



# The South Carolina Court of Appeals

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March 23, 2022

Ms. Sarah Elizabeth Shipe, Esquire  
1330 Lady Street, Suite 401  
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Mr. Mark Reynolds Farthing, Esquire  
PO Box 11549  
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Re: The State v. Tony A. Sanders  
Appellate Case No. 2019-000904

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

*V. Claire Allen*

CLERK

cc: Alan McCrory Wilson, Esquire  
William M. Blich, Jr., Esquire  
The Honorable Robin B. Stilwell

**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.

Tony Avella Sanders, Appellant.

Appellate Case No. 2019-000904

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Appeal From Pickens County  
Robin B. Stilwell, Circuit Court Judge

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Unpublished Opinion No. 2022-UP-147  
Submitted March 1, 2022 – Filed March 23, 2022

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**AFFIRMED**

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Appellate Defender Sarah E. Shipe, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Attorney General Mark Reynolds Farthing,  
both of Columbia, and Solicitor William W. Wilkins, III,  
of Greenville, all for Respondent.

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**PER CURIAM:** Tony Avella Sanders appeals his conviction of domestic  
violence in the second degree, arguing the circuit court erred in denying his motion  
for a mistrial based on the solicitor's comments during closing arguments. We find

the circuit court did not abuse its discretion in denying Sanders's motion for a mistrial. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Edmond v. State*, 341 S.C. 340, 345, 534 S.E.2d 682, 685 (2000) ("It is improper for the State to refer to or comment upon a defendant's exercise of a constitutional right."); *State v. Pickens*, 320 S.C. 528, 530–31, 466 S.E.2d 364, 366 (1996) (explaining the admission of comments on a defendant's exercise of a constitutional right is a trial error subject to harmless error analysis); *Gill v. State*, 346 S.C. 209, 221, 552 S.E.2d 26, 33 (2001) ("[I]mproper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant."); *State v. Brisbon*, 323 S.C. 324, 332, 474 S.E.2d 433, 438 (1996) ("The test of granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial."); *Johnson v. State*, 325 S.C. 182, 188, 480 S.E.2d 733, 735–36 (1997) (finding even if the solicitor's comments on the defendant's failure to testify were improper, "the trial court's instruction to the jury that it could not consider [his] failure to testify in any way and could not use it against him [was] sufficient to cure any potential error").

**AFFIRMED.**<sup>1</sup>

**THOMAS, MCDONALD, and HEWITT, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.