RECEIVED
May 02 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM CORNELIUS SANDERS,

APPELLANT

APPELLATE CASE NO. 2021-001536

FINAL BRIEF OF APPELLANT

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 APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

STANDARD OF REVIEW 7

ARGUMENT

The trial judge abused his discretion by admitting evidence that ten days before the shooting, during an argument with the complainant, Appellant's then girlfriend, Appellant displayed a gun, threatened to "bury [her] in this backyard" and repeatedly struck her with an open hand, since such evidence was improper propensity evidence, was not admissible pursuant to Rule 404(b), SCRE, was not part of the *res gestae*, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. 8

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) 12, 13, 15

State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) 12

State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) 7

State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) 11, 12

State v. Cope, 405 S.C. 317, 748 S.E.2d 194 (2013) 11, 12

State v. Curry, 330 N.E.2d 720 (Ohio 1975) 15

State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) 11, 12

State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997) 13

State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999) 11, 12, 13

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) 11

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 7

State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) 11

State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004) .... passim

United States v. Masters, 622 F.2d 83 (4th Cir. 1980) 13

Rules

Rule 401, SCRE 11

Rule 403, SCRE 12

Rule 404(b), SCRE .... passim

STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by admitting evidence that ten days before the shooting, during an argument with the complainant, Appellant's then girlfriend, Appellant displayed a gun, threatened to "bury [her] in this backyard" and repeatedly struck her with an open hand, since such evidence was improper propensity evidence, was not admissible pursuant to Rule 404(b), SCRE, was not part of the *res gestae*, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice?

STATEMENT OF THE CASE

A Colleton County Grand Jury indicted Appellant on November 21, 2019 for attempted murder and possession of a weapon during the commission of a violent crime. R. 614-617. His case was called to trial on December 13, 2021 before the Honorable Robert Bonds, and a jury. R. 1. Assistant Solicitors Ceth Utsey and Julie Kate Keeney represented the state. R. 1. Matthew Walker represented Appellant. R. 1.

On December 16, 2021, the jury found Appellant guilty as indicted. R. 594, ll. 4-15. He was sentenced to twenty years for attempted murder and eighteen months for the weapons offense. R. 611, ll. 9-18. The sentences were ordered to be served consecutively. R. 611, ll. 9-18.

This appeal follows.

STATEMENT OF FACTS

Appellant and Channta Kelly dated for approximately eight to nine months. R. 393, ll. 17-23. Channta and her four children moved into Appellant's home in Round O shortly after they began dating. R. 394, l. 24 – 395, l. 13. The pair's relationship was "pretty toxic" toward the end and they argued a lot. R. 494, ll. 9-14; R. 393, ll. 11-15. Channta claimed the two only argued when she "said no about sex." R. 394, ll. 16-20.

According to Channta, during the early morning hours of April 14, 2019, ten days before the shooting, Appellant woke Channta up in the middle of the night and "told [her] he wanted to have sex." R. 396, l. 1 – 397, l. 11. Channta told Appellant no because she had to work at six o'clock that morning. R. 397, ll. 11-16. Channta claimed Appellant was "irritated because [she] said no" and left the house. R. 397, ll. 20-23. She later called Appellant and asked him to "bring the vehicle back" because she needed to get "items" out of the car before she went to work. R. 397, l. 23 – 398, l. 16. Channta admitted she "was angry because [Appellant] woke [her] up out of her sleep." R. 398, ll. 11-12.

When Appellant returned to the house, Channta was on the front porch smoking a cigarette. She immediately walked off the porch and past Appellant to the car. R. 398, ll. 9-16. She got into the front passenger seat because most of her "things" were on the dashboard on that side of the car. R. 398, l. 23 – 399, l. 8. Channta claimed Appellant approached the car and began yelling at her and "saying vulgar things." R. 399, ll. 9-12. After the two "had words back and forth," Appellant walked away. R. 399, l. 15. According to Channta, Appellant came back with a "revolver gun" in the waistband of his pants. She asked him why he had a gun because he had never approached her with a gun before. She claimed Appellant "pulled the gun out" and said, "B-i-t-c-h, I'll bury you in this backyard." R. 399, ll. 17-25.

Channta testified that she closed the front passenger door and climbed into the driver's seat in an attempt to get away from Appellant. However, Appellant walked around to the driver's side and opened the driver's side door. Channta claimed Appellant then "began to hit [her] continuously with an open hand." R. 400, ll. 3-19. He hit her four or five times. R. 400, l. 25 – 401, l. 1. Channta "laid on the horn" and Appellant stopped and walked away. R. 401, ll. 4-15.

Appellant's account of this event was much different. He admitted he and Channta were arguing that day. However, he said Channta struck Appellant first and then grabbed him in the groin. Appellant grabbed Channta's hand in response and slapped her with an open hand four times. R. 486, l. 10 – 487, l. 3. Appellant denied having a gun during the altercation and threatening to "bury her in the back yard." R. 487, ll. 4-16.

After this event, Channta "broke up" with Appellant. She "made the choice that [she] wasn't going to be with him." R. 401, ll. 17-24; R. 402, ll. 22-23. Two days later, Channta's mother called her and told her a representative from the Department of Social Services (DSS) was at their (Appellant's) house and she needed to come home. Channta admitted that at the time she was "smoking marijuana." The individual from DSS told her there were "certain things [she] had to do in order to maintain custody of [her] children," including "stop smoking marijuana" and "take treatment classes." R. 402, ll. 1-17. Channta claimed it was Appellant who "called the Department of Social Services on [her]" after she "broke up with him." R. 402, ll. 18-23. However, the state provided no evidence to support this allegation. As a result of the Department's involvement, Channta "couldn't stay around [her] children" and Channta's mother was given temporary custody. R. 402, ll. 8-13; R. 409, ll. 12-15. Channta slept in a motel. R. 409, ll. 12-15.

After they separated, Channta claimed Appellant called her numerous times every day for the next ten days. He told her he could not eat or sleep and asked her to "be with him." R. 402, l. 24 – 404, l. 5. Channta repeatedly refused his requests. R. 403, ll. 14-20.

On April 24, 2019, Appellant and Channta met at Appellant's house in Round O where the couple had previously been leaving together. R. 488, ll. 12-13. Appellant had been staying with his father nearby after the couple separated. Channta's mother, who was living in the home with Channta's children, had asked Appellant to stop by the house to pick up "a cooler full of fish" that a friend had dropped off. R. 488, l. 19 – 489, l. 1; R. 423, ll. 22-24. Appellant also needed to get his tools out of Channta's vehicle. R. 489, ll. 2-3.

When Appellant arrived at the home, he pulled up next to Channta's vehicle and began to move his tools from the back of her car into the back of his pickup truck. R. 406, ll. 1-18. As Appellant was moving the tools, he and Channta argued. R. 406, ll. 21-23. Channta was angry because Appellant had told "a girl" that Channta was going to tell the Department of Social Services that the girl was selling food stamps. R. 426, l. 4 – 427, l. 10. The girl kept calling Channta and "harassing" her. R. 427, ll. 9-15. Eventually this argument ended and the conversation transitioned to Appellant again asking Channta "to be with him." R. 426, ll. 4-17. Appellant was "pleading his case over and over again." R. 407, ll. 8-10. The pair talked outside for about an hour until Channta made clear that their relationship was over. R. 406, l. 21 – 407, l. 7; R. 489, ll. 4-5. She told Appellant she was not going "to lay down with no man who called DSS on me." R. 409, ll. 9-11.

Appellant was sitting in the driver's seat of his truck when Channta turned around and began to walk back toward the house. R. 489, l. 15 – 490, l. 3. As she was walking, she heard a "boom" and fell to the ground. R. 410, l. 2 – 411, l. 6. She testified that as she tried to push

herself up, she looked to her left and saw Appellant pulling out of the driveway. R. 411, 7-19. She claimed the two made eye contact and she "knew that he shot [her]." R. 412, ll. 13-19. Appellant immediately drove away. R. 412, ll. 1-5.

Appellant denied shooting Channta. Tr. 485, ll. 8-9. He testified that he saw her get shot but he did not see who shot her. R. 491, ll. 19-25; R. 496, ll. 23-24. He was looking at Channta as she walked away and saw the "impact" but did not see where the shot was fired from. R. 492, l. 22 – 493, l. 3. After Channta was shot, Appellant looked around and saw a white truck in the roadway. It drove away. R. 492, ll. 1-15; R. 493, ll. 4-9. Appellant immediately "cranked [his] truck up and backed up and pulled off." R. 493, ll. 10-12. He was "scared" and did not know if the shooter was going to return. R. 493, ll. 22-23; R. 500, ll. 12-15; R. 501, ll. 9-14. Before he left, Appellant saw Channta's brother come outside. Her brother ran back into the house and said, "Mama, Channta's been shot. Call 911." R. 499, l. 11 – 500, l. 2.

Channta was "shot with a shotgun" in her lower back. She was airlifted to Trident Hospital. R. 389, l. 17 – 390, l. 17. Her injuries were life threatening and, after being evaluated, she "went to the operating room." R. 391, ll. 4-13. She remained hospitalized for roughly two months. Tr. 415, ll. 10-14. While she initially was unable to walk, she made a full recovery. R. 415, l. 15 – 416, l. 15.

Appellant was arrested at his father's house shortly after the shooting. R. 303, l. 16 – 305, l. 16. He was identified by Channta's minor son and her mother as the shooter even though neither of them saw the shooting. R. 232, ll. 18-22. Appellant was fully cooperative with law enforcement and gave a statement consistent with his testimony before the jury in which he denied shooting Channta. R. 312, ll. 12-19; R. 323, ll. 6-10; State's Exhibit No. 45 (Audio/Video Disk of Defendant's Interview).

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Atieh, 397 S.C. 641, 647, 725 S.E.2d 730, 733 (Ct. App. 2012) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Pagan, 369 S.C. at 208, 631 S.E.2d at 265) (internal quotation marks omitted).

ARGUMENT

The trial judge abused his discretion by admitting evidence that ten days before the shooting, during an argument with the complainant, Appellant's then girlfriend, Appellant displayed a gun, threatened to "bury [her] in this backyard" and repeatedly struck her with an open hand, since such evidence was improper propensity evidence, was not admissible pursuant to Rule 404(b), SCRE, was not part of the *res gestae*, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

How the Issue Was Presented Below

Appellant moved pretrial to exclude any evidence related to the event that occurred on April 14, 2019, ten days before the shooting pursuant to Rule 404(b), SCRE. The assistant solicitor explained that Appellant was arrested on April 14, 2019, ten days before the shooting, for domestic violence of a high and aggravated nature regarding Channta Kelly, Appellant's then girlfriend. The solicitor alleged that on that day Appellant "slapped her, he pointed a gun at her and said, I'll bury you. The cops came, arrested Mr. Sanders [Appellant], and he got out of jail the next day." R. 3, l. 22 – 4, l. 5. Citing to State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), the solicitor argued the April 14, 2019 incident should be admitted as evidence of motive and intent, two exceptions found in Rule 404(b), particularly where Appellant told law enforcement the charged event on April 24, 2019 was a drive by shooting. R. 5, ll. 1-21; R. 8, ll. 10-20.

The assistant solicitor also argued the evidence was admissible as part of the *res gestae*. He asserted, "The fact that they were breaking up, they were going through problems, he hit her on the head on the 14th, pointed a gun at her, said I'll bury you, called her everyday until the 24th, and then shot her on the 24th. This does give the jury a full picture and not a snapshot, and

I do believe it would complete the story of the crime for the jury when Mr. Sanders is on trial, and it would make sense to the jury." R. 7, l. 19 – 8, l. 5.

Defense counsel contended that the two events were unrelated and that the shooting was "a contained event." R. 8, l. 25 – 9, l. 20. He argued the state was seeking to admit evidence of the prior altercation as propensity evidence: Appellant had the propensity "to be the person who shot Miss Kelly." R. 9, ll. 5-8. Counsel explained that it was undisputed that shortly before the shooting, Appellant went to his house, where Channta's family was living, to get some tools out of Channta's car and pick up some fish. Appellant was at the house for an hour before the shooting took place. Appellant and Channta allegedly argued during that hour and Appellant communicated "a desire to continue the relationship." R. 9, l. 9 – 12, l. 18. Counsel asserted, "You can have an hour of conversation, get in a fight and shoot somebody. That happens more often than it should, but you don't need the previous incident to explain it, and you don't need the previous incident to explain why my client [Appellant] is there because the victim [Channta] tells you why he's there. . . . So its not a lying in wait. It's not, I'm coming to get revenge. [The evidence is] only serving to put . . . my client's character and propensity to be violent before the jury . . ." R. 12, l. 17 – 13, l. 10.

Counsel further argued the evidence was not part of the *res gestae* of the charged offense (the shooting). He contended that if evidence of the prior altercation was part of the *res gestae*, the state would not "be able to tell the story of what happened in that shooting without" the prior evidence. R. 13, ll. 11-17. He asserted, "You don't need to know of [this] prior information to say, hey, he [Appellant] came by, they've been having some relationship problems, he came by to get his tools, get his food. They talked for an hour or so and that developed into a heated argument and he shot her. That's a complete telling of the [story]." R. 13, ll. 17-24.

Defense counsel also distinguished the case from State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), which was cited by the state. In Sweat, this Court held evidence of a prior episode of domestic violence, which occurred two months before the burglary and assault for which Sweat was tried, was admissible to show motive and intent, both exceptions found in Rule 404(b). Counsel argued evidence of the prior event in this case was not admissible to show motive or intent. He asserted there was no evidence Appellant "had some, sort of, ongoing malicious plan or intent or common scheme" when he met Channta at his house on the night of the shooting. R. 10, l. 9 – 11, l. 14. Again, Appellant went to the house to get his tools and pick up some fish. He and Channta talked for an hour before the shooting took place.

The trial judge took the matter under advisement. R. 14, ll. 20-22. The following morning, the judge ruled the evidence was admissible. However, he excluded any evidence that Appellant was arrested and charged with domestic violence as a result of the prior event and that there was a restraining order or bond condition that Appellant could not have any contact with Channta. He reasoned that evidence of the arrest and no contact order was unfairly prejudicial because it could lead the jury to render a decision on an improper basis. R. 145, l. 5 – 154, l. 19.

Consistent with this ruling, the judge ordered the state to redact any mention of the arrest and no contact or restraining order during Appellant's recorded interview with law enforcement. However, he overruled Appellant's objection to the other portions of the interview in which the prior altercation was discussed. See R. 160, l. 16 – 181, l. 5; R. 257, l. 20 – 258, l. 14; State's Exhibit No. 45 (Audio/Video Disk of Defendant's Interview).

Appellant properly renewed his objection during Channta Kelly's testimony when she began to discuss the prior altercation that occurred on April 14, 2019. R. 396, ll. 1-20. He also

contemporaneously objected to the admission of Appellant's recorded interview with law enforcement which contained discussions of the prior event. R. 325, ll. 11-24.

Discussion

The trial judge abused his discretion by admitting evidence that ten days before the shooting, during an argument with Channta Kelly, the complainant, Appellant allegedly displayed a gun, threatened to "bury [her] in this backyard" and repeatedly struck her with an open hand, since the evidence was improper propensity evidence, was not admissible pursuant to Rule 404(b), SCRE, was not part of the *res gestae*, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

"Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial." State v. Perry, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). "South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan, or (5) the identity of the perpetrator." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) (citing Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)). "As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE." State v. Cope, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013) (citing State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)). "If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b)." Id.

"To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." Clasby, 385 S.C. at 155, 682 S.E.2d at 895 (quoting State v. Gaines, 380 S.C.

23, 29, 667 S.E.2d 728, 731 (2008) (internal quotation marks omitted). "If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." Cope, 405 S.C. at 337, 748 S.E.2d at 204 (quoting Gaines, 380 S.C. at 29, 667 S.E.2d at 731) (internal quotation marks omitted). "Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." Cope, 405 S.C. at 337-38, 748 S.E.2d at 204-05 (citing Clasby, 385 S.C. at 155, 682 S.E.2d at 896); See Rule 403, SCRE. "Unfair prejudice means 'an undue tendency to suggest [a] decision on an improper basis, commonly, though not necessarily, an emotional one.'" State v. Sweat, 362 S.C. 117, 128, 606 S.E.2d 508, 514 (Ct. App. 2004) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)) (alteration in original).

The *res gestae* theory "recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." King, 334 S.C. at 512, 514 S.E.2d at 582 (citing State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996), *overruled on other grounds by* State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014)). Our Supreme Court explained the theory of *res gestae* in Adams:

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae'" or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...' [and is thus] part of the res gestae of the crime charged." And where evidence is admissible to provide this "full presentation" of the offense, "[t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980)) (alterations in original). "Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime." King, 334 S.C. at 513, 514 S.E.2d at 583 (citing State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997)).

In State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), this Court affirmed the admission of evidence of a prior bad act of domestic violence pursuant to Rule 404(b), and as part of the *res gestae*. Sweat was charged with first degree burglary, assault and battery with intent to kill, and three counts of assault of a high and aggravated nature after he invaded a home occupied by his estranged wife, her boyfriend, and several others on December 11, 2001. Sweat, 362 S.C. at 121-22, 606 S.E.2d at 510-11. The state introduced testimony from Sweat's estranged wife about a domestic violence incident that took place two months earlier in October 2001. Id. at 122, 606 S.E.2d at 511. Sweat's wife reported the prior incident to law enforcement and Sweat spent forty-five days in jail. Id. While he was in jail, Sweat's wife ended their relationship and became romantically involved with another man. Id.

This Court held the prior episode of domestic violence was admissible under Rule 404(b) as evidence of motive and intent. Id. at 124, 606 S.E.2d at 512. The Court found from the October incident that the jury could have inferred both (1) motive—that Sweat was driven by anger over his estranged wife causing him to go to jail and terminating their relationship; and (2) intent—that Sweat maliciously sought to inflict harm upon his estranged wife and her boyfriend. Id. at 126, 606 S.E.2d at 513. This Court held the evidence was relevant because it tended to make the state's version of the case more probable and was logically related to why Sweat went to the house that night and to his intentions once there. Id. at 127, 606 S.E.2d at 514.

Additionally, this Court held the evidence was admissible as part of the *res gestae* and was properly admitted to "complete the story of the crime on trial." Id. at 133, 606 S.E.2d at 517. The Court concluded that the October incident, and the events that followed, including Sweat's estranged wife moving out and ending their relationship, provided the jury with "an appropriate context in which to place the December 11 attack." Id.

In this case, evidence of the prior altercation between Appellant and Channta, in which Appellant allegedly displayed a gun and threatened to harm or kill Channta, was not admissible pursuant to Rule 404(b) because it did not meet any exceptions found in the rule, namely it was not evidence of motive, intent, the absence of mistake or accident, a common scheme or plan, or identity. The state argued at trial that the evidence was admissible to show motive and intent similar to this Court's holding in Sweat. However, this case is easily distinguishable from Sweat. In Sweat, as summarized above, the state used evidence of the prior act of domestic violence to show why Sweat would want to harm his estranged wife—he was angry with her for causing him to go to jail and ending their nine year relationship while he was incarcerated—and his reason for invading the home occupied by his estranged wife and her boyfriend—he sought to maliciously harm them.

Here, however, there was no evidence Appellant was angry with Channta because of the prior altercation and his resulting arrest, that he sought revenge, or that he went to the house that night to harm Channta. Rather, both Appellant and Channta testified that the pair met at the house that night so Appellant could get his tools out of Channta's car and pick up some fish a friend had dropped off at the house. Once there, the two briefly argued about an unrelated matter and then continued to talk outside for nearly an hour. During their discussion, Appellant repeatedly communicated his desire to be with Channta (as he had during the prior ten days) but

she made clear their relationship was over. Consequently, evidence of the prior event was not admissible to show motive or intent.

The only other arguably relevant exception found in Rule 404(b) is identity. However, evidence that Appellant allegedly pulled a gun on Channta and threatened her ten days before the shooting is not evidence that he was the person who shot her on April 24, 2019. Rather, the sole purpose of admitting evidence of the prior altercation was to show Appellant's propensity "to be the person who shot Miss Kelly." R. 9, ll. 5-8. It was improperly used by the state to demonstrate Appellant's bad character, his propensity for violence, and that he was capable of being the person who shot Channta.

Additionally, the evidence was not admissible as part of the *res gestae*. The two events were unrelated and evidence of the prior altercation was not necessary to "complete the story of the crime on trial." Adams, 322 S.C. at 122, 470 S.E.2d at 371. Unlike in Sweat, the state could have fully presented its case without admitting evidence of the April 14, 2019 event (the prior crime) as the events were not so linked together. See State v. Curry, 330 N.E.2d 720, 725 (Ohio 1975) (explaining the *res gestae* exception is necessary because "it would be virtually impossible to prove that the accused committed the crime charged without also introducing evidence of the other acts"). The state could have argued Appellant shot Channta because he was angry she ended their relationship without admitting any evidence regarding the prior altercation.

Because the prior altercation was not evidence of motive, intent, or identity, and was not necessary to the state's theory of the case, it had no probative value. However, it was unfairly prejudicial to Appellant because it suggested a decision on an improper basis, namely that Appellant was guilty because he was a bad person and was violent toward women.

Respectfully, this Court should hold the trial judge abused his discretion by admitting evidence of the prior bad act, reverse Appellant's conviction, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy____________________
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of May, 2023.

RECEIVED
May 02 2023
SC Court of Appeals

CERTIFICATE OF COUNSEL

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

May 2, 2023

s/ Lara M. Caudy____________________
Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589