

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Cherokee County  
Keith Kelly, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

**Jul 26 2022**

S.C. SUPREME COURT

NICHOLAS BONNER,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000085

\_\_\_\_\_  
INITIAL BRIEF OF APPELLANT  
PURSUANT TO WHITE V. STATE  
\_\_\_\_\_

SUSANNAH ROSS, ESQ.

Ross & Enderlin, PA  
330 E. Coffee St.  
Greenville, SC 29601  
(864) 242-0029  
susannah@rossenderlin.com

ATTORNEY FOR APPELLANT

Other Counsel of Record:

Chelsey Marto  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803)734-6305

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIE.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE.....4

ARGUMENT .....13

**1. The issue of whether the trial judge erred in ruling that a cooperating co-defendant witness could testify about prior bad acts was preserved for appellate review even though trial counsel failed to make a contemporaneous objection.....13**

**2. The trial judge erred in ruling that a cooperating co-defendant witness could testify about prior bad acts.....15**

CONCLUSION..... 9

TABLE OF AUTHORITIES

**Cases:**

State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (S.C. 1996). .....15

State v. Bostick, 307 S.C. 226, 414 S.E.2d 175, (S.C. App. 1991).....16

State v. Cheeseboro, 346 S.C. 526, 548, 552 S.E.2d 300, 311 (2001).....15

State v. Coleman, 301 S.C. 57, 60, 389 S.E.2d 659, 660 (1990).....16

State v. Gore, 283 S.C. 118, 120, 322 S.E.2d 12, 13 (1984).....16

State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (S.C. App. 2001).....15

State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (S.C. 2021).....13, 14

State v. King, 561 S.E.2d 640, 349 S.C. 142 (S.C. App. 2002)..... 13, 14, 15

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).....15

State v. Ostrowski, 435 S.C. 364, 397, 867 S.E.2d 269 (S.C. App. 2021).....15

State v. Wiles, 383 S.C. 151, 156, 679 S.E.2d 172, 175 (2009).....13

State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980).....14, 16

White v. State, 263 S.C. 110, 119, 208 S.E.2d 35, 40 (1974) ..... 4

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).....14

**Court Rules:**

Rule 401 of the South Carolina Rules of Evidence.....15

Rule 404(b) of the South Carolina Rules of Evidence.....15

STATEMENT OF ISSUES ON APPEAL

1. Was the issue of whether the trial judge erred in ruling that a cooperating co-defendant witness could testify about prior bad acts preserved for appellate review when trial counsel failed to make a contemporaneous objection to the testimony?
  
2. Did the trial judge err in ruling that a cooperating co-defendant witness could testify about prior bad act?

## STATEMENT OF THE CASE

In September 2012, the Cherokee County Grand Jury indicted Nicholas A. Bonner for trafficking in crack cocaine, more than 400 grams (2012-GS-11-00820) and trafficking in cocaine, more than 400 grams (2012-GS-11-00821). On April 24, 2017, Mr. Bonner proceeded to trial before the Honorable R. Keith Kelly. He was represented by Attorney Candice K. Lapham. Assistant Solicitor Christopher M. Bain of the Seventh Circuit Solicitor's Office prosecuted the case. The jury found Mr. Bonner guilty of the lesser included offense of trafficking in crack cocaine, 28-100 grams. The jury did not reach a verdict on indictment number 2012-GS-11-00821 for trafficking powder cocaine and that indictment was declared a mistrial. Judge Kelly sentenced the appellant to imprisonment for a term of 20 years. Trial counsel filed a motion to reconsider the sentence and a motion for a new trial on May 5, 2017. After a hearing, Judge Kelly denied the motions by written order on May 30, 2017.

Trial counsel filed a notice of appeal, but then filed a motion to remand the case to the circuit court to resolve the pending post-trial motions on July 18, 2017. The South Carolina Court of Appeals granted Mr. Bonner's motion and dismissed the appeal without prejudice on August 24, 2017. The Remittitur was issued on September 15, 2017.

Mr. Bonner filed an additional motion for a new trial and a hearing on the motion was convened before Judge Kelly. Mr. Bonner was again represented by attorney Lapham, and the State was represented by Assistant Solicitor Bain. By written order filed December 5, 2017, Judge Kelly denied the motion. Following the denial of his motions, Ms. Lapham failed to file a notice of appeal.

Mr. Bonner filed a post-conviction relief action wherein a portion of the relief sought was for belated appellate review of direct appeal claims pursuant to *White v. State*, 263 S.C. 110, 119,

208 S.E.2d 35, 40 (1974). The Court convened an evidentiary hearing into the matter before the Honorable H. Steven DeBerry on August 4, 2021. Mr. Bonner was present at the hearing and represented by Attorney Susannah Ross. Assistant Attorney General William H. Ray of the South Carolina Attorney General's Office represented Respondent. In an order filed December 23, 2021, Judge DeBerry found that trial counsel's failure to timely file and serve the notice of appeal deprived Mr. Bonner of an opportunity to seek appellate review of his conviction and that he was entitled to belated review of his conviction. The judge denied relief on all other allegations and dismissed the application. After the denial of the Mr. Bonner's Motion to Alter or Amend the Judgment, a timely notice of intent to appeal was filed on January 26, 2022. This brief pursuant to *White* and a separately filed petition for writ of certiorari follow.

## STATEMENT OF THE FACTS

On August 6, 2012, the Cherokee County Sheriff's Office ("CCSO") and the City of Gaffney Police Department executed a search warrant on 126 Iris Lane. (R. 201-03; R. 280-84; R. 347-48). This search warrant was for marijuana based on the statement of Sheriff's Officer Brandon Gardner that a confidential reliable informant (CRI) had informed him over speakerphone that he had seen marijuana at 126 Iris Lane within the past 72 hours. (R. 283, l. 22, 843). This was the home of Gwendolyn A. Bonner, Nicholas Bonner's mother, where the State alleged that he lived along with his brother, Chris Bonner. (R. 292, l. 7, 708, l. 15). Police found a number of people including Nicholas Bonner, Jarvis McCluney, Stephon Adams, Travis Davidson, Ronald Littlejohn, and Eric Lattimore at the residence. They also found cocaine in Littlejohn's front right pocket, approximately two ounces of crack cocaine in the oven, \$13,084 in cash in the top drawer of the nightstand in the left bedroom, \$615 in another bedroom, and \$1,250 in Appellant's front right pocket. (R. 203-08; R. 291-92; R. 294-98; R. 303-09).

After the search and arrest of the occupants of the Bonner home, law enforcement got a warrant and searched the abandoned property across the street at 125 Iris Lane where they found over 400 grams of cocaine and crack cocaine in a trash can under the carport. (R. 209-10; R. 235, l. 11-15; R. 240-41; R. 249-50; R. 349-50). The second search warrant for 125 Iris Lane was issued August 6, 2012, at 7:20 p.m. It was based on City Officer Ronnie Anderson's affidavit saying that there was probable cause to search because a CRI who was known to him to be reliable and to recognize cocaine had seen cocaine at 126 Iris Lane within 72 hours. (R. 847). Anderson said that during the raid of 126 Iris Lane, Detective Todd Parker approached him and said that his CI, Prentiss Jeffries, told him a large quantity of narcotics was across the street. (R. 234), He said Parker then called the CI handed over the phone and the CI relayed that there was a

large amount of cocaine belonging to Nick Bonner across the street so Anderson then got the search warrant for 125 Iris Lane. (R. 234, 248).

Nicholas Bonner gave a statement to law enforcement saying Eric Lattimore came into the house looking for a scale to weigh his crack cocaine and the police raided the house soon after. (R. 319-20; R. 351-52). This statement was corroborated by the testimony and statements made by all the witness at the scene except Eric Lattimore. (R. 258-60; R. 268; R.382; R. 393; R. 587; 698). Lattimore was the only witness to contradict this saying he went to Nick Bonner's house to buy beer and a cigarette when he witnessed Nick make a drug sale. Without objection, he said a typical day at Nick Bonner's house was a lot of guys smoking reefer and selling drugs. (R. 160, l. 17). He then said he witnessed Nick make drug sales from the house every time he had been there before. (R. 161-62).

#### *State Witnesses*

Prentiss Jeffries, the confidential informant who Officers Garrett and Anderson claimed provided the tip supporting the two search warrants in the case, testified that he had had not been to 126 Iris Lane in the 72 before prior to the raid and did not provide the tip. (R.126, l. 21). He said he had only dealt with Investigator Todd Parker giving information about property crimes. (R. 120) He said that he started working as a CI with officer Todd Parker in 2008 signing a CI agreement with his thumbprint. (R. 116). He said he had worked off some charges years before and Todd Parker had his charges dismissed (R. 118). He said he was not the tipster here and denied providing information to law enforcement or speaking with officers until after the search. (R. 120-1). He said Investigators Todd Parker and Ronnie Anderson met with him a couple of days after the bust, coached him on what to say, and paid him to put his thumbprint to sign an undated false statement against Mr. Bonner. (R. 124, 128). Prentiss Jeffries read out the

statement which said he saw Nick Boner at 126 Iris Lane with a large amount of cocaine which he bagged and handed off to Pee-Wee who took the cocaine across the street and put in a trash can. (R. 123). Jeffries then testified that the statement was not true. (R. 123, l. 17).

Todd Parker testified that he was fired from the Cherokee County Sheriffs Office two days following the raid. (R. 144) He said beginning in 2008 until the time of this search, he was working property crimes with CI Prentiss Jefferies. (R. 136, 139) He said that on August 6, 2012, Jeffries provided a tip that a shipment of drugs came to 126 Iris Lane. (R. 140) Because he did not work narcotics, he put Jeffries on speakerphone so narcotics investigator Brandon Gardner could hear the tip and get the search warrant. (R. 142). He said that he was involved with the raid of 126 Iris Lane and later that day after failing to find a large shipment of drugs, a second call with Jeffries revealed that the drugs had been moved across the street. Parker gave that information to Ronnie Anderson but did not remember if Anderson was there during the phone call. (R. 143).

Eric Lattimore said he went to Mr. Bonner's home, and saw Bonner send a person to retrieve bags from across the street to get drugs for "[s]ome dude from out of town[.]". (R. 151-52). He said Mr. Bonner produced scales, weighed what Lattimore described as "some white stuff like cocaine, crack cocaine[.]" and gave it to the out-of-towner. (R. 152-53; R. 159, l. 5-14). He said Mr. Bonner then directed his man to return the bag of drugs across the street. (R. 153, l. 3-4). The police raided the house soon after and arrested everyone present. (R. 159-60). He gave law enforcement a written statement consistent with his trial testimony. (R. 167-68). Lattimore told the jury that he had been to Mr. Bonner's "a lot" and had seen Bonner dealing out of his house in crack and powder cocaine every time he went to the house. (R. 161-62). A motion to

exclude the testimony was argued and denied by the trial judge before opening statements but counsel did not renew the objection. (R. 93).

Stephon Adams testified that when he was in Mr. Bonner's house, Eric Lattimore walked in and asked for a scale which Lattimore used to weigh cocaine that he had brought with him. (R. 258-60). Soon after Mr. Bonner said, "there go the cops[,]" and people began to flee the house. (R. 255-56). As he was leaving Adams saw Lattimore at the back door near the stove trying to get out. (R. 270) Adams was apprehended and arrested for trafficking crack cocaine. (R. 256, 11-14). While the group, minus Lattimore, were transported in the police van, Mr. Bonner asserted to the group that the drugs belonged to Lattimore. (R. 260-61). Adams denied knowing anything about the drugs recovered from across the street. (R. 264-65).

Jarvis McCluney testified that he was at Mr. Bonner's house smoking marijuana. (R. 380). McCluney denied familiarity with drugs other than marijuana, but said he saw Lattimore arrive and produce a hard, white substance and ask for a scale. McCluney admitted he handed him the scale. (R. 381-83). McCluney denied ever seeing an exchange of drugs but admitted during direct examination that Lattimore came to the door and called Mr. Bonner outside. (R. 384, 1-19). Somebody yelled the police had arrived, and McCluney pocketed his scale and stepped through the door while Lattimore ran toward the kitchen. (R. 385, 17-22). McCluney saw an argument between Mr. Bonner and Lattimore because, "Eric was asking everyone to put the drugs on a 14 year old." (R. 385-86). McCluney said everyone was put in a van and transported to the jail except Lattimore. He transported in Inv. Ronnie Anderson's jeep. (R. 387, l. 17; R. 395, l. 7) Lattimore denied knowing anything about the drugs recovered from across the street. (R. 390-91). McCluney gave a statement to law enforcement largely consistent with his trial testimony. (R. 392, 15-23).

### *Defense Witnesses*

Nicholas Bonner testified that he did not live at 126 Iris Lane but visited his mother there every day and listed her address on his paperwork to ensure that she received it. (R. 613-14). He testified his mother had worked for nearly forty years after inheriting the home from her own father and the cash was her savings. (R. 614-15). This testimony was corroborated by a number of defense witnesses. The day of the raid, Appellant said he was in his mother's house with friends when Eric Lattimore came in asking for a scale. McCluney gave Lattimore the scale. (R. 615-16). Bonner testified that when he saw Lattimore's dope, he told him, "get the hell out of my house. By that time the police come on up in there." (R. 616, l. 13-15).

Appellant said Lattimore fled to the back door from the kitchen at the time police arrived and threw drugs in the stove when he found the back door was nailed shut and could not get out the back. (R. 617, 3-17). Jarvis McCluney and Stephon Adams also said Lattimore ran to the kitchen. (R. 270; R. 385). Mr. Bonner said he hit Lattimore in the front yard after Lattimore refused to admit the drugs were his and said to "put the drugs on the 14 year old." (R. 617-18). He recalled after hitting Lattimore in the mouth, Officer Anderson asked why he hit his informant. (R. 618-19). Mr. Bonner explained the cash in his pocket was from selling a four-wheeler to Gus Logan, who testified that he had bought the four-wheeler from Bonner for \$2500. (R. 619-20, 544).

On cross-examination, Mr. Bonner read the statement he gave to law enforcement saying that Lattimore entered the home, pulled out a bag with a big block of crack, asked for a scale, said he would sell his crack for \$350, and that the police came right after. (R. 640, 12-19). Bonner said he thought his Mama had \$35,000, not \$13,084 implying the police had underreported the cash to steal it and noted that Parker was fired for unlawfully selling poker

machines. (R. 631-34). He was confronted with Eric Lattimore's statement. (R. 647). When asked how Lattimore could have known the color of the bag and scale, Mr. Bonner testified that Lattimore would have known the colors because the drugs were his and he weighed them on the scale. (R. 648-9).

When confronted with CI Prentiss Jeffries' unsigned or dated statement; Mr. Bonner asked, "Did Prentiss tell you he was coached and paid \$3500 to sign a statement on me?". (R. 649). The Applicant was admonished for failing to answer the question though Prentiss Jeffries had, in fact, testified that Investigators Todd Parker and Ronnie Anderson met with him after the bust, coached him on what to say, and paid him to sign a false statement against Mr. Bonner. (R. 121-2)

Rodney Love, a friend of Mr. Bonner's, arrived at the house after the police had raided the building and testified that he saw law enforcement retrieve a red bag from the woods, then bring it back to Mr. Bonner's property. (R. 463-65). Love also testified he observed Ofc. Anderson leave with Lattimore in custody, then return around fifteen minutes later. (R. 468, 9-14). After Anderson returned, the entire raid team converged on the abandoned house across the street from Mr. Bonner; when they opened the trash can, they began to celebrate. (R. 468-69). Love said Bonner did not live at the home, but visited every day to see his mother, Gwen Bonner. (R. 471-72).<sup>1</sup> Love also testified the nightstand in which the \$13,000 cash was found was Gwen's "money drawer." (R. 487, 6-23).

Daphine Bonner, Mr. Bonner's aunt, testified Mr. Bonner did not live at the home, but would visit every day. (R. 530-31). Daphine testified Gwen trusted banks, but when confronted with the \$13,840 from the "money drawer," Daphine found nothing strange about it, explaining she also had such a drawer. (R. 534-35). DeeGee Bonner, Mr. Bonner's older sibling, testified

Mr. Bonner visited his mother often and denied any drug transactions or other suspicious activity was taking place at the home. (R. 705-06). DeeGee explained the money in the drawer was her mother's savings, separate from her checking account. (R. 706-10). DeeGee denied ever seeing Mr. Bonner use, buy, or transport drugs. (R. 710-11).

Chris Bonner, Mr. Bonner's cousin, said he was sitting by the big tree when Lattimore arrived and asked him for a scale; Chris denied knowing anything about a scale and Lattimore went into the house. (R. 578-80). Chris did not see what occurred inside the house, and testified he never saw Lattimore and Mr. Bonner walk out. (R. 580-81). Chris denied it was common for people to come and go from the house buying and selling drugs, and testified he never saw Mr. Bonner involved in drug activity. (R. 581, 11-21). Chris was present and arrested during the raid. (R. 586-87). As the police brought everybody out of the house, Lattimore said, "put the drugs on the young guy, and [Mr. Bonner] hit him in his mouth." (R. 587, 6-11).

Nickcos Smith testified he was at the house when Lattimore entered and sat down next to him. (R. 697-98). A few minutes later, Ronnie Littlejohn entered and threw marijuana down on the table while Lattimore was looking out the back window. (R. 698, l. 7-11; R. 701, l. 6-14). Smith also recalled Lattimore producing the crack and asking McCluney for the scale, and that Mr. Bonner told him to get out with the drugs. (R. 699-701). When the police raided the house, he saw Lattimore throw his crack into the stove. (R. 699, 13-14). Smith denied ever seeing Prentiss Jefferies at the house or any person from North Carolina buy drugs from Nick that day. (R. 698, l. 15-20). Smith affirmed his own nickname was "Pee Wee." (R. 701, 22-23).

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<sup>1</sup> Gwen Bonner was deceased at the time of trial. (R. 494, 22-24).

## ARGUMENT

**1. The issue of whether the trial judge erred in ruling that a cooperating co-defendant witness could testify about prior bad act was preserved for appellate review even though trial counsel failed to make a contemporaneous objection.**

Prior to opening statements, the state proffered the testimony of Eric Lattimore regarding prior bad acts of Bonner selling drugs out of the house arguing it was admissible to show intent regarding the aiding and abetting element of the charge of trafficking. (R. 82, 90, 91). *State v. King* was cited to support to support this position. *State v. King*, 561 S.E.2d 640, 349 S.C. 142 (S.C. App. 2002). (R. 82, 90, 91). The defense moved to exclude the testimony and the judge ruled that he would allow it because "aiding and abetting was in this case and the probative value outweighs the prejudicial effect". (R. 93). This constituted a final ruling on the matter rather than an *in limine* finding subject to change depending on the evidence developed during trial.

"If an evidentiary ruling is pretrial, a contemporaneous objection must be raised during trial when the evidence is admitted, whereas a party need not renew an objection if the decision is final. See *State v. Wiles* , 383 S.C. 151, 156, 679 S.E.2d 172, 175 (2009)." *State v. Jones*, 435 S.C. 138, 866 S.E.2d 558 (S.C. 2021). Testimony was proffered by the State and it was ruled to be admissible. The fact that the State chose to put up two witnesses before calling Mr. Lattimore after their proffer should not necessitate a redundant objection to the testimony defense counsel recently moved to exclude. In a jury trial, such an objection highlights the importance of the prejudicial testimony and should not be required to allow appellate review of the ruling.

Lattimore was the third witness to testify and intervening testimony did not offer a reason for the judge to reconsider his prior ruling to allow prior bad acts after he had determined that the reliability of the testimony was a finding for the jury and the probative value outweighed the prejudicial effect. (R. 93). "Preservation rules are intended to ensure that appellate courts review

considered decisions of our trial courts and that issues are not being raised for the first time on appeal. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Their purpose is not to sabotage attorneys' efforts to bring issues before the appellate courts..." *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558 (S.C. 2021). Here, the issue is preserved for review. The bad act testimony was proffered, clearly argued, and ruled to be admissible. To require a contemporaneous objection from trial counsel serves only to sabotage attorneys' efforts to bring issues before the appellate courts.

**2. The trial judge erred in ruling that a cooperating co-defendant witness could testify about prior bad acts.**

Nick Bonner was charged with trafficking, and the State's burden in the case was to prove his knowing possession of trafficking quantities of drugs found at 126 and 125 Iris Lane on August 6, 2012, beyond a reasonable doubt. The State sidestepped the requirement that prior bad act evidence be clear and convincing arguing under *State v. Wilson* and *State v. King* the credibility of a witness is an issue solely reserved for the jury and, "[I]f there is any evidence to support the admission of the bad act evidence, the trial judge's ruling will not be disturbed on appeal." (R. 91) *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 830 (2001); *State v. King*, 561 S.E.2d 640, 349 S.C. 142 (S.C. App. 2002). The trial judge ruled that because the jury was the judge of credibility, a co-defendant arrested at 126 Iris Lane who all the other witnesses at the trial accused of bringing cocaine into the house, could testify that Nick Bonner sold drugs out of the house in the past. (R. 93). This ruling was in error allowing unreliable propensity evidence which had nothing to do with whether Bonner was guilty of trafficking or had knowing possession of the drugs found that day.

After *Lyle*, incorporated in Rule 404(b) of the rules of evidence, a defendant's prior bad acts may not be admitted to show propensity but only to prove: (1) motive; (2) identity; (3) the existence

of a common scheme or plan; (4) the absence of mistake or accident; or (5) intent. *See State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923); Rule 404(b), SCRE. The evidence of prior bad acts must be clear and convincing to be admissible. *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (S.C. 1996). To admit prior bad acts regarding Bonner's prior drug dealing under the *Lyle* exception, there must be a logical relevance between the acts in question and the purpose for introduction other than to simply show propensity. *See State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). "[I]f the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.'..." *State v. Ostrowski*, 435 S.C. 364, 397, 867 S.E.2d 269 (S.C. App. 2021).

"Under Rule 401, 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." *State v. Cheeseboro*, 346 S.C. 526, 548, 552 S.E.2d 300, 311 (2001), cert. pending; see also *State v. Hamilton*, 344 S.C. 344, 543 S.E.2d 586 (Ct.App. 2001). The State argued and the trial judge agreed that the bad act evidence went to intent because aiding and abetting is in this case. (R. 90-93). This an error of law. "Showing that the defendant had intent to distribute the drugs is not listed in the statute as necessary for a [trafficking] conviction." *State v. Ostrowski*, 435 S.C. 364, 867 S.E.2d 269 (S.C. App. 2021). Lattimore's testimony the Bonner sold drugs was not relevant in this case and only served to show criminal propensity.

"Under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than prior criminal or immoral acts." *State v. Gore*, 283 S.C. 118, 120, 322 S.E.2d 12, 13 (1984). "It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual."

*State v. Coleman*, 301 S.C. 57, 60, 389 S.E.2d 659, 660 (1990). "Further, the danger of prejudice is enhanced when, as here, there has been no trial and conviction for the [alleged previous criminal activity]. The subsequent acts remain accusations. The manifest prejudice of this evidence is obvious." *State v. Wilson*, 274 S.C. at 638, 266 S.E.2d at 427. *State v. Bostick*, 307 S.C. 226, 414 S.E.2d 175, 176-7 (S.C. App. 1991). Here, the prior bad act testimony created the precise type of inference of propensity prohibited by *Lyle*.

The prejudice is clear. The case was a close one with the jury hung on the cocaine trafficking charge and a finding of guilt of trafficking a reduced weight in the crack charge. All the trial witnesses stated they saw Eric Lattimore with the crack, except Lattimore and he was allowed to sully the proceeding with improper prejudicial prior bad act testimony which served only to show criminal propensity. Lattimore testified that he was not surprised that there were drugs at the petitioner's house because he had seen Bonner dealing out of his house in crack and powder cocaine every time he went to the house. (R. 161-62). Lattimore had drug convictions and said he was familiar with the drug dealers in the community and that people go to Nick Bonner's house at 126 Iris Lane to get drugs. (R. 180-1). The State capitalized on the improper comments saying in his closing argument , "You heard Eric Lattimore testify that Nick Bonner is the kingpin." (R. 762, l. 21). This was fundamentally unfair and effected the outcome of the case.

CONCLUSION

Based on the above argument, the convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,

*Susannah Ross*

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Susannah Ross, Esq. #11205  
330 E. Coffee St.  
Greenville, SC 29601  
(864) 242-0029  
susannah@rossenderlin.com

ATTORNEY FOR APPELLANT

This 27th day of June, 2022