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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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STATE OF HAWAIʻI,
Respondent/Plaintiff-Appellee,

vs.

JOSHUA R.D. WILLIAMS,
Petitioner/Defendant-Appellant.

SCWC-13-0001285

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-13-0001285; CR. NO. 12-1-0425)

JUNE 15, 2020

DISSENTING OPINION BY NAKAYAMA, J.
IN WHICH RECKTENWALD, C.J, JOINS

I respectfully dissent from the Majority's holding that the Circuit Court of the First Circuit (circuit court) erroneously excluded evidence of defendant Joshua R.D. Williams's (Williams) state of mind. In my view, the circuit court did not abuse its discretion by excluding certain statements Williams alleges that the complaining witness, David Quindt Jr. (Quindt),

made to him in the weeks before Williams stabbed Quindt. Moreover, I believe that if the circuit court did err in excluding Quindt's statements, that error was harmless beyond a reasonable doubt. Quindt's excluded testimony was cumulative to the testimony the circuit court did admit, and was not, as the Majority holds, "essential" to Williams's self-defense claim. Therefore, I respectfully dissent.

I. BACKGROUND

Williams was charged with attempted murder in the second degree after stabbing Quindt in the arm, neck, and face.

The following facts were adduced at trial. Williams met Quindt three weeks before the incident and began renting a room in Quindt's home in Waiʻanae, Oʻahu several days later. On the night of March 10, 2012, Quindt was driving his sports utility vehicle (SUV) in Waiʻanae when he and Williams began to argue. At one point, Williams exited Quindt's vehicle, but got back in shortly after. When Williams re-entered the vehicle, he sat in the back seat. The argument escalated as Quindt continued to drive. Suddenly, Williams began to stab Quindt. Quindt fought back against Williams, who was still in the back seat. Quindt stopped the vehicle in the Waianae Mall parking lot and persuaded Williams to drive him to the Waianae Coast Comprehensive Health Center (health center). At the health center, Williams "ran toward the ocean" and hid the knife.

Williams initially told Honolulu Police Department (HPD) Detective Ernest Robello (Detective Robello), that he and Quindt had been confronted by three men at a beach park, who followed them to the Waianae Mall parking lot and stabbed Quindt. After Detective Robello pointed out inconsistencies in Williams's statement, Williams admitted to stabbing Quindt, but claimed to have stabbed him in self-defense. At trial, the sole issue was whether Williams acted in self-defense when he stabbed Quindt.

In advance of trial, Williams filed Defendant's Notice of Prior Bad Acts pursuant to Hawaiʻi Rules of Evidence (HRE) Rule 404(b). Williams sought to admit testimonial evidence that during the several weeks Williams knew Quindt before the stabbing, Quindt would "boast and brag" about:

> a. Doing time for the crime of murder in California,
> b. That he did hard time in California;
> c. That he knows how to fight because of the time he spent in jail and that he had to learn to fight to survive;
> d. That he knows about gang-bangers and gang-members;
> e. That he has experience with violence from spending time in jail;
> f. That he "got away" with murder by beating the charge – because someone else took credit for it;
> g. That he did the crime but got off on a technicality.

The circuit court ruled that items "a" and "b" were the same and permitted Williams to testify that Quindt bragged about having been convicted of murder. The circuit court altered item "c" slightly - ruling that Williams could testify that Quindt said

"he knows how to fight, he learned how to fight in jail." The circuit court excluded items "d" and "e," finding that they were too general. The circuit court ruled that items "f" and "g" were irrelevant to violent conduct.

A. Quindt's Trial Testimony

At trial, Quindt testified that he met Williams for the first time outside a tattoo parlor around three weeks before the stabbing. Shortly thereafter, Quindt allowed Williams and his young son to move into a room in Quindt's home in Waiʻanae.

Quindt testified that he had been convicted of murder in an unrelated case but was exonerated in 1998. However, Quindt denied having ever mentioned his murder conviction to Williams. Quindt testified that Williams might have overheard him discussing the conviction with a woman from the Hawaiʻi Innocence Project.

On March 10, 2012, Quindt tattooed Williams's leg and planned to pierce one of Williams's friends later that evening. Quindt and Williams returned to Quindt's house to drop off Williams's son before going to do the piercing. Quindt stated that he became frustrated that Williams was making him wait while Williams put his son to bed. When Williams returned to the car, the two began to argue, and Williams began to yell at Quindt.

While Quindt drove less than five miles-per-hour,

Williams "jump[ed] out of the vehicle." Quindt testified that he asked Williams to get back in the vehicle and, a minute later, Williams got into the "right passenger side backseat[.]"

Quindt continued to drive. Quindt testified that he raised his voice at Williams when he heard that Williams was on the phone with his girlfriend, with whom Williams was in a custody dispute over their son. Quindt and Williams began to yell and swear at each other. At that point, Quindt stated that he told Williams that he had to move out of Quindt's house.

Quindt testified that he never threatened to hurt or kill Williams. On the night of the stabbing, Quindt was carrying a folded-up knife in his pants pocket. Quindt testified that he never threatened Williams with the knife or attempted to take it out. He stated that since he was "seat-belted in" he would have been unable to get to the knife.

Quindt testified that he was pulling into the Waianae Mall parking lot when he felt "a hit to [his] right-hand side on [his] face." Quindt felt blood running down his neck and realized that Williams had stabbed him. In response, Quindt testified that he "started fighting, gassing the car, hitting the brake, gassing the car, trying to throw [Williams] off balance." Williams stabbed Quindt through his nose, out the left side of his cheek, and through his upper lip. Williams also cut the

right side of Quindt's face, down to his Adam's apple, and through his ear. Quindt also sustained a three to four inch laceration on his arm, and cuts on his finger and chest.

Quindt got out of the car and tried to dial 911 but was unable to do so because his phone screen was covered in blood. Quindt heard Williams call Williams's mother and say, "I'm going to go to jail, I just stabbed [Quindt]."

Quindt persuaded Williams to drive him to the health center. Williams drove Quindt to the emergency room, and Quindt saw him run toward the ocean. Williams told Quindt he was going to "get rid of the knife." Quindt testified that he did not tell Williams to get rid of the knife or to make up a story about having been attacked by three unknown males.

B. Detective Robello's Trial Testimony

Detective Robello testified about his interviews with Williams after the stabbing. Detective Robello testified that Williams told HPD patrol officers at the health center that he and Quindt had been confronted by three unknown males at a beach park, who followed them to the Waianae Mall parking lot and stabbed Quindt. Williams repeated this statement to Detective Robello. Detective Robello testified that when he confronted Williams with inconsistencies in his statement and told Williams that Quindt had identified Williams as the assailant, Williams

"started to change the story." Williams told Detective Robello that he had stabbed Quindt, but that Quindt had told him to come up with an alternative story. Williams told Detective Robello that he had stabbed Quindt in self-defense. Detective Robello stated that he asked Williams, "[s]o you stabbed [Quindt] with the intent to kill him before he could kill you?" Williams replied, "[y]es.".

Detective Robello testified that Williams told him that "the night before the stabbing, during an argument between the two of them, he said that Mr. Quindt had said that he had been incarcerated. He had killed somebody in the past and gotten away with it."

Detective Robello also recounted that Williams initially told him that the knife he had used to stab Quindt could not be recovered because he had thrown it into the ocean. Williams later admitted that the knife could be found "in some shrubs" near the health center.

C. Williams's Trial Testimony

Williams testified in his own defense at trial. Williams testified that he stabbed Quindt in self-defense after Quindt threatened to kill him. Specifically, Williams testified that Quindt was "an Alpha male. He would tell me things to do, and if I did them a different way, he would, I guess, bash me

down on it." Williams stated that he and Quindt "clashed a few times, had a few arguments. [Quindt] would always kind of – kind of scare me. He was really jumpy. . . . He lost his temper very easily. When he'd lose his temper, he would want to fight. . . . He would just want to fight." Williams further testified that "[a] few times, it came very close to an actual altercation. There was never actually physical blows thrown. There was times when I was scared . . . ." Williams stated that Quindt "blew off the top the lid [] instantly with [me], and I was getting scared."

Williams testified that he feared Quindt because Quindt bragged about "an alleged attempted murder that he committed." Williams stated that Quindt bragged to Williams about the murder charge multiple times.

Williams also testified about his fear of Quindt on the night of the stabbing. According to Williams, on that night, Quindt started yelling at Williams as soon as Williams got into Quindt's SUV. Williams testified that he jumped out of Quindt's truck at a stop sign, but Quindt pushed him to the ground, yelled at him, and put his fists up like he wanted to fight. Quindt said, "you think I'm afraid of you? I learned how to fight in jail." Quindt grabbed Williams and forced him into the back seat of his truck.

Quindt began to drive erratically, screaming and cursing at Williams, who tried to appease Quindt. Williams testified that Quindt engaged the child locks,[1] and smiled sardonically at Williams "like ha-ha, I got you, you know, you're not getting anywhere." Williams testified that Quindt said, "[w]hen I stop this truck, I'm going to fucking kill you." Williams stated that "I was scared. I was petrified. In my mind, I really thought I was going to die." He testified,

> I noticed we were going up a dark road, and he says I'm going to kill you, and he goes like this, like he nods, like he was assuring himself or something. I don't know. I kept thinking I can't let him stop this truck. And I – I was scared, and I stabbed him.

After Williams stopped stabbing Quindt, Williams testified that Quindt pulled over in the Waianae Mall parking lot and they both got out of the car. Williams stated that he was "distraught" because he was scared for both his and Quindt's lives. Williams drove Quindt to the health center. On the way, Williams testified that Quindt told him "don't tell the police what happened, don't worry, dude, don't worry, nothing's going to happen, don't tell the police." Williams testified that once they arrived at the emergency room, Quindt told Williams to get rid of the knife. Williams testified that when police arrived, he "made up a story about getting jumped by three guys that

[1] Quindt testified that his vehicle does not have a master button that locks all the doors but has auto lock on the windows for child safety.

followed us from a beach park." Williams also admitted that he lied to Detective Robello about having thrown the knife into the ocean.

The jury later convicted Williams of attempted murder in the second degree. The ICA affirmed, holding that "in light of the evidence that the Circuit Court ruled would be permitted and the evidence that was actually admitted at trial, any error in the Circuit Court's pre-opening-statement limitation of Williams' proffered evidence was harmless beyond a reasonable doubt." I agree.

II. DISCUSSION

A defendant has a constitutional right to present a defense, but not an unmitigated right to present any evidence he wishes in whichever manner he chooses.[2] It is the specific role

[2] The Majority avers that a criminal defendant has the "right to speak directly to his peers about the exact allegedly life-threatening words spoken to him by the complaining witness" and that "the trial strategy of defense counsel and the defendant as to the content of defendant's state of mind testimony supporting his self-defense claim" is not "subject to alteration by the court." Majority at 29-30 n.16. The Majority cites the United States Supreme Court opinion Rock v. Arkansas, 483 U.S. 44 (1987) to support this contention. While the Rock court expounded the fundamental right of a defendant to present his own defense, the court also acknowledged that "the right to present relevant testimony is not without limitation. The right may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." Id. at 55 (citing Chambers v. Mississippi, 410 U.S. 284, 295 (1973)). The court held that "restrictions of a defendant's right to testify [by a state's evidentiary rules] may not be arbitrary or disproportionate to the purposes they are designed to serve." Id. at 55-56. Applying this standard, the court concluded that "Arkansas' per se rule excluding all posthypnosis testimony infringes impermissibly on the right of a defendant to testify on his own behalf." Id. at 62.

Unlike the posthypnosis rule repudiated by the Rock court, HRE

(continued...)

of the trial court to moderate the evidence both the prosecution and the defense wish to present, including the defendant's own testimony, to ensure a fair and efficient trial. See State v. Haili, 103 Hawaiʻi 89, 101, 79 P.3d 1263, 1275 (2003) ("[T]he determination of the admissibility of relevant evidence under [HRE Rule 403[3]] is eminently suited to the trial court's exercise of its discretion[.]")

The Majority mischaracterizes the circuit court's rulings on Williams's pre-trial notice of prior bad acts as having eviscerated Williams's ability to mount an effective self-defense defense. Contra Majority at 30-33. The Majority concludes that the circuit court's pretrial rulings consolidating certain cumulative testimony and excluding patently irrelevant

[2](...continued)
Rule 403 does not per se exclude a specific type of testimony, but instead vests the circuit court with discretion to exclude relevant evidence if negative countervailing factors substantially outweigh its probative value. HRE Rule 403, which is identical to Federal Rules of Evidence (FRE) Rule 403 and analogous to certain rules of evidence from virtually every state, is not arbitrary or disproportionate to the purpose it is designed to serve – "maintaining the delicate balance between probative value and prejudicial effect[.]" State v. Iaukea, 56 Haw. 343, 349, 537 P.2d 724, 729 (1975).

The Majority cites no precedent categorically limiting that discretion with respect to a criminal defendant's testimony. Each HRE Rule 403 ruling is scrutinized by the abuse of discretion standard on appeal. Indeed, that Williams was required to file a pretrial notice of intended prior bad acts testimony demonstrates the circuit court's ability to alter Williams's testimony as it reasonably saw fit.

Here, I strongly disagree that the circuit court abused its discretion in reasonably limiting Williams's state of mind testimony.

[3] HRE Rule 403 states, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." HRE Rule 403 (1993).

testimony were so limiting that the circuit court violated Williams's constitutional right to testify.

However, the circuit court allowed Williams to testify extensively about both Quindt's prior threatening statements and behavior and about Williams's state of mind at the time he attacked Quindt to support Williams's theory that he acted in self-defense. The question is therefore one of degree. Did the circuit court's alteration and exclusion of some of Quindt's alleged statements amount to error that was an abuse of discretion? And if so, is it reasonably possible that the exclusions contributed to Williams's conviction? The record demonstrates that the answer to both questions is "no."

A. The circuit court did not err in excluding certain statements that Quindt allegedly made in the weeks before the stabbing.

The Majority holds that the circuit court ruled in error with respect to items "c" through "g" of Quindt's alleged statements. As I discuss below, the Majority overstates both the quantity and quality of the testimony that the circuit court excluded. In vacating Williams's conviction based on the circuit court's reasonable evidentiary rulings, the Majority improperly substitutes its own judgment for that of the circuit court instead of abiding by established appellate review standards.

First, with respect to item "c," the circuit court

ruled that instead of testifying that Quindt stated "[t]hat he knows how to fight because of the time he spent in jail and that he had to learn to fight to survive[,]" Williams could testify that Quindt stated that he "knows how to fight. He learned how to fight in jail." The circuit court excluded the language "fight to survive." Nevertheless, Williams's counsel used the phrase "fight to survive" in opening statements. Williams's counsel stated, "[Williams] knows – he remembers how [Quindt] would talk about how he learned how to fight in prison because you have to fight – I'm sorry – in jail because you have to learn how to fight to survive in jail."

The Majority appears to take issue with the fact that Williams himself could not use the phrase "fight to survive" during his testimony. Majority at 24-25. However, to the extent that this language carries the weight that the Majority asserts, this supposed "key characterization" is inconsistent with Williams's position that he was afraid Quindt would attack him, so Williams had to preemptively stab Quindt to protect himself. Put differently, the testimony that Quindt told Williams he had to learn to fight to survive implies that Williams knew Quindt would fight back to protect himself if attacked by another, not that Williams should fear Quindt would attack him first. The circuit court therefore ruled within its discretion when it

excluded this language based on its conclusion that the language would confuse the jury. Such a ruling does not "clearly exceed[] the bounds of reason or disregard[] rules or principles of law or practice[.]" See Kealoha v. Cty. of Hawaiʻi, 74 Haw. 308, 318, 844 P.2d 670, 675 (1993).

Second, with respect to item "d," the circuit court excluded Quindt's alleged statement "[t]hat [Quindt] knows about gang-bangers and gang-members[.]" The Majority holds that this statement "could have provided a specific, probative example of Quindt's alleged proclivity towards violence." Majority at 27. However, to the extent that the statement "[I] know about gang-bangers and gang-members"[4] can be considered specific, it is certainly cumulative of Quindt's "alleged proclivity toward violence." Williams was permitted to elicit testimony from Quindt that Quindt had been convicted of murder and was permitted to testify that Quindt bragged about the murder conviction to Williams repeatedly. Williams was also permitted to testify that Quindt bragged about having learned to fight in jail. Williams was further permitted to testify about multiple occasions in which Quindt allegedly tried to engage Williams in physical

[4] Quindt's alleged statement that he "knew about" gang-bangers is confusing and misleading. Williams did not allege Quindt told him that he was a gang-banger or that he knew gang-bangers. In addition, this statement is not relevant because simply knowing about gang-bangers would not make Quindt prone to violent behavior.

altercations during the several weeks that they knew one another before the attack. I therefore agree with the ICA that the statement "was covered by, merely cumulative of, and less significant than the [other] evidence admitted into evidence." The circuit court did not err in excluding this statement because it was cumulative of evidence that showed actual specific instances of Quindt's proclivity toward violence.

Third, with respect to item "e," the circuit court excluded Quindt's alleged statement that "he has experience with violence from spending time in jail." In my opinion, this statement conveys the same message as Quindt's alleged statement that he learned how to fight in jail, and it is therefore cumulative. Moreover, to the extent that this statement would affect Williams's state of mind with respect to Quindt's proclivity to commit violent acts, it is cumulative of testimony that Quindt had committed specific, violent acts – that Quindt had been convicted of murder, and that Quindt had repeatedly tried to fight Williams. The circuit court therefore did not err in excluding this alleged statement.

Fourth, with respect to items "f" and "g," the fact underlying those statements – that Quindt was later exonerated from the murder conviction – was presented at trial through Quindt's and Detective Robello's testimony. Quindt testified on

direct examination that he had been convicted of murder, but that he had been exonerated. Detective Robello testified that Williams told him that Quindt had bragged to Williams that he "had been incarcerated [and] [h]e had killed somebody in the past and gotten away with it."

Nevertheless, the Majority contends that because Detective Robello and Quindt, not Williams himself, testified that Williams told him he knew Quindt had "gotten away" with murder, Williams was deprived of his "right to speak directly to his peers about the exact allegedly life-threatening words spoken to him by the complaining witness[.]" Majority at 30. I disagree. Williams was given ample leeway to testify that he believed Quindt had killed before and might kill Williams. Moreover, the fact that Quindt was exonerated from the murder is not relevant to Williams's state of mind. It has no bearing on whether Williams believed that Quindt had committed the murder, or that he was capable of murdering again. In light of Williams's extensive testimony about Quindt's intimidating statements, the circuit court did not err in allowing Detective Robello and Quindt, but not Williams, to testify about the irrelevant fact that Quindt had been exonerated of the murder for which he was convicted.

The Majority holds that the circuit court "deprived

Williams of evidence that he acted in self-defense as a result of his life-threatening fear of Quindt." Majority at 31. However, the only statements that were truly excluded were the statement about "gang-bangers" and the "fight to survive" language. As explained previously, this language was cumulative and its exclusion did not detract from Williams's extensive testimony about Quindt's violent nature and his profound fear of Quindt.

In my view, the Majority overlooks the "abuse of discretion" standard of review by which it is bound in vacating Williams's conviction based on the circuit court's pretrial rulings. Abuse of discretion occurs when the circuit court "clearly exceed[s] the bounds of reason or disregard[s] rules or principles of law or practice to the substantial detriment of a party litigant." See Kealoha, 74 Haw. at 318, 844 P.2d at 675. Here, the Majority does not explain how the circuit court's rulings clearly exceeded the bounds of reason and amounted to abuse of discretion, because the record does not support such a holding. Even if this court disagrees with the circuit court's ruling, it is not for this court to disregard an established standard of review and vacate a conviction based on a circuit court ruling that does not rise to abuse of discretion. See Id. ("Under [the abuse of discretion] standard different trial judges may, on the same facts, arrive at opposite rulings without any of

them being reversible on appeal."). It is improper for this court to vacate Williams's conviction when the record demonstrates that the circuit court did not abuse its discretion in altering and excluding certain statements at trial.

B. If the circuit court excluded Quindt's statements in error, those errors were harmless beyond a reasonable doubt.

Even if, contrary to my position, every ruling the circuit court made with respect to the prior bad acts motion was in error, those errors were harmless beyond a reasonable doubt in light of the other testimonial evidence that the circuit court allowed Williams to present to prove he acted in self-defense. Moreover, certain undisputed facts impeached Williams's credibility, which indicates that further testimony by Williams about his state of mind would not have influenced the jury's verdict.

If a trial court errs in admitting evidence, a defendant's conviction shall not be overturned if the error was "harmless beyond a reasonable doubt." Haili, 103 Hawaiʻi at 100, 79 P.3d at 1274.

> [T]he error is not to be viewed in isolation and considered purely in the abstract. It must be examined in the light of the entire proceedings and given the effect which the whole record shows it to be entitled. In that context, the real question becomes whether there is a reasonable possibility that error might have contributed to conviction.

State v. Heard, 64 Haw. 193, 194, 638 P.2d 307, 308 (1981).

Williams testified at trial that when Quindt lost his temper he would want to fight. He testified that Quindt tried to fight him several times during the few weeks they knew one another before the attack. He testified that Quindt scared him. He testified that Quindt bragged multiple times about having committed murder.

Williams specifically testified about the fear he felt on the night of the attack. Williams stated that Quindt began yelling at him as soon as Williams got into Quindt's truck. When Williams got out of the truck and tried to leave, Quindt pushed him to the ground, "put his fists up like he wanted to fight, and said 'you think I'm afraid of you? I learned how to fight in jail.'" Quindt grabbed Williams and forced him back into his truck. Quindt began to drive erratically, screaming and cursing at Williams, who tried to appease Quindt. Quindt engaged the child locks, and smiled sardonically at Williams "like ha-ha, I got you, you know, you're not getting anywhere." Williams testified that Quindt said, "[w]hen I stop this truck, I'm going to fucking kill you." Williams testified, "I was scared. I was petrified. In my mind, I really thought I was going to die." He continued,

> I noticed we were going up a dark road, and he says I'm going to kill you, and he goes like this, like he nods, like he was assuring himself or something. I don't know. I kept thinking I can't let him stop this

truck. And I – I was scared, and I stabbed him.

The only language that the circuit court prevented Williams from testifying that Quindt used was "[t]hat [Quindt] knows about gang-bangers and gang-members," and that "[Quindt] had to learn to fight to survive." What these statements add to the narrative, if anything, is negligible. Williams testified about how Quindt would threaten him and brag about his experience in jail after his murder conviction. Williams testified extensively about how this, combined with Quindt's behavior on the night of the incident and his statement "I'm going to fucking kill you," caused Williams to fear for his life and stab Quindt preemptively in self-defense.

This testimony clearly illustrated Williams's state of mind at the time of the attack – that he feared Quindt and feared for his life. Williams, through his own testimony and that of others, presented a complete and thorough self-defense defense. Nevertheless, the jury convicted Williams of attempted murder in the second degree. I believe that the exclusion was harmless beyond a reasonable doubt because the jury would have come to the same conclusion had Williams been permitted to present the scant evidence that the circuit court excluded. See Heard, 64 Haw. at 194, 638 P.2d at 308 ("[T]he real question becomes whether there is a reasonable possibility that error might have contributed to

conviction.").

Moreover, despite Williams's extensive self-defense testimony, certain undisputed facts call into question Williams's credibility and render harmless the exclusion of further testimony. First, Quindt was driving his vehicle in the driver's seat when Williams attacked him from the back seat. It is difficult to imagine a scenario where Quindt could have reached into the back seat, while driving, and killed Williams. Further, when Quindt stopped the vehicle, Williams did not flee or call the police. Instead, he called his mother to tell her that he had stabbed Quindt, got back into Quindt's car, and drove Quindt to the health center. This is not the behavior of a person who genuinely fears for his life. Finally, Williams admitted that he lied to HPD officers and Detective Robello about both his involvement in the stabbing and the location of the knife he used to stab Quindt. These false statements call into question the veracity of all of Williams's statements. In light of these facts, it is clear to me that additional testimony by Williams would not have convinced the jury that Williams acted in self-defense. Therefore, the exclusion of this testimony was harmless beyond a reasonable doubt.

In my view, any error the circuit court committed in excluding Quindt's alleged statements was harmless beyond a

reasonable doubt. As such, I respectfully disagree with the Majority's holding that the circuit court deprived Williams of his constitutional right to present a defense. Contra Majority at 31-32.

III. CONCLUSION

I disagree with the Majority's holding that the circuit court erred by "prohibit[ing] Williams from presenting state of mind evidence relevant to his self-defense claim[.]" Contra Majority at 2. The circuit court excluded only the "gang-bangers" statement and the "fight to survive" language. Neither statement was essential to Williams's state of mind testimony or his self-defense claim. The circuit court did not abuse its discretion in excluding those statements.

I further believe that if the circuit court excluded those statements in error, that error was harmless beyond a reasonable doubt in light of both the abundant testimonial evidence Williams was permitted to provide about his fear of Quindt and the undisputed facts which impeached Williams's credibility.

For these reasons, I respectfully dissent.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama