friends tried to save him. (R.p.415, line 2-16; p.433, lines 17-23; p.442, lines 12-25). Deputy Shane Chandler (Chandler) was the first one to respond and testified the victim was not moving

when he arrived. (R.p.413, lines 13-15; p.414, line 20-p.415, line 16). Chandler asked the witnesses who shot the victim and they pointed toward appellant, who was standing by his truck. (R.p.415, lines 17-22). Chandler approached appellant and told him to put his hands up, and asked him if he was the shooter and appellant told him that he was. (R.p.415, line 23-p.416, line 8). Chandler handcuffed appellant and placed him in a patrol car. (R.p.416, lines 9-13; p.421, lines 14-21). Another deputy arrived at the scene shortly thereafter and asked where the gun was and appellant told him it was on the hood of his truck. (R.p.417, lines 5-11; p.443, line 18-p.444, line 1).

A search of appellant's truck revealed twelve bullets and two spent casings for a Smith and Wesson .41 caliber magnum revolver. (R.p.541, lines 17-22). The spent casings were found on the driver's seat. (R.p.543, lines 5-11). Moreover, a check of the gun by forensic investigators showed appellant had reloaded it, so that it contained six bullets. (R.p.576, lines 8-11; p.596, line 24-p.597, line 7). Investigators who searched the victim's truck found a closed pocketknife in the console, mixed in with a lot of other items such as tools and glue. (R.p.525, line 7-p.526, line 3; p.527, 13-24; p.528, lines 11-18). Additionally, forensic investigators noted two bullet holes in the victim's truck, as well as damage to both pick-ups from the initial accident. (R.p.465, line 2-p.467, line 1; p.547, lines 16-22).

While investigators processed the scene, appellant was taken to the Anderson County law enforcement center. (R.p.422, lines 1-6). Appellant did not have any visible injuries from the deadly incident, such as bruising, to corroborate his statements to law enforcement that the victim punched him, but appellant reported multiple pre-existing medication conditions when he was booked into the detention center. (R.p.470, lines 17-19; p.472, lines 19-23, p.473, lines 8-10). Those conditions included a hernia, high cholesterol, mood issues, and a prior incidence of

"head cancer."³ (R.p.530, line 19-p.531, line 6; p.533, lines 22-23). Subsequently, appellant was charged with murder and possession of a weapon during the commission of a violent crime. (R.pp.5-8).

While appellant was in jail awaiting trial, he talked to his cellmate, Roy Lawrence (Lawrence), about the case against him, and told Lawrence "[h]e ran into somebody's car or vehicle and it 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." (R.p.736, lines 3-12; p.738, lines 2-10). Lawrence was in jail on a pending charge of criminal sexual conduct with a minor. (R.p.752, line 24-p.753, line 1). Lawrence testified appellant told him there were eyewitnesses to the shooting, but there would be a mistrial if the witnesses disappeared. (R.p.738, line 25-p.739, line 3). Lawrence stated appellant asked him to kidnap three specific witnesses once he was released on bond. (R.p.739, lines 14-20; p.742, lines 18-22). In return, appellant promised to give Lawrence some land. (R.p.741, line 22-p.742, line 2).

Appellant drew a map of the witnesses' homes and showed Lawrence how to get inside them. (R.p.738, lines 18-23; p.739, lines 5-7). The homes belonged to James Madison, Brenda Masters, and Larry Williamson.⁴ (R.p.741, lines 10-14). Once Lawrence was released, he told his brother-in-law, who was a state constable, about appellant's plan, and his brother-in-law told him he would contact someone in law enforcement. (R.p.743, lines 4-17). Lawrence testified an investigator arrived at his house, he told him about the plan, and gave him the list of names and map appellant drew. (R.p.743, lines 18-25; p.744, lines 21-25; p.778, line 20-p.779, line 1).

³ During his testimony at trial, appellant stated he also suffered from diabetes, arthritis, kidney disease, and neuropathy, or numbness, in both legs. (R.p.857, line 22-p.858, line 8).

⁴ Larry Williamson was not at the party, did not witness the murder, and did not testify at trial. (R.Vol.1.pp.ii-iv; Vol.2.pp.i-iii; p.810, line 19-p.811, line 4).

Sergeant Robert Gebing (Gebing) with the Anderson County Sheriff's Office verified appellant wrote the document, verified the locations of the witnesses' homes, and that appellant owned the land promised to Lawrence. (R.p.775, lines 23-24; p.780, line 15-p.781, line 1; p.783, line 5-p.784, line 1; p.794, line 11-p.798, line 11). Gebing testified he told Lawrence to contact him if he heard anything further from appellant about carrying through with the plan. (R.p.800, lines 6-14).

A few days later, appellant called Lawrence from jail and they spoke again about the plan. (R.p.745, lines 1-8; p.745, line 25-p.746, line 16). Lawrence testified he lied to appellant and told him he had "scoped it all out," but that one of the witnesses was not home so appellant told Lawrence to "hold off" for a week. (R.p.747, lines 1-8). Appellant told Lawrence he would write him a letter with further instructions; however, Lawrence mistakenly gave appellant the wrong zip code and Lawrence never received a letter. (R.p.747, lines 15-20). The phone call was recorded and played for the jury at trial. (R.p.748, line 10-p.749, line 13). Gebing testified the phone call corroborated the information Lawrence gave him, leading to three counts of solicitation of a felony. (R.pp.12-13; pp.17-18; pp.22-23; p.802, line 23-p.803, line 7).

After the State rested its case, the defense called three witnesses. Sheila Arflin (Sheila), appellant's wife, testified she was at home on the night of the murder when appellant called her, upset. (R.p.826, lines 10-11; p.833, lines 19-24). Sheila stated appellant told her he was trying to get home when he hit the victim's truck, and the victim yelled at him and hit him on the jaw. (R.p.833, line 25-p.834, line 5). Sheila testified appellant admitted to her that he shot the victim. (R.p.834, lines 6-7). Sheila further acknowledged that a deputy asked her if appellant had any problems and she responded that appellant "just gets something on his nerves so bad sometimes." (R.p.843, line 23-p.844, line 5). Appellant's brother, Bobby Arflin (Bobby), testified appellant

also called him and told him he accidentally hit a truck, and appellant later overheard someone say, "I'm going to knock the piss out of you." (R.p.846, lines 1-5; p.848, lines 2-8). Bobby stated he believed, from his conversation with his brother, that appellant felt like he was in danger. (R.p.849, lines 20-25).

Appellant also testified at trial, continuing to advance his assertion that he acted in self-defense on the night he shot the victim twice. Appellant stated he was returning home after running errands when he saw the victim's truck in the road and thought he could get around it. (R.p.860, line 2-p.861, line 12; p.862, lines 4-25). As appellant tried to drive past, he heard something hit his truck and, because he did not want to cause any problems with his neighbors, he testified he backed up, but felt another bump. (R.p.863, line 3-p.864, line 22). Before he got out of his truck, appellant grabbed his cell phone and gun, putting the gun in the waistband of his pants, behind his back. (R.p.865, lines 20-24).

Appellant called 911 to report the accident and testified he heard the victim and Madison murmuring they were going to "kick [his] ass." (R.p.865, line 25-p.866, line 25; p.869, lines 8-11). Appellant stated the 911 operator asked him if anyone was hurt and appellant responded, "Not yet." (R.p.869, lines 12-15). Appellant testified he saw the victim rummage around in his truck but could not tell what he grabbed. (R.p.870, lines 4-23).

Appellant testified the victim acted aggressively and became more agitated as he tried to explain how the accident happened. (R.p.871, lines 10-19; p.872, line 9-20; p.874, lines 2-5). Appellant told the jury he tried to walk away from the victim, but the victim hit him in the jaw. (R.p.875, line 23-p.876, line 18). However, on cross-examination, appellant admitted he told the staff at the detention center that he did not have any recent injuries to his jaw. (R.p.903, lines 10-25). Appellant testified everything happened "so fast" after the victim hit him. (R.p.878,

lines 17-23). While appellant stated he did not remember firing his gun twice, he acknowledged he must have because investigators found two spent casings. (R.p.880, lines 1-6; p.881, line 4-6). Appellant further testified he was not aware the victim had been shot and stated, when Masters begged him to stop shooting, he told her, "Tell him to stay away from me." (R.p.882, lines 15-23). Appellant also admitted he laid the two spent casings on the front seat of his truck and that he put two more rounds in the revolver while he waited for law enforcement. (R.p.883, line 23-p.884, line 1; p.884, lines 12-20).

As for the plot to kidnap three witnesses to prevent the trial from taking place, appellant testified he never told his cellmate to commit the crimes. (R.p.890, lines 2-4). Appellant admitted he drew the map, but stated he never gave it to Lawrence and simply used it to illustrate where his property was in relation to the shooting scene. (R.p.890, line 24-p.891, line 4; p.892, line 22-p.893, line 15). Appellant testified he was surprised when Lawrence brought up kidnapping the witnesses during the phone call and, despite the evidence previously admitted in the form of the recorded call, appellant stated he tried to change the subject and he never sent Lawrence a letter.⁵ (R.p.895, line 21-p.896, line 7; p.897, lines 7-9).

⁵ As noted above, the call was played for the jury. (R.p.748, line 10-p.749, line 13). In addition to telling Lawrence to wait a week before kidnapping the witnesses, appellant also told him he would pay to "stash[] them away". (R.p.747, lines 1-8; p.899, line 17-p.900, line 1).

ARGUMENT

I.

The trial court did not err in excluding evidence of the victim's arrest in 2009 for criminal domestic violence because it involved someone other than appellant, was too remote, and was not relevant. Further, the exclusion was harmless error where the charge did not show any propensity for violence.

Introduction

The trial court did not abuse its discretion in excluding evidence of the victim's arrest in 2009 for criminal domestic violence (CDV) involving his wife because the evidence was not relevant and inadmissible. The State did not open the door to the arrest by presenting evidence of the victim's good character during re-direct examination of a witness when asking if he had ever seen the victim fight someone. Instead, the State was presenting rebuttal evidence of the victim's good character after appellant first attacked his character and alleged the victim was the primary aggressor. Any error excluding the remote evidence of the dismissed CDV charge was harmless beyond a reasonable doubt because the record shows the exclusion had minimal impact on the verdict.

How the Issue Was Raised

Prior to trial, the State made a motion to exclude evidence of the victim's prior arrest for CDV in 2009. (R.p.94, lines 17-20). The State argued a victim's reputation for violence is only admissible if the violence was directed at the defendant or, if directed at others, must be "so closely connected at the point in time" with the homicide to reasonably indicate the victim's state of mind at the time or to "produce a reasonable apprehension of great bodily harm." (R.p.95, lines 4-13). The State maintained the prior arrest was inadmissible because it was too remote as it occurred four years before the murder and involved the victim's ex-wife. (R.p.95, line 14-p.96,

line 2; p.108, lines 2-4). The State asserted the arrest was not relevant or probative of the victim's propensity for violence at the time of his death. (R.p.96, lines 2-3).

Appellant proffered the testimony of the victim's ex-wife and the deputy who arrested Powell. Deputy Brian Lewis (Lewis) responded to the incident on July 18, 2009 and stated Kerri Powell (Kerri) told him she and her husband⁶ argued over a bill. (R.p.96, lines 20-23; p.97, lines 1-4; p.97, lines 20-25). The couple kept fighting as Kerri collected her belongings, and Powell slapped her. (R.p.98, lines 3-14). Kerri left, went to a friend's house, and called 911. (R.p.98, lines 15-17). Lewis testified Powell admitted he hit Kerri when asked about the incident. (R.p.98, lines 17-23).

Kerri testified she and Powell slapped each other during the argument. (R.p.100, lines 16-20; p.101, lines 3-12). Kerri admitted she told Lewis that Powell hit her, but stated the shock was worse than the physical pain because it was out of character for Powell and he had never done anything like that during their fifteen-year marriage. (R.p.101, lines 15-25; p.106, lines 7-12). Moreover, Kerri testified she and Powell had a good relationship following their divorce, talking regularly and spending occasional holidays together. (R.p.105, lines 10-18).

The trial court initially excluded evidence of the dismissed CDV charge, finding "it was a mutual combat situation." (R.p.108, lines 9-13).

During direct examination, the State questioned James Madison (Madison) at length about the events leading up to the deadly shooting. The State elicited specific details about what Madison witnessed that night and never asked him about the victim's past or his character, including whether the victim had a reputation for either violence or peacefulness. (R.pp.262-300).

⁶ Kerri and the victim divorced in 2012. (R.p.104, line 23-p.105, line 1).

During cross-examination, however, defense counsel advanced the assertion that appellant acted in self-defense and the victim was the primary aggressor. Specifically, counsel asked Madison if he was aware of appellant's various medical conditions, if he recalled telling law enforcement the victim "confronted" appellant, and further asked if Madison agreed "when it's dark and when someone is filching through their truck and they come out with a dark object and they're threatening to harm you that you might not be able to see it very well to tell what it is," indicating appellant thought the victim retrieved a weapon. (R.p.311, lines 20-23; p.312, lines 4-7; p.313, lines 18-25; p.319, line 22-p.320, line 16). Counsel asked Madison if he was aware a pocketknife was found in the console of the victim's truck, to which Madison responded, "No, ma'am." (R.p.324, lines 18-20; p.525, lines 11-13). The following exchange then occurred:

Q: But you and [the victim], when there was murmuring about kicking [appellant's] ass, you were looking around in that area of his truck in the dark; is that correct?

A: No, ma'am.

Q: Were you all looking for the knife?

A: I didn't know [the victim] had a knife.

(R.p.324, line 21-p.325, line 1). On re-direct, to rebut evidence that the victim was the primary aggressor, the State elicited from Madison that no one said anything about beating up appellant, and the only time the victim reached into his truck was to retrieve his cell phone. (R.p.328, line 24-p.329, line 14). The State asked Madison:

Q: Did you ever see [the victim] fight someone?

A: No, ma'am.

Q: Until he died, did you ever see him fight someone?

A: No, ma'am.

(R.p.328, lines 20-23). Following a brief re-cross, in which defense counsel asked Madison about statements he made during a 911 call, counsel asked for a bench conference. (R.p.330, line 19-p.332, line 7).

Subsequently, the trial court excused the jury and defense counsel argued the State opened the door to evidence of the victim's prior CDV arrest when the solicitor asked Madison if he had ever seen the victim in a fight. (R.p.332, line 8-p.333, line 15). Counsel asserted she was entitled to rebut the testimony that the victim did not have a violent past. (R.p.334, lines 15-23). The State maintained the testimony from Madison was elicited during re-direct and in response to defense counsel's questions regarding whether the victim and Madison "were threatening to kick [appellant's] ass" and the State did not open an additional door, but was reacting to something defense counsel brought up during her cross-examination of Madison. (R.p.335, line 20-p.336, line 2).

The trial court ruled evidence of the victim's prior arrest was inadmissible, noted defense counsel's objection, but allowed counsel to proffer testimony from Madison regarding the CDV charge. (R.p.336, lines 5-15). When asked during the proffer, Madison stated he knew the victim was previously married to Kerri Powell, but he was not aware of the victim's arrest in 2009 for CDV, had not talked to the victim about the incident, and had not heard about it. (R.p.336, line 18-p.337, line 4).

Analysis

Standard of Review

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb such a ruling upon a showing of a "manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429,

632 S.E.2d 845, 847-48 (2006). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *see also State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (holding appellate courts review errors of law only and are bound by the trial court's factual determinations unless they are clearly erroneous).

Whether counsel opens the door to the admission of otherwise inadmissible evidence during trial, as with other evidentiary matters, is left to the sound discretion of the trial court. *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008) (citing *State v. Adcock*, 194 S.C. 234, 234, 9 S.E.2d 730, 732 (1940)); *see also State v. White*, 361 S.C. 407, 415-16, 605 S.E.2d 540, 544 (2004) (holding otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence). "When a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." *State v. Jackson*, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005).

Victim's Prior Arrest Not Relevant

Ordinarily, all relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE. Evidence of a person's character is generally not relevant and not admissible to prove conduct, except:

Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

Rule 404(a)(2), SCRE. More specifically, the State cannot offer evidence of the victim's good character because it is not relevant to the issue of a defendant's guilt, unless the defendant first attacks the victim's character. *Id.*; see also *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 100 n.3 (1999) (holding testimony from the sister of a murder victim about their family, how the victim got the nickname "Bunny," and that the victim played drums in the high school band was not relevant to issue of defendant's guilt in a murder prosecution because the defendant did not first attack the victim's character).

Here, the trial court did not abuse its discretion in excluding evidence of the victim's prior CDV arrest because the evidence was not relevant and inadmissible. The record shows the State did not question James Madison (Madison) about the victim's character during direct examination and did not open the door to that type of reputation testimony. See Rule 404(a) (providing that character evidence is generally inadmissible); *White*, 361 S.C. at 415-16, 605 S.E.2d at 544 (stating opposing counsel may open the door to admit otherwise impermissible evidence by its questions). The State confined its questions to specific details that Madison witnessed on the night of the homicide. However, once defense counsel attacked the victim's character during cross-examination and asserted he was the primary aggressor, the State was entitled to rebut that testimony during re-direct with evidence of the victim's peacefulness. See Rule 404(a)(2) (providing that the prosecution is entitled to offer evidence of the victim's peacefulness to rebut evidence by the defendant in a murder case that the victim as the primary aggressor). Accordingly, the testimony from Madison on re-direct that he had never seen the victim in a fight did not open the door to evidence of the victim's prior CDV arrest, but was simply rebuttal evidence and admissible under Rule 404(a)(2). See *Langley*, 334 S.C. at 648, 515 S.E.2d at 100 n.3 (citing Rule 404(a)) (noting that the State can offer evidence of the

victim's good character after the defendant first attacks that character).

Additionally, and as the trial court ruled during the pre-trial hearing, the victim's prior charge was not relevant because it was too remote to allow for its admission. *See State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000) (holding, where a defendant argues self-defense, a victim's reputation for violence, if directed at someone other than the defendant, is only admissible where it is "so closely connected at the point of time or occasion with the homicide to reasonably indicate" the victim's state of mind). The arrest at issue here happened more than four years before the victim's death and there was no evidence to show appellant was aware of the incident. Appellant could have no "reasonable apprehension of great bodily harm" when he was not even aware of the victim's alleged violent past, especially where there was evidence presented that the CDV incident was out of character for the victim. *See id.* (holding, in addition to being closely connected in time to the homicide, the previous violent incident on the part of the victim must also "produce reasonable apprehension of great bodily harm," if it does not reasonably indicate the victim's state of mind at the time).

For all of the above reasons, the evidence of the victim's prior arrest was not relevant, its exclusion did not prejudice appellant, and the State did not open the door to the evidence by its rebuttal evidence during re-direct examination of Madison. Therefore, the trial court did not abuse its discretion in excluding the evidence.

Harmless Error

If the Court were to find the trial court abused its discretion in excluding the victim's prior arrest, the error was harmless. To warrant reversal based on the exclusion of evidence, an appellant must prove both the error and that there is a reasonable probability the wrongly excluded evidence influenced jury's verdict. *See State v. Livingston*, 282 S.C. 1, 6, 317 S.E.2d

129, 132 (1984) ("[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result."). Whether an error is harmless depends on the circumstances of the particular case. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. *Id.*

Here, an examination of the record shows any error in excluding the victim's prior CDV charge was harmless because appellant's guilt was established by other evidence and hearing the fact of the victim's remote past arrest likely would not have impacted the jury's verdict.⁷ *See Livingston*, 282 S.C. at 6, 317 S.E.2d at 132 (holding an error admitting evidence is harmless beyond a reasonable doubt where guilt is proven by other competent evidence, such that the error could not have reasonably affected the result at trial). As discussed above, the State's case against appellant was strong—not only did eyewitnesses see appellant shoot the victim, they testified to the statements he made to the victim, and appellant himself testified he killed the victim while claiming he did so in self-defense. The State further elicited from appellant that he did not report any injuries to his jaw, despite his claim that the victim punched him, and did not have any bruising on his face at the time of his arrest. Additionally, empty bullet casings were found in appellant's truck, and appellant admitted during his testimony that he fired the gun collected at the scene.

Moreover, the record demonstrates the jury carefully considered the evidence presented

⁷ Not only was evidence of the 2009 CDV charge remote, the proffered testimony of Kerri Powell (Kerri) would have ameliorated the singular incident and any suggestion that the victim had a propensity for violence. (R.pp.100-06). Kerri specifically testified the incident was out of character for the victim, it was a mutual combat situation, and she did not want the victim arrested. (R.pp.101-02).

by the State and the evidence presented by appellant of his health problems, age, and lack of criminal background, as well as appellant's assertions that he acted in self-defense. *See Mitchell*, 286 S.C. at 573, 336 S.E.2d at 151 (holding the materiality and prejudicial character of an error must be determined after a review of the entire record). The trial court instructed the jury extensively on self-defense based on appellant's testimony at trial and, importantly, recharged the law a second time after a jury question regarding the elements of the defense. (R.p.998, line 8-p.1001, line 6; p.1008, line 17-p.1012, line 25). This fact indicates the jury thoughtfully considered the defense before ultimately finding appellant did not meet the elements and finding him guilty of murder. Accordingly, the effect of the excluded evidence was minimal and any error that resulted from its exclusion was harmless.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

CHRISTINA THEOS ADAMS
Solicitor, Tenth Judicial Circuit

BY: 

SHERRIE BUTTERBAUGH

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

December 20, 2016.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
R. Scott Sprouse, Circuit Court Judge

RECEIVED

DEC 20 2016

SC Court of Appeals

THE STATE,

Respondent,

v.

BOBBY JOE ARFLIN,

Appellant.

Appellate Case No. 2015-001900

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 20th day of December, 2016.



SHERRIE BUTTERBAUGH
Assistant Attorney General

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bobby Joe Arflin, Appellant.

Appellate Case No. 2015-001900

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2017-UP-303
Submitted June 1, 2017 – Filed July 26, 2017

AFFIRMED

Sarah Ganss Drawdy, of Byrholdt Drawdy, LLC, of
Anderson, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General J. Robert Bolchoz, Deputy Attorney
General Donald J. Zelenka, and Assistant Attorney
General Sherrie Butterbaugh, all of Columbia; and
Solicitor David R. Wagner, Jr., of Anderson, all for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Page*, 378 S.C. 476, 481, 663 S.E.2d 357, 359 (Ct. App. 2008) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 404(a), SCRE (providing evidence of an individual's character is generally inadmissible); *Page*, 378 S.C. at 482, 663 S.E.2d at 360 ("It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence."); *State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000) ("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."); *id.* at 420, 535 S.E.2d at 436 ("Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the trial [court's] discretion and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused."); Rule 404(a)(2), SCRE (providing in homicide cases, the prosecution may admit "evidence of a character trait of peacefulness of the victim . . . to rebut evidence that the victim was the first aggressor").

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 11, 2017

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Bobby Arflin
Lower Court Case No. 2015GS0400426, 2015GS0400340,
2015GS0400341, 2015GS0400342
Appellate Case No. 2015-001900

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Sarah Ganss Drawdy, Esquire
Donald J. Zelenka, Esquire
Sherrie Butterbaugh, Esquire
J. Robert Bolchoz, Esquire
David Rhys Wagner, Jr., Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of ANDERSON)Bobby Joe ARLIN 365273)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017 CP 0402103

APPLICATION FOR

POST-CONVICTION RELIEF

COMMON PLEAS AND
GENERAL SESSIONS

2017 OCT - 9 AM 10:58

FILED-CLERK'S OFFICE
ANDERSON SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

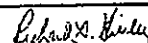
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention ANDERSON County DETENTION Center
2. Name and location of Court which imposed sentence ANDERSON County General Session Court. ANDERSON
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 0400426, 2015 GS 04 00348;
 - (b) 2015 GS 04 00341, 2015 GS 04 00342

A TRUE COPY

OCT - 9 2017


 ANDERSON CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August, 27, 2015
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS, P.O. Box 11629, Columbia, SC, 29211
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 26, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE COUNSEL.
- (b) SENTENCING
- (c) STATE MISCONDUCT
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) At this time I do not have collateral counsel or resources
- (b) to investigate - I reserve the right to amend this
- (c) application
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~No~~ No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) COULD NOT RAISE ON APPEAL.
 (b) WAS NOT PROPER PRESERVED
 (c) " "

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? DRUANE D. WHITE
 (b) your trial, if any? " "
 (c) your sentencing? " "
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? SAATH GANSS DRAWDY
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. ANDERSON, S.C.
 ii. ANDERSON, S.C.
 iii.
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT
TRIAL, SENTENCING.
 ii. APPEAL
 iii.

19. State clearly the relief you seek in filing this application:

NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Robert Joe Arflew, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

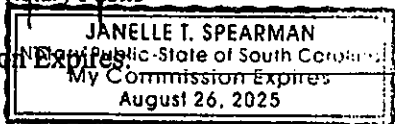
Robert J. Arflew

SWORN to and subscribed before me this 26th day of September, 2017.

Janelle T. Spearman (L.S.)

Notary Public

My Commission Expires: August 26, 2025



FILED-CLERK'S OFFICE
ANDERSON SC

2017 OCT -9 AM 10:58

COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

Revised 3/2003

OCT - 9 2017

Robert J. Arflew
ANDERSON CLERK OF COURT

FILED CLERK'S OFFICE
ANDERSON SC

2017 OCT -9 AM 10: 58

2017CP0402103

COMMON PLEAS AND
GENERAL SESSIONS

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Bobby Joe Arflin, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

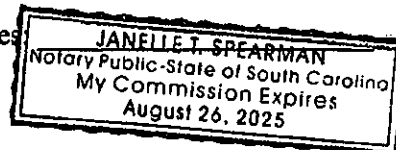
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bobby J. Arflin
Applicant

SWORN or affirmed to and subscribed before me this
9th day of September, 2017.

Janelle T. Spearman
Notary Public

My Commission Expires



A TRUE COPY

Revised 3/2003

OCT - 9 2017

Richard A. Kille
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Bobby Joe Arflin, #365273,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-04-02103

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on October 9, 2017, would respectfully show this Court:

I.

Bobby Joe Arflin (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its March 2014 term, the Anderson County Grand Jury indicted Applicant for Murder (2014-GS-04-00426) and Possession of a Weapon During the Commission of a Violent Crime (2014-GS-04-00426) and, during its March 2015 term, for three counts of Solicitation to Commit a Felony (2015-GS-04-00340; 2015-GS-04-00341; 2015-GS-04-00342). The indictments for Murder and Possession of a Weapon during the Commission of a Violent Crime stem from a shooting occurring on December 11, 2013, whereas the indictments for Solicitation to Commit a Felony stem from conversations with a confidential informant while in prison.

On December 11, 2013, Applicant hit Jody Powell's (Victim) pick-up truck as he was driving down the street to his home. Tr. pp. 248-50. Victim emerged from the house he was in, where his girlfriend's niece was having a birthday party, and an argument between Applicant and Victim ensued. Tr. pp. 245, 256. Applicant got in Victim's face, Victim pushed Applicant in the chest to

get Applicant away from him, and Applicant took a step back, pulled out a gun from behind his back, and fired a shot. Tr. pp. 256-57, 337-38, 349. Upon seeing the gun, Victim raised his hands and then began running away. Tr. pp. 258, 260, 338. Applicant followed Victim. Tr. pp. 260, 340. When Victim fell face down into a ditch, Applicant stood over Victim with the gun pointed at him and again shot Victim. Tr. pp. 260, 340. Multiple witnesses denied that Victim had a weapon and testified that Victim never threatened Applicant. Tr. pp. 258, 266, 335.

Victim was pronounced dead at the hospital, and an autopsy later determined that Victim was shot once in the shoulder and once in the back, near his hip. Tr. pp. 433, 640-41. Although the wound to Victim's shoulder severed an artery, Victim could have survived that wound. Tr. p. 642-43. The wound to the hip, however, was fatal. Tr. p. 643. Applicant had no apparent injuries to corroborate his statements to law enforcement that Victim punched him. Tr. p. 455.

After the shooting, Applicant walked away to move his truck and wait for the police. Tr. pp. 263, 341. When the police arrived, they saw Victim in the ditch and saw that he was not moving. Tr. pp. 398, 400. When police asked the witnesses who shot Victim, they pointed toward Applicant, who was standing by his truck. Tr. p. 400. A deputy approached Applicant, told him to put his hands up, and asked him if he was the shooter. Tr. p. 400. Applicant responded that he was the shooter. Tr. p. 400. The deputy handcuffed Applicant and placed him in a patrol car. Tr. pp. 401, 406. Another deputy asked Applicant where the gun was, and Applicant responded that it was on the hood of his truck. Tr. pp. 402, 428-29. A search of Applicant's truck revealed twelve bullets and two spent casings for a Smith and Wesson .41 caliber magnum revolver, which were found on the driver's seat. Tr. pp. 526, 528. A search of Victim's truck revealed a closed pocketknife in the console, mixed with other items such as tools and glue. Tr. pp. 510-11. Additionally, there were two bullet holes in Victim's truck, as well as damage to both trucks from the initial accident. Tr. pp.

450-52, 532. During the search of the scene, Applicant was taken to the Anderson County law enforcement center. Tr. p. 407.

While Applicant was in jail awaiting trial on the Murder and Possession of a Weapon During the Commission of a Crime charges, he talked to his cellmate, Roy Lawrence (Lawrence), about the case against him, and told Lawrence “[h]e ran into somebody’s car or vehicle and it 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.” Tr. pp. 725, 727. Lawrence testified that Applicant told him there were eyewitnesses to the shooting but that there would be a mistrial if the witnesses disappeared. Tr. pp. 727-28. Lawrence further testified that Applicant asked him to kidnap three specific witnesses once Lawrence was released on bond. Tr. pp. 728, 731. In return, Applicant agreed to give Lawrence some land. Tr. pp. 730-31. Applicant drew a map of the witnesses’ homes and showed Lawrence how to get inside. Tr. pp. 727, 728. These homes belonged to James Madison, Brenda Masters, and Larry Williamson. Tr. p. 730.

Upon Lawrence’s release, he told his brother-in-law, who was a state constable, about Applicant’s plan, and his brother-in-law told him that he would contact someone in law enforcement. Tr. p. 732. An investigator subsequently arrived at Lawrence’s house, and Lawrence told the investigator about the plan and gave him a list of names, as well as the map Applicant drew. Tr. pp. 732, 733, 767, 768. Sergeant Robert Gebing with the Anderson County Sheriff’s Office verified Applicant wrote the document, verified the locations of the witnesses’ homes, and that Applicant owned the land promised to Lawrence. Tr. pp. 764, 769, 772, 783-87. Sergeant Gebing also told Lawrence to contact him if he heard anything further from Applicant about carrying through with the plan. Tr. p. 789.

A few days later, Applicant called Lawrence from jail, and they spoke about the plan. Tr. p.

734. Lawrence testified that he lied to Applicant and told him that had “scoped it all out,” but that one of the witnesses was not home so Applicant told Lawrence to “hold off” for a week. Tr. p. 736. Applicant also told Lawrence that he would write him a letter with further instructions, but Lawrence mistakenly gave Applicant the wrong zip code, so he never received a letter. Tr. p. 736.

From these conversations with Lawrence, the Anderson County Grand Jury indicted Applicant for three charges of Solicitation of a Felony, specifically Kidnapping.

Druanne D. White, Esquire, and Ashlea M. White, Esquire, represented Applicant. Assistant Solicitors Lauren D. Price, Esquire, and Catherine T. Huey, Esquire prosecuted the case. On August 24-27, 2015, Applicant proceeded to trial before the Honorable R. Scott Sprouse and a jury. The jury convicted Applicant as indicted on all charges. Judge Sprouse sentenced Applicant to imprisonment for thirty years for Murder, a consecutive ten years of imprisonment for one of the Solicitation charges, and concurrent terms of five years imprisonment for Possession of a Weapon During the Commission of a Violent Crime and twenty years imprisonment for the remaining two Solicitation charges.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Sarah Ganss Drawdy, Esquire. By opinion decided July 26, 2017, the South Carolina Court of Appeals affirmed Applicant’s convictions. *State v. Arflin*, Op. No. 2017-UP-303 (S.C. Ct. App. Filed July 26, 2017). The Remittitur was issued on August 11, 2017.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on “Ineffective Assistance of Counsel, Sentencing, and State Missconduct [sic].” Applicant wholly fails to set forth any facts to support this general allegation.

Attached to this Return and incorporated by reference are the records of the Anderson County

Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the Record on Appeal, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRPC.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support his general allegations. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50

(1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

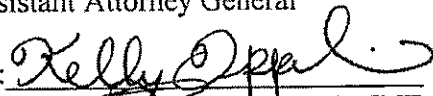
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 16, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	2017-CP-04-2103
	)	
BOBBY J. ARFLIN, #365273	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion For More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this the 16th day of January, 2018.



Patricia Keaton, Legal Assistant
For Respondent

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 State of South Carolina In the Court of Common Pleas
2 County of Anderson

3
4 Bobby Joe Arflin,
5 Appellant,

2017-CP-04-02103

6 -vs-

August 12, 2019

7 The State of South Carolina,
8 Respondent.

Transcript of Record

9

10

11

B E F O R E:

12

The Honorable Eugene C. Griffith, Jr., Judge

13

A P P E A R A N C E S:

14

Taylor Z. Smith, Esquire
15 Attorney for the State

16

Rodney Richie, Esquire
17 Attorney for Appellant

18

19

20

Reported by:
Diane L. Marcengill, RPR, CRR, CRC
21 Circuit Court Reporter

22

23

24

25

I N D E XWitnessesPage

BOBBY JOE ARFLIN

Direct Examination By Mr. Richey

5

Cross-Examination By Mr. Smith

13

DRUANNE WHITE

Direct Examination By Mr. Richey

17

Cross-Examination By Mr. Smith

24

Reporter's Certificate

39

E x h i b i t s

For the Appellant:

Marked Description

I.D.

Admitted

None offered.

For the Respondent:

Marked Description

I.D.

Admitted

None offered.

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:00 a.m.)

4 MR. SMITH: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. SMITH: This is the case of Bobby Joe Arflin
7 vs. the State, 2017-CP-04-02103. Mr. Arflin is
8 presently confined in SCDC pursuant to orders of
9 commitment from Anderson County Clerk of Court.

10 During its March of 2014 term in Anderson County,
11 the Grand Jury indicted him for murder and possession
12 of a weapon during the commission of a violent crime
13 and then later, during its March of 2015 term, for
14 three counts of solicitation to commit a felony, the
15 underlying felony being murder. Kidnapping and murder.

16 On December 11th, 2013, there was an incident near
17 Mr. Arflin's home in which he backed into the victim's
18 truck. There was a scuffle. Mr. Arflin shot twice,
19 and the victim died shortly after that.

20 And the solicitation charges stem from his
21 attempting to hire a cellmate to kidnap slash murder
22 witnesses when his trial came up.

23 Mr. Arflin did file a notice of appeal, and his
24 direct appeal was perfected, but his conviction was
25 affirmed in the opinion issued in July of 2017. He has

Bobby Joe Arflin - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 since filed this PCR application and alleged multiple
2 things, but it's my understanding, from talking with
3 his attorney today, that he's narrowed it down to one
4 or two issues that weren't pled but that we're prepared
5 to go forward on today with that being ineffective
6 assistance of counsel for failure to investigate a
7 bullet ricochet and ineffective assistance of counsel
8 because counsel advised him not to testify on that
9 alleged ricochet.

10 And I will let Mr. Richey confirm if that's an
11 accurate summary of the two allegations today. And
12 just as far as those two go, we're ready to proceed on
13 those, your Honor.

14 THE COURT: Okay.

15 Mr. Richey, a little brief summary there by the
16 attorney general. What do you --

17 MR. RICHEY: Your Honor, that's correct. We're
18 ready to move forward.

19 THE COURT: Okay.

20 MR. RICHEY: We call Mr. Arflin.

21 THE COURT: Come forward to be sworn.

22 **BOBBY JOE ARFLIN,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 THE CLERK: If you would take the witness stand,
25 please, sir, and state your name for the record.

1 THE WITNESS: My name is Bobby Joe Arflin.

2 DIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Bobby, are you currently in the Department of
5 Corrections?

6 A I am.

7 Q And are you there for the charges that were spoken
8 about by the attorney general?

9 A I am, yes.

10 Q And who represented you on those charges?

11 A Druanne White.

12 Q And did you plead guilty or have a trial?

13 A I had a trial, sir.

14 Q Okay. And she represented you during that entire
15 trial?

16 A Yes.

17 Q And you filed this application for postconviction
18 relief today; is that correct?

19 A I did.

20 Q Because you believe there are some issues that
21 Ms. White did not effectively represent you on in your
22 trial; is that correct?

23 A It is, yes, sir.

24 Q And by way of a brief summary about the facts, can
25 you tell me, this incident occurred where?

Bobby Joe Arflin - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 A It occurred on Williamson Drive, about 50, 60 feet
2 from my driveway in front of the Williamsons' house at
3 126 Williamson Drive.

4 Q And what happened? Were you driving your vehicle?

5 A I was trying to -- I was on my way home from
6 visiting my mother, and when I got to go down the road
7 in front of my -- to get to my house, because it's a
8 one-way street, there's only one way in, one way out.

9 When I was going home, his truck was parked in the
10 road, and I tried to get by it. And when I went by it,
11 it hit the mirrors, busted the mirror off. I didn't
12 know that. I didn't realize that, and when I went
13 around, I tried to back back up to see what I had hit.

14 And in doing that, I bumped into the front end of
15 the truck because my mirror on the right-hand side was
16 knocked in so I couldn't see. And at that point, I got
17 out, and I knew that there could possibly be some
18 problems because of this.

19 So when I got out of the truck, I did secure my
20 weapon from the glove box. And at that point in time,
21 I told them, I went and told them --

22 Q You say them. Who?

23 A The Williamsons. Because I didn't know who the
24 truck belonged to.

25 Q Yes, sir.

1 A So I told them what whoever owned the truck needed
2 to come out because I had hit it. And when they come
3 out -- they come out, there was four of them, or
4 probably five of them when they come out. And at that
5 point, the -- let's see, the -- the -- Jody come out --

6 Q Go ahead.

7 A Mr. Mathis -- I think his name was Mathison --
8 come out and Brenda come out, all of them. And then
9 other people at different points in the few minutes
10 that there was -- that began at that point. And at
11 that point I was on the phone calling 911 at the time.
12 They had a phone record of that. And I was attempting
13 to get the police to come out there to rectify the
14 problem and what was going on.

15 At that time, when I -- as soon as I got off the
16 phone, when I hung the phone up, he jumped between
17 me -- I tried to go back to my truck. He jumped
18 between me and my truck.

19 Q "He" is the alleged victim?

20 A Yes, Jody. I didn't know his name. I didn't know
21 who he was or anything about him. But I do know that
22 he jumped between me and my truck so I could not go
23 back to my truck. And at that point, when he jumped in
24 between me and my truck, he started hitting me. He had
25 said he was going to, basically, from what I

Bobby Joe Arflin - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 understood, he was going to whip my ass.

2 Now, I had just had cancer surgery just maybe a
3 year before. I was also doing chemo. I was not in
4 good health at the time. So when he jumped on me, he
5 started knocking me backwards, and I told him, "I am
6 not going to fight you. I am not going to fight you."
7 And that's, you know, what he was going to make me do.

8 So he hit me about four times, and he done an
9 upper cut and hit me on my chin, which knocked me on my
10 hind-end, knocked me down on the ground, at which time,
11 when I went to come up from the ground, he was still
12 coming towards me. At that point in time I pulled the
13 pistol and fired one shot. And then he's still coming.
14 I fired the second shot. When he stopped coming, I
15 ceased to fire the gun anymore.

16 Q And at your trial, the State alleged that you shot
17 him from behind, correct?

18 A Yes.

19 Q And it was your position that you never shot him
20 while he was running away or anything, correct?

21 A No, no. He was facing me the whole time.

22 Q And so you believe that the shot that actually hit
23 him in the back ricocheted off one of the vehicles; is
24 that correct?

25 A Yes.

1 Q And did you talk to Ms. White about that?

2 A I did.

3 Q And did you ask her to investigate that?

4 A I did ask her on multiple occasions to get
5 somebody to go out there and look at the back of that
6 truck, take pictures of it, whatever they needed to do,
7 get somebody out there that knew, you know, how to
8 investigate, what to look for on it because there had
9 to be a bullet ricochet somewhere off the back of that
10 truck. My truck was too far away.

11 Q And you have some background in auto mechanics; is
12 that correct?

13 A I do.

14 Q And in that background, you know the workings of
15 the bumpers, how to take them off?

16 A Yes.

17 Q Okay. And you talked to Ms. White about the
18 procedure and how to do that?

19 A They had -- they had took the bed off the truck in
20 order to procure one of the bullets that went through
21 the truck into the back of the cab. Okay? Going --
22 for them, in order for them to remove the bed, they had
23 to climb up and down on the back bumper to get into the
24 bed, to hold the bolts so they could remove the bolts
25 and then slide the bed back far enough for them to get

Bobby Joe Arflin - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 into the back of the cab, which is, basically, they're
2 destroying evidence on the back bumper on the back end
3 of the truck by climbing in and out of it. I don't
4 know if they used one man or if they used two. More
5 than likely two, one underneath and one in the bed to
6 hold the stakes.

7 You know, by the time they took the bed, moved it
8 back, shuffled it around, stood on the bumper to do
9 what they needed to do, and then the reattachment
10 series, which is just the opposite of putting
11 everything back on, they're still doing the same thing.
12 So they're still climbing on the back bumper and the
13 back of the truck at the tailgate, and that's the
14 reason that they, more than likely, contaminated or
15 destroyed the evidence before anybody could take a
16 picture of it or see it.

17 Q So you had the type of discussion you had today
18 with the Court with Ms. White?

19 A Yeah, I did tell her to try to get somebody to go
20 out there and look at it. I did tell her to try to
21 take pictures of the back bumper at least so I could
22 see it and get somebody to go out there and look at it
23 because when they done the -- when they done the
24 investigation at the scene, they didn't investigate
25 anything about the truck, the back of the truck or

1 anything. That I know of. It's not in me -- it wasn't
2 in my discovery that they had looked at the back
3 bumper. There wasn't in my discovery that they even
4 tried to procure or find the second bullet that they
5 said was fired.

6 Q And so you, essentially, armed Ms. White with the
7 information; is that correct?

8 A Yes, I did.

9 Q Okay. And at trial, you testified; isn't that
10 correct?

11 A Yes.

12 Q In your defense. And at your trial, did you bring
13 up the information you just brought up?

14 A No, I did not.

15 Q And can you tell me why you didn't bring up that?

16 A I was advised not to.

17 Q You were advised not to?

18 A I was.

19 Q And what was the conversation in telling you not
20 to bring up that?

21 A Because there was no -- nobody had seen it, nobody
22 had investigated it, nobody had seen any part of it, so
23 the jury was not going to, you know, was not going to
24 believe it. Nobody was going to believe it simply
25 because nobody went out and investigated it, you know,

Bobby Joe Arflin - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 straight-up investigated it and took pictures and
2 brought back the evidence of it.

3 Q And so you believe that the lack of that testimony
4 hurt your case?

5 A I do, sincerely.

6 Q And you believe that that testimony would
7 corroborate your position in what happened?

8 A Yes.

9 Q Because it's your position that, if the jury had
10 been shown evidence of you not shooting the guy in the
11 back, that would have been more advantageous to your
12 case?

13 A Yes.

14 Q And you would have testified to it as well?

15 A Yes.

16 Q And you believe that this, by not having this
17 evidence, you were prejudiced in your case; you were
18 hurt by it?

19 A Yes.

20 Q And you -- so without any doubt, you discussed
21 that with Ms. White?

22 A Yes.

23 Q And what was Ms. White's response?

24 A On the occasions that I asked her about it and
25 spoke to her about it, she didn't seem to be interested

1 in doing anything at that point to try to get anybody
2 to go out there and investigate it or look at it or
3 take pictures of it, because I even suggested that
4 somebody just go out and take pictures of it, take
5 pictures of the back of the truck, the back bumper, you
6 know, so I could see it, if there was any markings or
7 anything on it that they had left by, you know, not
8 disturbed by climbing in and out of the bed of the
9 truck.

10 Q Right. And you believe that Ms. White did a lot
11 in your case, correct? I mean --

12 A Yes.

13 Q But there was some -- but this particular issue
14 was a big issue because it made you look bad to the
15 jury, shooting the guy in the back, correct?

16 A Yes.

17 Q Thank you. Answer any questions the attorney
18 general has for you.

19 CROSS-EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Arflin, at the time of the shooting, do you
22 believe you were acting in self-defense?

23 A Yes.

24 Q Were you afraid?

25 A Yes.

Bobby Joe Arflin - Cross

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 Q Okay. And did you feel like you had no choice but
2 to shoot?

3 A I -- yes.

4 Q Yes, you're agreeing?

5 A Yes, I didn't have any other choice. It's the
6 only way I could stop him.

7 Q All right. So tell me -- I mean, I'm having a
8 hard time understanding. Are you saying both bullets
9 ricocheted off the truck?

10 A No, sir, just one.

11 Q Which one?

12 A The first shot.

13 Q Okay. But you shot him twice?

14 A Yes.

15 Q Okay. So if you're saying only the first bullet
16 was a ricochet, then the second bullet was a direct
17 hit; that's the only other option, right?

18 A Yes. It hit him -- from what I can remember, it
19 hit him in the right shoulder.

20 Q Well, the first shot --

21 A No --

22 Q -- is what you're talking about?

23 A -- second shot.

24 MR. SMITH: Your Honor, may I approach the
25 witness?

1 THE COURT: Sure.

2 BY MR. SMITH:

3 Q Mr. Arflin, do you have a copy of the transcript
4 up there?

5 A No, sir, I do not.

6 MR. SMITH: Beg the Court's indulgence one moment.

7 THE COURT: Sure.

8 BY MR. SMITH:

9 Q All right. Mr. Arflin, I'm going to show you the
10 trial transcript here, and we're going to be looking at
11 about page 648.

12 MR. RICHEY: 648.

13 BY MR. SMITH:

14 Q Okay. Mr. Arflin, this is actually page 642.
15 Will you please confirm that this is the transcript
16 from your trial?

17 A Yes, sir.

18 Q Okay. And will you confirm that we're looking at
19 page 642?

20 A Yes.

21 Q Okay. And so let's look at Ms. White's question
22 about line 3 on page 642. At this point she's
23 questioning the forensic pathologist. And if you will
24 read her question on line 3.

25 A "And can you tell me a little bit more about the

Druanne White - Direct

Bobby Joe Arlin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 first wound that you just mentioned?"

2 Q Okay. And if we look at lines 5 and 6, does the
3 pathologist say that the first wound was a shoulder
4 shot?

5 A "Answer: There was a gunshot wound that passed
6 through his right shoulder down to the muscle on his
7 right shoulder."

8 Q And that was his answer in response to her
9 question about the first shot?

10 A Yes.

11 Q Okay. So your testimony is that shot is the shot
12 that ricocheted off the truck?

13 A No, sir.

14 Q Okay.

15 A That is the second shot that he described. The
16 first shot didn't -- it missed him, hit the truck and
17 then ricocheted back off. That would have been the
18 first shot.

19 Q All right. And like you testified earlier, you
20 didn't bring that up at trial, the ricochet?

21 A No.

22 Q Okay. How many shots did you fire?

23 A I fired two.

24 Q Okay. And you testified that it was in
25 self-defense?

1 A Yes, sir.

2 Q Okay.

3 MR. SMITH: Your Honor, I believe that's all the
4 questions I have. Thank you.

5 THE COURT: Mr. Richey.

6 MR. RICHEY: No other questions.

7 We'll call Ms. White.

8 THE COURT: Mr. Arflin, you can step down.

9 DRUANNE WHITE,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: If you would take the witness stand,
12 please, ma'am, and state your name for the record.

13 THE WITNESS: Druanne White.

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q Ms. White, you represented Bobby; is that correct?

17 A I did.

18 Q And you were retained to represent him, correct?

19 A Yes.

20 Q And you've been in the courtroom, and you've heard
21 the issues that we have been addressing; is that
22 correct?

23 A Yes.

24 Q And in terms of ricocheting of a bullet, did you
25 discuss that with Bobby, Mr. Arflin?

Druanne White - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 A I don't recall that. I'm not denying it; I just
2 don't recall it.

3 Q You don't --

4 A I don't know. I don't know if we discussed that.
5 I know in my office we keep time, even though it's a
6 criminal case. And I see on the time sheet where I
7 went out and examined the vehicles twice. We took
8 pictures and all of that of the vehicle, but I probably
9 would have done that regardless.

10 Q And did you share those pictures with Mr. Arflin?

11 A I'm sure I probably did, but I -- you know, I have
12 that we met with him. We try to meet with our clients
13 about every two weeks out at the jail. And, you know,
14 I just have in my notes, I just have, like, whenever
15 discovery, whenever things like that.

16 So, again, I'm not denying he said that. I would
17 have a reason why I would not have encouraged it in
18 this case, if you want me to say that, but I don't
19 remember specifically if we did.

20 Q Okay. And so his defense was the guy was in front
21 of him coming at him, correct?

22 A Yes.

23 Q And his whole defense was he shot the guy where
24 the guy was facing him, correct?

25 A Well, when the guy was -- there were -- what he's

1 saying is that he went down this narrow road. He lived
2 at the bottom. It was a cul-de-sac. So he's saying he
3 went by and the alleged victim's truck was in the road.
4 It was a very narrow road.

5 We went out, in fact, with his brother, measured
6 it all, took pictures. I think we got maybe 16 feet
7 wide. The county is supposed to be 20. And there are
8 ditches on the side. So, you know, originally he was
9 charged with deliberately hitting the vehicle.

10 And what we did is we went out and measured and
11 took pictures with the measuring tapes and all and
12 showed, you know, it was dark, there were no lights on
13 the road, he had no choice but to go that way to get to
14 his house. So we were trying to show that it was an
15 accident, he didn't have room to get around.

16 So, in other words, if the cul-de-sac is down here
17 and his house is down here, he's going down the road.
18 The alleged victim's truck is faced this way, toward
19 his house. So my client is coming around his vehicle,
20 hits it, backs up, hits it again, and then gets out of
21 his vehicle.

22 He certainly called 911 right then. People start
23 coming out of the house. But if you look at the truck,
24 there's one shot. This is the bed of the truck.
25 Again, it's facing this way. The shot goes in here,

Druanne White - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 goes into the back of the truck and then falls to the
2 ground.

3 And the rod went through it, and it certainly
4 showed -- and the bullet was, the spent round was taken
5 out of the back from behind that backseat in the truck.
6 And it was a fairly level shot. And Bobby had said the
7 altercation was back here.

8 So the MAIT witness testified that this entry --
9 entrance hole was not consistent with a perfect spiral
10 as if, for instance, it could have gone through
11 someone, is what we're saying. And that would -- the
12 victim -- I'm trying to think if it was right or
13 left -- I think it was the right shoulder it went in,
14 and it came out a little bit in the back.

15 And then the other entrance wound was -- I may be
16 getting right and left and left and right mixed up -- I
17 think it was on the left side and came out the right
18 side. I know the exit wounds were right near each
19 other.

20 So -- so, anyway, so that bullet went straight
21 through and hit the backseat and was actually
22 recovered. The other was not recovered at all. And,
23 you know, I was looking at Bobby in his sixties, had
24 had cancer, had poor health. I had actually gone to
25 Lauren's office and engaged in quite a few

1 negotiations, but a voluntary manslaughter with
2 30 years no parole potentially would not have helped
3 him much at his age and his condition.

4 So I had talked to her, actually, about
5 involuntary, but she had not agreed to that. And then,
6 of course, we had the phone call with the alleged
7 killing or kidnapping of witnesses, and that kind of
8 ended all plea negotiations that were at all
9 meaningful, anyway.

10 Q So I guess you explained this. So you did go out
11 there and look at the truck or had pictures taken; you
12 did do that?

13 A Oh, we did it multiple times. In fact, Lauren
14 went with us. But, you know, Mr. Richey, this is the
15 thing. Again, for involuntary manslaughter, what I had
16 was a client who's saying, "I pulled the trigger
17 twice." Not struggling over the weapon but
18 self-defense, and "I," you know, "I pulled the
19 trigger."

20 So with the one that went into the truck, even if
21 the other were a ricochet, if he pulled the trigger,
22 wasn't struggling over a gun or anything, I don't think
23 that would have gotten us an involuntary anyway.

24 So what I'm telling you is I may have talked to
25 him and said, "Look, you have got this other shot

Druanne White - Direct

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 that's clearly through. We had gone out and looked at
2 the trucks. We didn't see anything else. MAIT had
3 come and thoroughly examined the trucks. So I
4 probably, if -- this is probably why I don't really
5 remember it much, is I might have said, I don't think
6 that's going to get you a whole lot because if you're
7 going to put your money somewhere, put it somewhere
8 else because you have got this other shot that's
9 clearly through, you have got a voluntary pulling of
10 the trigger, and I don't think that's going to get you
11 an involuntary anyway. I didn't see that it would be
12 beneficial.

13 Don't forget we also had a couple witnesses who
14 testified. The one in the house said the two shots
15 were very close on her 911 call, like bang-bang, and
16 then she walked back -- now, she changed her testimony
17 in court, but we were able to impeach her with that.

18 And then another witness who came out, Brenda, had
19 testified, actually, at the bond hearing and said that
20 she was standing there and, no, he didn't stand over
21 the alleged victim and shoot. She was right there. So
22 we had, I thought, some pretty good evidence that
23 showed the two shots were right here anyway.

24 Q And that was -- there was some issue about whether
25 the guy was shot in the back or not, is that --

1 A Well, it was -- your Honor, do you mind if I stand
2 up?

3 THE COURT: I don't mind.

4 THE WITNESS: As I recall, it was more, like,
5 right here and then came out right here. And then the
6 other one was here and came out maybe about right here,
7 a little bit down. I think it was maybe three inches
8 down from the other one. Now, this is in general. I
9 tried this a long time ago, but.

10 BY MR. RICHIE:

11 Q And do you believe at all, if the case was
12 centered around both shots being directly in front of
13 the guy, do you think that would benefit his case?

14 A Well, don't forget we were saying there were
15 people there, and more than one -- there was more than
16 one person there, and it was a dynamic scene. I mean,
17 we were never saying that it was this, straight on.
18 You know, it was a dynamic scene. He was afraid that
19 they were going to come at him, and, you know, they --
20 it wasn't just one person.

21 Q Right.

22 A Yeah.

23 MR. RICHIE: One moment, your Honor.

24 Q Ms. White, do you practice in Anderson County?

25 A I do.

Druanne White - Cross

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103

August 12, 2019

1 Q And how long have you practiced in Anderson
2 County?

3 A I think I got here in January of '88.

4 Q Thank you, ma'am. Answer any questions the
5 attorney general may have for you.

6 CROSS-EXAMINATION

7 BY MR. SMITH:

8 Q Ms. White, how long have you been practicing law?

9 A Well, we were the fortunate ones to get the first
10 bridge-the-gap class, so we actually graduated in '84,
11 but I think, with the new bridge-the-gap program and
12 all, I think we got sworn in maybe in January of '85.
13 I think it was '85. Might have been '84, though.

14 Q Okay. How much of your experience has been in the
15 field of criminal law?

16 A Well, I did a lot of criminal law. I was Marine
17 Corps JAG first and then solicitor's office as an
18 assistant solicitor and then solicitor and now private
19 practice. So pretty much all of it.

20 Q Okay. Did Mr. Arflin maintain throughout your
21 representation that he acted in self-defense?

22 A Yes. And, really, I will say this. We keep time,
23 but we don't keep all our time. We have over 720 hours
24 that we put into this case. And I will tell you, I
25 really -- I really think that Bobby had a decent case

1 until that recording. I really thought he had a pretty
2 good shot at this case, and then that recording did not
3 help us any at all.

4 Q By "recording," you're meaning the recording of
5 the phone call between him and the informant about the
6 solicitation, the kidnap, and murder?

7 A Yeah. I mean, you could watch the jury's face
8 when they heard the recording. They -- it was -- they
9 had recorded the CI calling him, saying, "Okay. How do
10 you want me to get the witnesses?" and all that. And
11 he didn't make any admissions, but it wasn't a straight
12 denial either.

13 Now, let me just tell you. I believe Bobby about
14 that. I really believe that he wasn't doing that, but
15 it didn't help his case at all. It hurt.

16 Q Okay. So you don't have any independent memory of
17 him asking you about a potential ricochet?

18 A I don't. But, again, I wouldn't -- I -- it would
19 have been something that I would have said, "Well,
20 yeah, but you've got this other shot that went straight
21 through. How's that going to help you at all because
22 it's still a murder charge? I mean, it's either
23 self-defense or not -- I understand you can have
24 involuntary accident and self-defense under the right
25 circumstances, but these weren't the circumstances that

Druanne White - Cross

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 he was telling me.

2 Q And he shot twice?

3 A Yeah. That was the problem is the deliberate
4 pulling of the trigger. And as you know, under those
5 circumstances with involuntary, you don't get an
6 involuntary.

7 Q Okay. I can't remember if you said this or not.
8 Do you know if you took pictures of the victim's truck?

9 A We would have, yeah. We would have taken
10 pictures, and like I say, we went out at least two
11 times to examine the truck.

12 Q Do you remember if you shared those pictures with
13 Mr. Arflin?

14 A I probably would have, but, I mean, normally, we
15 would go over every time we got discovery and all. And
16 he was good about looking at things. But can I tell
17 you under oath that I definitely did? I can't. I
18 can't tell you under oath that I definitely talked to
19 him about the ricochet or I didn't. I don't know, but
20 it just would not have been something, to me, that
21 would have been a game changer.

22 Q Do you remember seeing more than one bullet hole
23 in the truck?

24 A No, there wasn't -- yeah, there was, but if you
25 look at the truck, it's pointed this way. Here is the

1 bed. It came in the bed, and it went through the cab,
2 so, technically, there is a hole here and a hole there,
3 and then the bullet fell to the ground there.

4 Q So multiple holes made from the same bullet?

5 A That's certainly what it looked like, and if
6 you -- you know, the stick was put through it, and, you
7 know, it lined up with pretty much where he said they
8 were standing. And that would have been consistent
9 with the hole in the alleged victim, one of the holes.

10 Q But -- and you testified earlier that you did
11 discuss trying to get an involuntary manslaughter plea?

12 A I talked to her, and she never said yes or no, and
13 in fact, didn't -- but she didn't completely tell me I
14 was crazy, and then the tape came in.

15 Q Right.

16 A And, of course, at that point -- yeah.

17 Q Okay. Didn't the forensic pathologist testify
18 that the second shot, which would have gone through, I
19 suppose, through the torso diagonally, was the fatal
20 wound?

21 A I think he said either could have been fatal, but
22 that was the one that was more immediately fatal, I
23 believe.

24 Q And the first shot, which was through the arm,
25 would have been fatal without immediate medical

Druanne White - Cross

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 attention?

2 A I believe that's what he said, from what I recall.

3 Q Okay.

4 A But don't forget, you know, if you look at
5 Dr. Woodard's autopsy reports, he will say first shot
6 and second shot or whatever, or he testifies that way,
7 but he'll tell you he has no idea -- he didn't know
8 which one was the first or second shot.

9 I mean, he dubbed them that for purposes of
10 talking, but he didn't know actually which one took
11 place first.

12 Q Okay. I suppose, perhaps, that conclusion was
13 reached in corroboration with the eyewitness testimony
14 about which shot was first or second, maybe?

15 A I'm not sure that he ever definitively said this
16 one had to be the first and this one had to be the
17 second. You know, he had testified, I think,
18 originally on direct that Jody would not have been able
19 to go very far, couldn't have gone -- I know he said
20 the arm would have been incapacitated after the
21 shoulder shot, but I think he said he wouldn't have
22 been able to go very far after the other shot.

23 But then when I cross-examined him and said, Well,
24 are you aware that this witness said this, this, and
25 this, he did say, yes, he could have gone a little.

1 Like the ditch wasn't far. He ended up falling in the
2 ditch, which is not far at all from where this vehicle
3 was. Remember the road was really small, so the ditch
4 was, you know, just a few feet.

5 Q Okay. Whose decision was it for Mr. Arflin to
6 testify?

7 A Normally, I try never to put a client on the
8 stand. That's the last thing I want to do. But in
9 this case, obviously, they had several witnesses, and
10 so I think that's probably the only way he would have
11 had a chance or they wouldn't have heard about the
12 self-defense. But it's always the client's choice
13 whether or not to go. Now, I certainly give my opinion
14 whether I think this is a case where it would probably
15 be necessary.

16 Q Did he tell you he wanted to testify about a
17 bullet ricochet?

18 A Again, I don't -- I don't know. I would have
19 explained at that point probably that what I would have
20 certainly done, as the prosecutor, on
21 cross-examination, because there was absolutely no
22 evidence of that, but -- and I don't think it would
23 have helped him, is what I'm saying.

24 Q Okay.

25 A You're not going to get a lesser on that when

Druanne White - Cross

Bobby Joe Arflin vs. The State of South Carolina 2017-CP-04-02103 August 12, 2019

1 you've got two shots, that the trigger is deliberately
2 pulled.

3 Q Okay.

4 A Again, I thought it was self-defense or nothing
5 under those circumstances. You can get both in some
6 cases, but I didn't think, under these circumstances,
7 you would.

8 Q Okay. Your advice on that point to him, would it
9 have been -- and I feel like I know the answer to this,
10 but I'm going to ask it -- would it have been to lie
11 about it if it comes up or just don't volunteer that
12 information?

13 A No. I mean, who would ever know if it's a
14 ricochet anyway? You wouldn't have any idea. We
15 didn't even know where the shots were. He had
16 testified -- I didn't even know if he was shot or not
17 when he was in the -- so, I mean, it would have just
18 been so speculative anyway.

19 How would you ever know in the dark? Again, he
20 testified he didn't even know he had been shot when he
21 was found in the ditch. So it just would have been so
22 speculative because you wouldn't know if something had
23 ricocheted in the dark like that.

24 Q And you argued self-defense throughout this trial,
25 right?

1 A Yes.

2 Q Did you emphasize that fact, that he testified
3 that he was afraid?

4 A Yes, of course.

5 Q And shot in defense of himself?

6 A We put in his health issues, his age. We put --
7 normally, I would never put a picture of a victim in.
8 We actually did put one in, just to show -- he was 40
9 or 41, but he was in great shape. It was a picture --
10 as I recall, he might not have even had a shirt on.
11 Maybe in some kind of marathon or something, I don't
12 know, but it showed how buffed he was, and we brought
13 all that up.

14 Prior difficulties, it was dark, he heard them
15 rumbling around in the car where a knife was found,
16 heard them talking about possibly kicking his ass,
17 quote/unquote. So, yeah, we brought all of that in.
18 And that there were multiple people there. They had
19 threatened him before. We brought all of that out.

20 Q Thank you.

21 A His clean record, never been arrested before.

22 Q All right. No more questions. Thanks.

23 MR. RICHEY: No other questions, your Honor.

24 THE COURT: You may step down.

25 MR. SMITH: Your Honor, may this witness be

1 excused?

2 THE COURT: She may.

3 THE WITNESS: Thank you.

4 MR. RICHEY: No other witnesses.

5 THE COURT: All right.

6 MR. SMITH: Your Honor, we have no witnesses.

7 THE COURT: All right.

8 So I understand, the two main issues, Mr. Richey,
9 for this case is the lack of investigation of the
10 ricochet or examination of the truck.

11 MR. RICHEY: Yes, sir.

12 THE COURT: And then what was the other one?

13 MR. RICHEY: And by the lack of investigation as
14 to the truck, it precluded him from testifying to that
15 issue. That counsel -- and he was advised because the
16 evidence was not in the case, he could not testify to
17 that.

18 THE COURT: Would you like to summarize your
19 client's case?

20 MR. RICHEY: I'll just take a couple minutes and
21 I'm going to clarify this.

22 Your Honor, it is his position that that ricochet
23 argument was really critical in his facts. This guy
24 was coming at him, and it's our position that the first
25 shot did not immediately hit him when he fired it.

1 Okay? The first shot was a ricochet shot, so the
2 individual kept coming at him, which necessitated the
3 second shot.

4 So it's our position that that would enhance his
5 self-defense because it would show that the first shot
6 did not stop the guy. And this was all quick, but the
7 first shot did not stop him.

8 THE COURT: All right.

9 Mr. Smith.

10 MR. SMITH: Your Honor, we would just say, on the
11 first issue, you know, I believe the testimony has been
12 that Ms. White went out and looked at the car, went
13 with the solicitor, took pictures, and didn't see a
14 second bullet trajectory. So, you know, on that issue,
15 she didn't have any independent memory about did he ask
16 about the bullet ricochet, but I believe from her
17 testimony, it indicated that she would have
18 investigated that had it been an issue.

19 But she also testified that she didn't think it
20 was very relevant or helpful to the case anyway because
21 the fact is that Mr. Arflin shot twice, so it's hard
22 for me to see the benefit to him whether the first
23 bullet ricocheted or the second. He shot twice. There
24 were eyewitnesses who said he shot. His own testimony
25 then and now is that he shot both times in

1 self-defense. You heard him today say he was scared.
2 That's the testimony the jury heard at the time. Just,
3 legally speaking, I have trouble seeing how this helps
4 his case at all. His defense was self-defense and --

5 THE COURT: As I read the record, self-defense was
6 instructed to the jury, was it not?

7 MR. RICHEY: Yes, your Honor.

8 MR. SMITH: Yes. And you've heard they made a
9 strategic decision, in light of his age, and he's got
10 some health problems, that either he would be acquitted
11 or he would die in prison. Those were, essentially,
12 the only options. It didn't matter whether it was
13 voluntary manslaughter or murder.

14 And, you know, in light of the testimony of
15 Mr. Arflin today and Ms. White, I still fail to see how
16 they could have gotten, you know, an involuntary
17 manslaughter jury charge at trial, if that's what he's
18 asking for, because his defense was self-defense. And
19 you can't get an involuntary manslaughter instruction
20 if your defense is self-defense. He said today he shot
21 both times because he had to because he was scared.
22 Self-defense. That's his position today, and that's
23 what it was at the time of trial.

24 So, you know, in terms of investigation, it seems
25 to me a reasonable investigation was done. In regards

1 to her advice to him about testifying, you know, it
2 would have been that this particular fact about a
3 bullet ricochet was irrelevant or not helpful to the
4 defense.

5 You know, she didn't testify on this point, but
6 I'm assuming she wouldn't have told him not to answer a
7 question if it was asked. But I fail to see any
8 prejudice here at all, just, you know, there's no
9 deficiency. I don't see how this case is benefitted
10 by, did one of these two bullets ricochet. There was
11 no -- no discrepancy about the fact that he fired
12 twice, both times in self-defense.

13 So even if one of these two bullets ricocheted and
14 then came back and hit the victim, he shot twice. And,
15 you know, the medical examiner's testimony was that
16 either one of those shots would have been fatal. So,
17 you know, I don't see any deficiency. I certainly
18 don't see how you can get any prejudice out of this
19 because Mr. Arflin still maintains it was self-defense.
20 You pulled intending to shoot someone in self-defense,
21 I'm not sure it matters if it hits an object over there
22 and then hits the person because you still intended to
23 shoot them in self-defense. And the victim was shot
24 twice. So, and Mr. Arflin's testimony today was that
25 only one of the bullets ricocheted.

1 Now, I'm not sure which one, you know. There's
2 some discrepancy about which shot was the first shot.
3 I still just don't see how it matters. I think there's
4 no deficiency here, and there's absolutely no
5 prejudice, but that's the State's position on it.

6 THE COURT: Anything else, Mr. Richey?

7 MR. RICHEY: Judge, just so I'm very clear on
8 this, this is what he's essentially saying: If the guy
9 is coming at him, he's defending himself. He shoots
10 the first shot, misses the guy. Don't touch him. The
11 guy keeps coming, then he fires a shot. Now that makes
12 that second shot more reasonable. See, that's the
13 nutshell of what he's saying.

14 And I think what the State is missing is two
15 shots, if we look at it under the circumstances that
16 the first shot completely misses the guy, don't even
17 hit him and the guy keeps coming at him, the second
18 shot is then more reasonable on his self-defense.

19 THE COURT: Ain't it plausible, and I don't know
20 if this was discussed, but shot him the first time,
21 first hit him in the right shoulder; the second time
22 hits him in the right side -- I mean left side.

23 MR. RICHEY: No. We disagree with that, and I
24 think Ms. White testified that they don't know which
25 shot was first. They're just assuming.

1 THE COURT: What about this. The medical examiner
2 said there were two shots. He said the first shot
3 would be, whether high or low, whichever order they
4 came in. But the first and the other, maybe it would
5 be better than the first and second one.

6 MR. RICHEY: That testimony believes that the
7 first shot was the shoulder, then yeah. But it's
8 Mr. Arflin's position that the first shot was not the
9 one that hit him in the shoulder.

10 And I think Ms. White's testimony was that, from a
11 case standpoint and from an investigation standpoint,
12 they couldn't say definitively which shot was the first
13 or second shot.

14 THE COURT: Because it was in the dark, all
15 happened fast. Okay.

16 MR. RICHEY: And he would be in a position, a
17 better position than anybody, to say which shot was
18 first or second. He would be in a better position to
19 do that.

20 Thank you, your Honor.

21 THE COURT: Sounds like a jury issue, but let me
22 read this stuff.

23 MR. SMITH: And I'll just draw the Court's
24 attention to the fact that there were two -- the
25 mechanic employee of the fleet services testified at

1 trial about taking the vehicle apart to look for the
2 bullet, as did the MAIT team. So there was a thorough
3 review of this car, and there was only testimony at
4 trial about one bullet hole through the truck -- or one
5 pathway, and that Ms. White testified about that fact
6 today, so -- and I'll just point the Court to the
7 testimony of Mr. Arflin at trial when he's talking
8 about the shots, he testifies at one point that he
9 remembers the first shot but not the second. And then
10 later on at trial, he testifies that he remembers the
11 second shot but not the first shot.

12 So, you know, in light of that, I -- I'm
13 struggling to see how, you know, now he's reasoning out
14 that he would have had this defense of, Well, my
15 self-defense is more reasonable or less reasonable at
16 that point because his own testimony is contradictory
17 on that point.

18 THE COURT: Okay. I want to read some of this
19 testimony and make a decision.

20 Anything else?

21 MR. RICHEY: No, your Honor. Thank you.

22 THE COURT: Okay.

23 (WHEREUPON, proceedings adjourned at 10:48 a.m.)

24 ***END OF REQUESTED TRANSCRIPT OF RECORD***

25

January 6, 2019

Diane L. Marcengill
Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Bobby Joe Arflin, #365273,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-02103

ORDER OF DISMISSAL

A TRUE COPY

OCT 17 2019

This matter comes before this Court by way of an Application for Post-Conviction filed on

October 9, 2017, by Bobby Joe Arflin (Applicant). The State (Respondent) filed its Return on January 19, 2018. An evidentiary hearing in the matter was held before the undersigned on August 12, 2019, at the Anderson County Courthouse. Applicant was present and was represented by Rodney W. Richey, Esquire (PCR Counsel). Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf and called Druanne Dykes White, Esquire, (Counsel) as a witness. Respondent cross-examined Applicant and Counsel. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its March of 2014 term, the Anderson County Grand Jury indicted Applicant for murder (2014-GS-04-00426) and possession of a weapon during the commission of a violent crime (2014-GS-04-00426). During its

'19 OCT 17 PM 12:01:12
Anderson, SC COC, CP/GS

1 of 14 *for*

March of 2015 term, the Grand Jury then indicted Applicant for three counts of solicitation to commit a felony (2015-GS-04-00340 to -00342). The first two indictments stemmed from a shooting that occurred on December 11, 2013. The later indictments stemmed from Applicant's attempt to solicit an informant to kidnap and/or kill the eyewitnesses of the 2013 shooting while he was awaiting trial on the earlier indictments. Counsel and Ashlea M. White, Esquire, represented Applicant at trial. Assistant Solicitors Lauren D. Price and Catherine T. Huey prosecuted the case on behalf of the State. On August 24-27, 2015, Applicant proceeded to trial before the Honorable R. Scott Sprouse and a jury. At the conclusion of trial, the jury found Applicant guilty as indicted on all charges. Judge Sprouse sentenced Applicant to imprisonment for thirty years for murder, twenty years each for two of the solicitation charges, ten years for the third solicitation charge, and five years for the possession charge, with all sentences running concurrently.

Counsel filed a timely notice of appeal, and the appeal was perfected by Sarah Ganss Drawdy, Esquire. Assistant Attorney General Sherrie Butterbaugh, of the South Carolina Attorney General's Office, represented Respondent. Applicant argued on appeal that Judge Sprouse erred in denying Applicant's right to introduce evidence that the victim in the shooting had previously been arrested for criminal domestic violence in rebuttal to the State's character evidence. Final Brief of Appellant at 3, State v. Arflin, Op. No. 2017-UP-303 (S.C. Ct. App. filed July 26, 2017) (per curiam). The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Arflin, Op. No. 2017-UP-303 (S.C. Ct. App. filed July 26, 2017) (per curiam). The Remittitur was issued on August 11, 2017.



CURRENT PROCEEDING

On October 9, 2017, Applicant filed an Application for Post-Conviction Relief, in which he alleged that he was being held in custody unlawfully based upon the ineffective assistance of counsel, "sentencing", and state misconduct. At the time, Applicant failed to include any supporting details in his Application. At the evidentiary hearing before the undersigned on August 12, 2019, Applicant specified that he would be moving forward only upon two allegations: 1) Counsel was constitutionally ineffective for failing to investigate the possibility that a bullet from Applicant's gun ricocheted off of the victim's car before striking the victim and 2) Counsel was constitutionally ineffective for advising Applicant not to testify about his suspicion that one of his bullets had ricocheted off of the victim's car and struck the victim. Although these two allegations were not included in the Application for Post-Conviction Relief and no amended pleading was filed, Applicant was allowed to proceed at the hearing upon these two allegations because Respondent had no objection.¹ Applicant explicitly waived all other allegations and they will not be addressed in this Order.

Applicant testified on his own behalf at his PCR hearing. He testified that the events giving rise to his arrest took place on a road near his driveway. He was on the way home from visiting his mother when he accidentally hit the side mirror of the victim's truck with his own truck while passing the victim's unoccupied, parked truck. He testified that he then accidentally backed into the victim's truck while reversing his own truck to see what he had hit. As Applicant testified that he had a history of bad relations with the Williamsons, at whose house the victim's truck was parked, he anticipated trouble because of the collision. He testified that he retrieved his gun from his truck and then informed the Williamsons of the collision. He said that multiple people came

¹ Respondent informed the Court that PCR Counsel had provided sufficient notice about the two new allegations by email before the hearing.

out of the Williamson home. He was on the phone with 911 at the time. He testified that, as soon as the 911 call ended, the victim put himself between Applicant and Applicant's truck, began to hit Applicant, and told applicant that he would "kick [Applicant's] ass." According to Applicant, the victim knocked Applicant to the ground and Applicant shot him with the gun. When the victim continued to come towards Applicant, he shot the victim again. He testified that he did not shoot the victim in the back. Applicant testified that he had told Counsel that he believed that one of the two bullets that he had shot had ricocheted. He testified that Counsel did not take any steps to investigate this possibility. Due to his experience in automobile mechanics, Applicant testified that he thinks that he would have been able to evaluate whether a bullet ricocheted if he had been allowed to see the truck or a photograph thereof for himself. He claimed to have asked Counsel to, at the very least, take photographs of the victim's truck or bumper so that he could look for evidence of a ricochet. He believes that the State destroyed evidence when it took apart the victim's truck during its investigation. He testified that he did not think that anyone looked at the back bumper of the victim's truck or took photographs thereof. He said that Counsel told him not to bring up his theory of the bullet ricochet while testifying at his trial and that he did not do so at her advice. He testified at the PCR hearing that he thinks that the jury would have believed his version of events if they had heard his theory on the ricochet, and that he was prejudiced since the jury did not hear his testimony on that point. On cross-examination, Applicant admitted that he fired his gun twice during the incident, and that he was scared of the victim, feared for his life, and shot both times in self-defense. Applicant testified that he did not have any choice but to shoot the victim. Applicant also testified that the forensic pathologist who testified at his trial incorrectly identified the first bullet as the one that Applicant shot second.



Counsel also testified at the PCR hearing. She has been practicing law since around 1985, and she has been a Judge Advocate General, a South Carolina Circuit Solicitor, and an attorney in private practice. She testified that she went with the solicitor to inspect Applicant's and the victim's vehicles on multiple occasions, and that they only observed evidence that one of the bullets shot by Applicant had struck the victim's truck. She said that that bullet was recovered from the truck by the State and was the subject of testing. She testified that the other bullet was never recovered from the scene of the victim's truck. She testified that she and Applicant discussed the possibility that the bullet that was recovered had penetrated the victim's body and then entered and lodged in the victim's truck. Although she did not have any memory of Applicant's telling her that he believed that one of his bullets ricocheted off of the victim's truck before striking the victim, she did not have enough of a recollection to deny that he had shared this suspicion with her. She testified that she believes that she had photographs of the victim's truck, and that she would have reviewed them with Applicant if she did have them. She testified that she reviewed all of the discovery in the case with Applicant. She testified that, had Applicant shared this suspicion with her, she likely would have told Applicant that the possibility that one of the two bullets that he fired at the victim first ricocheted off of the victim's truck was irrelevant to his defense since Applicant admitted to shooting the victim twice, admitted to doing so intentionally and in self-defense. She specifically mentioned that she did not think that Applicant would have been entitled to a jury instruction on voluntary manslaughter at trial in light of the evidence and their defense.

She testified that her trial strategy was to have Applicant acquitted of murder, and that she did not seek a lesser-included offense because, due to his advanced age and poor health, any such conviction would have resulted in a de facto life sentence. She also offered that her estimation of Applicant's defense was that she believed that his trial had a good chance of resulting in an

acquittal until the jailhouse informant came forward to say that Applicant had solicited him to kidnap and/or kill the eyewitnesses of the shooting.

Counsel testified that she believes that the forensic pathologist's referring at trial to "shot one" and "shot two" was meant to distinguish between the two shots rather than identify which injury was sustained first by the victim. She agreed that the medical evidence at trial indicated that either of Applicant's shots would have probably been fatal to the victim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Counsel was constitutionally ineffective for failing to investigate the possibility that a bullet from Applicant's gun ricocheted off of the victim's car before striking the victim.

By making this allegation, Applicant was arguing that Counsel's preparation and investigation into the possibility that one of the bullets that struck the victim after ricocheting off of the victim's truck was ineffective.

This Court finds that Counsel's testimony regarding her investigation of the possibility that one of the bullets ricocheted off of Applicant's truck into the victim's body was more credible than Applicant's assertions that Counsel did not investigate the matter or discuss it with him. Applicant testified at the PCR hearing that he shared his concerns with Counsel and that she failed to look into his theory of a bullet ricochet or share any photographs of the victim's truck with him. While on the stand during his trial, Applicant testified that he did not remember firing two shots at the victim. Trial Tr. 872. He later testified at trial that he fired two shots because he was acting in self-defense, and "was under full impression that this guy was going to beat [him] to death" Trial Tr. 890. Applicant's testimony during the PCR hearing was more definite as to the shooting, and it presents as self-serving that he could not remember the events of the shooting at trial but his testimony before this Court was void of lapses in memory.

Applicant has not put before this Court any evidence that one of the bullets fire by Applicant ricocheted off of the victim's truck and then struck the victim. Instead, Applicant has merely speculated that such a ricochet could have happened. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C.

329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)).

An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. See Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). A bullet lodged in the victim's truck was recovered and admitted in evidence at trial. There was no evidence then or now that there a second bullet had struck the victim's truck. Therefore, Applicant has failed to demonstrate that there existed some ricochet evidence for Counsel to discover.

Counsel testified that she did not have an independent memory as to whether she discussed the theory of a bullet ricochet with Applicant, but she did testify that she conducted an adequate investigation in preparation for trial. Counsel's testimony was that her investigation included multiple visits to view the victim's car, but her testimony did not indicate that there was any evidence that would have corroborated Applicant's speculation that one of his two bullets ricocheted off of the victim's truck before striking the victim. She also indicated that she believed that she reviewed photographs of the victim's truck with Applicant, but was firm that she reviewed all discovery with him. Justin Richey, a forensic investigator with the Anderson County Sheriff's Department, testified at Applicant's trial that he had searched the victim's truck and discovered "a bullet hole" that indicated that one of Applicant's fired bullets had passed through multiple layers of metal in the victim's truck before lodging therein. Trial Tr. 532-39. The State also introduced photographs (State's Exhibits 64 through 75) taken of the victim's truck that showed the bullet hole. Trial Tr. 535. Since this Court finds that Counsel's testimony about reviewing regarding discovery is more credible than Applicant's, it is reasonable to assume that the photographs constituting the State's Exhibits 64 through 75 would have been shown by Counsel to Applicant before trial. A defense attorney has a duty to undertake reasonable investigations or to make a

decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). This Court finds that Counsel conducted an adequate and thorough investigation into the evidence in the case, which included a visual inspection of the victim’s truck.

Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions. . .” Strickland, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Id.* at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). Applicant has failed to demonstrate what further benefit would have accrued from any additional investigation or preparation on the part of Counsel, and Counsel testified that she did not think that a ricochet, had one happened, would have affected the defense strategy in the case. Applicant admitted during the PCR hearing that he had fired two shots. He also testified that he did so in self-defense and believed that he had no other choice. “‘Murder’ is the killing of any person with malice aforethought, either express or implied.” S.C. Code Ann. § 16-3-10. A defendant has to show the following in order to establish a defense of self-defense:

- (1) [T]he defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, [the] defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he

was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000) (citing State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999)).

If Applicant admits that he fired two shots at the victim, and claims that he did so intentionally in self-defense, then it matters not whether that bullet launched straight from the barrel of his handgun and into the body of the victim or whether it took a detour on its flight path in ricocheting off of the victim's truck and then striking the victim's body. Applicant made it clear at the PCR hearing that he was not arguing that he would have been entitled to or wanted an instruction on a lesser-included offense. Therefore, since the existence of a ricochet would have not been material to the case at hand in light of Applicant's reliance upon self-defense, it would have been reasonable from a strategic viewpoint for Counsel to decide to not do any additional investigation into Applicant's ricochet theory beyond the investigation that she did, as it would not have contributed much to his defense.

This Court finds that Counsel was not constitutionally ineffective for failing to investigate or prepare for trial since Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this claim of ineffective assistance of counsel is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for advising Applicant not to testify about his suspicion that one of his bullets ricocheted off of the victim's car before striking the victim.

By making this allegation, Applicant was arguing that Counsel was deficient in advising him not to testify about his theory that one of his bullets had ricocheted off of the victim's truck before striking the victim because the jury would have found this testimony credible, and he was deprived of this boost to his credibility due to his reliance upon Counsel's advice. He testified that

he was not alleging that he was prejudiced because he was deprived of an instruction on a lesser-included offense. Counsel testified that she did not have an independent memory regarding her alleged advice to Applicant not to volunteer his ricochet theory at trial. She testified that she would never ask a client to lie on a subject at trial, and she testified that she would have advised Applicant, had he mentioned it to her, that his defense would not have benefitted at trial if he have shared his theory of a ricochet. Her testimony was that Applicant intentionally shot the victim twice in an alleged act of self-defense, and the elements of murder could have been proven by the State notwithstanding any bullet ricochet.

This Court finds that Counsel's performance with regard to her advice to Applicant was not deficient. Although Counsel cannot remember advising Applicant not to offer his theory of a bullet ricochet, her testimony about what she probably would have said is not dissimilar to Applicant's explanation for why he did not offer the theory at trial. This Court finds that Counsel has given a reasonable and valid strategic reason for not eliciting testimony from Applicant about his theory of the ricochet. Counsel testified that she did not see how the ricochet would have been material to the case, particularly since the defense did not want a lesser-included offense, but sought an acquittal of the murder charge based on self-defense. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing Strickland, 466 U.S. at 690). Applicant has not shown any reason that this Court should find deficiency in Counsel's advice as to testifying about his ricochet theory, which may have been inadmissible anyway in light of his lack of expertise in bullet trajectories, would have been irrelevant in light of the legal issues and his testimony about the shooting, and would have been subject to cross-examination based upon the lack of evidence that one of the two bullets fired by Applicant ricocheted off of the victim's truck before striking the

victim. Furthermore, this Court finds that Applicant did not suffer any prejudice by not offering this testimony at trial as Applicant's unsupported theory has not altered the legal issues in his case and has not made any other aspect of his testimony more credible.

This Court finds that Counsel was not constitutionally ineffective in making a valid and strategic judgement that Applicant's bullet ricochet theory would not be of benefit to Applicant at trial and finds that Applicant did not suffer any prejudice by not offering this testimony before the jury. As such, this claim of ineffective assistance of counsel is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

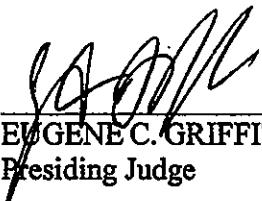
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

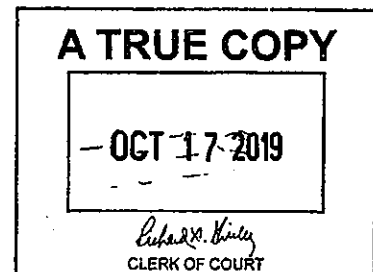
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10th day of October, 2019.


EUGENE C. GRIFFITH, JR.
Presiding Judge

Nawbeny, South Carolina

'19 OCT 17 PM 12:01:20
Anderson, SC CDC, CP/GS



1139

WITNESSES

W B Simpson, Anderson Co. Sheriff's Office

DOCKET NO. 2014GS04 00426

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAR 18 2014

Term

ARREST WARRANT NUMBER

2013A0410202094

2013A0410202095

THE STATE

vs.

Bobby Joe Arflin

ACTION OF GRAND JURY

TRUE BILL

MAR 18 2014

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

Guilty

Foreperson of Petit Jury

Date:

8/27/15

LDP

Indictment for

Murder / Murder

SC Code: 16-03-0010, 0020

CDR Code: 0116

Possession of a Weapon During the
Commission of a Violent Crime

SC Code: 16-23-0490

CDR Code: 0549

A TRUE COPY

OCT -9 2017

Anderson Co. Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on MAR 18 2014, the Grand Jurors of Anderson County present upon their oath:

Murder / Murder

That **Bobby Joe Arflin** did in Anderson County, on or about **December 11, 2013**, unlawfully and with malice aforethought kill Jody Powell by means of, shooting him with a handgun, and that Jody Powell died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Possession of a Weapon During the Commission of a Violent Crime

That **Bobby Joe Arflin**, did in Anderson County on or about **December 11, 2013**, while committing the crime of murder, a crime of violence, have in his possession a handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Anderson Co. Sheriff's Office
Robert K. Gebing, Jr.

ARREST WARRANT NUMBER

2014A0410101421

TRUE BILL
ACTION OF GRAND JURY
MAR 17 2015

Foreperson of Grand Jury
Date: *Robert K. Gebing, Jr.*

VERDICT

Guilty

David J. Gable
Foreperson of Grand Jury
Date: *8/27/15*

DOCKET NO. 2015-GS-04- 00340

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

MAR 17 2015

, TERM

THE STATE

VS.

BOBBY JOE ARFLIN

INDICTMENT FOR

**SOLICITATION / SOLICITATION TO
COMMIT A FELONY**

SC Code: § 00-00-0000
CDR Code: 0795

A TRUE COPY

OCT - 9 2017

Robert K. Gebing, Jr.
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

MAR 17 2015

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

SOLICITATION / SOLICITATION TO COMMIT A FELONY

That Bobby Joe Arflin did in Anderson County, between the dates of October 4, 2014, through November 4, 2014, solicit the agency of another, to wit: Bobby Joe Arflin did solicit Roy Lawrence to commit the act of kidnapping upon Brenda Masters, by counseling, enticing, or inducing Roy Lawrence to commit the felony hereby stated. This is in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



LAUREN D. PRICE
ASSISTANT SOLICITOR

WITNESSES

Anderson Co. Sheriff's Office
Robert K. Gebing, Jr.

ARREST WARRANT NUMBER

2014A0410101422

TRUE BILL
ACTION OF GRAND JURY

MAR 17 2015

Foreperson of Grand Jury
Date: *Charles Gebing*

VERDICT

Guilty

Daniel J. Jones
Foreperson of Grand Jury
Date: *8/27/15*

DOCKET NO. 2015-GS-04- 00341

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
MAR 17 2015

_____, TERM

THE STATE

VS.

BOBBY JOE ARFLIN

INDICTMENT FOR

**SOLICITATION / SOLICITATION TO
COMMIT A FELONY**

SC Code: § 00-00-0000
CDR Code: 0795

A TRUE COPY

OCT - 9 2017

Charles Gebing
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAR 17 2015, the
Grand Jurors of Anderson County present upon their oath:

SOLICITATION / SOLICITATION TO COMMIT A FELONY

That Bobby Joe Arflin did in Anderson County, between the dates of October 4, 2014, through November 4, 2014, solicit the agency of another, to wit: Bobby Joe Arflin did solicit Roy Lawrence to commit the act of kidnapping upon James Madison, by counseling, enticing, or inducing Roy Lawrence to commit the felony hereby stated. This is in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



LAUREN D. PRICE
ASSISTANT SOLICITOR

WITNESSES

Anderson Co. Sheriff's Office
Robert K. Gebing, Jr.

ARREST WARRANT NUMBER

2014A0410101423

TRUE BILL
ACTION OF GRAND JURY

MAR 17 2015

Foreperson of Grand Jury
Date: *Charles Salter*

VERDICT

Guilty

Janet Jackson
Foreperson of Grand Jury
Date: *8/27/15*

DOCKET NO. 2015-GS-04- *00342*

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

MAR 17 2015

, TERM

THE STATE

VS.

BOBBY JOE ARFLIN

INDICTMENT FOR

**SOLICITATION / SOLICITATION TO
COMMIT A FELONY**

SC Code: § 00-00-0000
CDR Code: 0795

A TRUE COPY

OCT - 9 2017

Anderson County Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

MAR 17 2015

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

SOLICITATION / SOLICITATION TO COMMIT A FELONY

That Bobby Joe Arflin did in Anderson County, between the dates of Ocobter 4, 2014, through November 4, 2014, solicit the agency of another, to wit: Bobby Joe Arflin did solicit Roy Lawrence to commit the act of kidnapping upon Larry Williamson, by counseling, enticing, or inducing Roy Lawrence to commit the felony hereby stated. This is in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



LAUREN D. PRICE
ASSISTANT SOLICITOR

COUNTY OF
STATE

Anderson

VS.

Bobby Joe Arflin

AKA:

Race: W Sex: M Age: 61

DOB: [REDACTED] SS#: [REDACTED]

Address: 141 Williamson Dr

City, State, Zip: Belton, SC 29627-8404

DL#: [REDACTED] SID#: SC02132456

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder

INDICTMENT/CASE#: 2014GS0400426

A/W#: 2013A0410202094

Date of Offense: 12/11/2013

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

77011

Price, Lauren D.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130.00

Clerk of Court/ Deputy Clerk

Court Reporter: D. Martengill

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY

OCT - 9 2017

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2752

Sentence Date: 8-27-17

Richard D. Kline
ANDERSON CLERK OF COURT

1148 SOUTH CAROLINA

COUNTY OF Anderson
 STATE VS.
Bobby Joe Arflin
 AKA:
 Race: W Sex: M Age: 61
 DOB: [REDACTED] SS#: [REDACTED]
 Address: 141 Williamson Dr
 City, State, Zip: Belton, SC 29627-8404
 DL#: [REDACTED] SID#: SC02132456

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 77011
Price, Lauren D. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$
 TOTAL \$ 130.00

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: D. Marceng
 SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0400426
 A/W#: 2013A0410202095
 Date of Offense: 12/11/2013
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP
 days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

A TRUE COPY

OCT - 9 2017

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

[Signature]
 ANDERSON CLERK OF COURT

Presiding Judge [Signature]
 Judge Code: 2752
 Sentence Date: 8-27-15

COUNTY OF **ANDERSON**

STATE VS.

BOBBY JOE ARFLIN

AKA:

Race: **White**Sex: **M**Age: **62**DOB: **[REDACTED]**SS#: **[REDACTED]**Address: **141 Williamson Dr**City, State, Zip: **Belton, SC 29627-8404**DL# **[REDACTED]**SID# **SC02132456***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Solicitation / Solicitation to commit a Felony**In violation of § **00-00-0000** of the S.C. Code of Laws, bearing CDR Code # **0795**☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Lauren D. Price, Assistant Solicitor **77011**
SC Bar #**Defendant****Attorney for Defendant** **5991**
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,
for a determinate term of **10** days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: **2015 GS-04-00426**☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel

\$47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

\$ _____

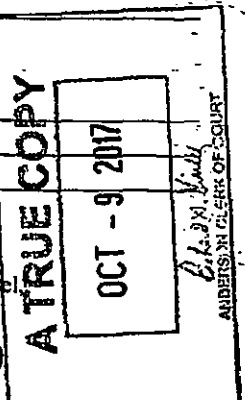
TOTAL

\$ **130.00**Clerk of Court/Deputy Clerk: **[Signature]**Court Reporter: **[Signature]**

SCCA/217 (03/2011)

Presiding Judge: **[Signature]**

Judge Bar ID: _____

Sentence Date: **8-27-15**Judge Code: **2752**

COUNTY OF ANDERSON
STATE VS.INDICTMENT/CASE# 2015.GS-04-00341
A/W: 2014A0410101422
Date of Offense: 11/05/2014
S.C. Code §: 00-00-0000
CDR Code #: 0795BOBBY JOE ARFLIN
AKA: _____
Race: White Sex: M Age: 62
DOB: _____ SS#: _____
Address: 141 Williamson Dr
City, State, Zip: Belton, SC 29627-8404
DL# _____ SID# SC02132456

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Solicitation / Solicitation to commit a FelonyIn violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 0795☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lauren D. Price, Assistant Solicitor SC Bar # 77011 Defendant Attorney for Defendant SC Bar # 5991WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ <u>5.00</u>
TOTAL		\$ <u>130.00</u>

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

A TRUE COPY

OCT - 9 2017

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

ANDREWS, J. CLERK OF COURT

Clerk of Court/Deputy Clerk: Richard D. Price
Court Reporter: D. Marcengill
SCCA/217 (03/2011)Presiding Judge: R. D. Price
Judge Bar ID: _____ Judge Code: 2752
Sentence Date: 8-27-15

COUNTY OF ANDERSON

STATE VS.

BOBBY JOE ARFLIN

AKA:

Race: White Sex: M Age: 62

DOB: [REDACTED] SS#: [REDACTED]

Address: 141 Williamson Dr

City, State, Zip: Belton, SC 29627-8404

DL# [REDACTED] SID# SC021324\$6

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Solicitation / Solicitation to commit a Felony

In violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 0795

INDICTMENT/CASE# 2015-GS-04-00342
 A/W: 2014A0410101423
 Date of Offense: 11/05/2014
 S.C. Code §: 00-00-0000
 CDR Code #: 0795

SENTENCE SHEET



☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lowd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lauren D. Price, Assistant Solicitor SC Bar # 77011 Defendant Attorney for Defendant SC Bar # 5991

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____ days/hours Public Service Employment
 Total: \$ _____ plus 20% fee: \$ _____ Obtain GED ☐
 Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 5.00

Proviso 90.5 (SCCA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ \$ 130.00

TOTAL \$ _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel

\$47.12 requires \$500 be paid to Clerk _____

during probation.

Presiding Judge: _____

Judge Bar ID: _____ Judge Code: 2752

Sentence Date: 8-27-15

Clerk of Court/Deputy Clerk: _____

Court Reporter: D. Marcangeli

SCCA/217 (03/2011)

A TRUE COPY

OCT - 9 2017

ANDERSON CLERK OF COURT