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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-002078

THE STATE ....RESPONDENT,

v.

DALE EUGENE KING ....APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial judge erred in failing to grant a mistrial after instructing the jury in his opening remarks that a trial was a search for the truth where such an instruction impermissibly shifted the burden of proof to the defendant?

2. Whether the trial judge erred in failing to grant a mistrial after the decedent's sister testified that she advised the decedent to end her relationship with Appellant because Appellant physically assaulted her where the trial judge ruled such testimony was inadmissible?

3. Whether the trial judge erred in allowing testimony that Appellant physically assaulted the victim two months prior to her death where the prior assault was not probative of intent or lack of mistake or accident, and any probative value was substantially outweighed by the danger of unfair prejudice?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the trial judge's opening comments were anything other than harmless error when viewed in light of the entire record and the amount of time spent on the Appellant's presumption of innocence when the United States Supreme Court has described the criminal trial as a "search for the truth" for over a hundred years.

2. Whether the trial judge abused his discretion by denying the Appellant's motion for a mistrial after he had instructed the jury to disregard a witness's one-sentence statement about her sister's abuse by the Appellant when, under South Carolina case law, curative instructions are presumed to cure alleged error.

3. Whether the trial judge abused his discretion by allowing witnesses to briefly testify how the Appellant was arrested for abusing the victim two months before her death when the testimony was highly probative, logically relevant evidence of his motive, intent, and lack of accident and helped the trier of fact determine the element of malice aforethought.

STATEMENT OF THE CASE

The Beaufort County Grand Jury true-billed the Appellant's indictment for Murder (2017-GS-07-00810) in October of 2018. Appellant proceeded to trial by jury on December 9, 2019 pursuant to which Appellant was found guilty of the May 16, 2017 murder of Veronica King. ROA. 1, 190, L. 18–19. He was represented by Trasi Campbell, Esquire, and the State was represented by Assistant Solicitors Kimberly Smith, Esquire, and Hunter Swanson, Esquire. ROA. 1. He was sentenced by the Honorable Edgar W. Dickson to thirty-five years' imprisonment after the three-day trial concluded on December 11, 2019. ROA. 200, L. 14–16. Appellant timely filed a notice of intent to appeal his conviction and sentence on December 17, 2019 and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Dale King hit his wife Veronica in the face while their daughter hid in their hotel room's bathroom on March 18, 2017. ROA. 137, L. 10–11, ROA. 140, L. 24. Both parties had been drinking and arguing, but only King resorted to violence. ROA. 136 L. 23–24. Veronica's face was badly bruised as a result and King was arrested for Domestic Violence Second Degree. ROA. 137, L. 15–20, ROA. 142, L. 3–4.

A little less than two months later, Dale and Veronica King were drinking with friends in that same hotel room around 10 or 11:00 PM. ROA. 70, L. 17–19, 94, L. 12, 95, L. 6. Dale King initially told law enforcement and his brother-in-law that he and Veronica had gone to bed around 10:30 or 11:00 PM when their friends left. R. 69, L. 22, 70, L. 2–18, ROA. 94, L. 18–24. However, he later changed his story and said they were up drinking vodka and beer until 2 or 3:00 AM. ROA. 70, L. 19–23. Witnesses related seeing both full and empty beer cans and liquor all over the room, as both Dale and Veronica drank daily. ROA. 61, L. 23–25, ROA. 84, L. 15–19.

Sometime during the late night or early morning hours of May 15 to 16, 2017, Dale King got into an argument with his wife about her wanting to bathe. ROA. 95, L. 19–25. "She wanted to take a shower and I just told her to get her ass in bed and we'd wash up in the morning when we [got] up. I don't know why she just made her head so hard. She just wouldn't listen to me." ROA, 71, L. 17, 25, ROA. 72, L. 4–8. They had argued about her showering at night after drinking many times before, ROA. 102, L. 15–17, and he admitted to being angry at her for wanting to take a shower that night. ROA. 100, L. 2; ROA. 101, L. 23.

Veronica King was found "unresponsive, laying on the sofa, stiff and cold to the touch [with] . . . signs of blood and a cut to the lip and also blood coming from her nose" around 8:00 AM the morning of May 16, 2017. ROA. 42, L. 15, ROA. 43, L. 14. An autopsy revealed she

had been strangled to death.[1] ROA. 96, L. 13, ROA. 100, L. 24. There were three areas of bruising on the left side of her neck, two areas of bleeding in her left eye, an abrasion on her tailbone that showed she may have been dragged, discoloration around her neck, and hemorrhages in six of her ten neck muscles. ROA. 43, L. 17, ROA. 117, L. 17–25, ROA. 121, L. 8–21. The hemorrhages wrapped around her esophagus. ROA. 122, L. 1–7. Blunt force trauma and petechiae were also located on her body, accompanied by bruises of all different colors and ages. ROA. 87, L. 16–17, ROA. 124, L. 15–25. Her body appeared to have been moved. ROA. 25, L. 11, ROA. 43, L. 17.

When asked what happened, King initially denied knowing what happened to Veronica at all. ROA. 67, L. 2–3, ROA. 69, L. 20–23. He did not report a disturbance or argument with her. ROA. 94, L. 2–5, ROA. 95, L. 6. When he found his wife stiff and cold, he did not call 911. ROA. 56, L. 24–25. Instead, he got dressed and went to the hotel office where he reported her unresponsive to a hotel employee. ROA. 56, L. 9–18. When first-responders arrived, he said she had a history of seizures, ROA. 46, L. 14, 23, ROA. 106, L. 2–3, and claimed she may have had a seizure and/or slipped in the shower and hit her head. ROA. 67, L. 2–3, 68, L. 9–15. No seizure medication was found in the room. ROA. 47, L. 18–19. He denied knowing where the injury on her mouth came from. ROA. 96, L. 6–9, ROA. 102, L. 20–23. He was highly intoxicated at the scene and was crying. ROA. 66, L. 2–3, ROA. 67, L. 4, 20.

Later that day, however, he said, "I have to – I have to face this the rest of my life." ROA. 68, L. 1–8. "What did I just do? What was I thinking? What did I just do?" ROA. 70, L. 2–23. He then changed his story and said he "thought something happened," and added if he was

[1] The autopsy was conducted by Dr. Nick Batalis, a Forensic Pathologist from The Medical University of South Carolina. ROA. 117–126. He declared the cause of death to be homicide by strangulation. ROA. 125, L. 21–25.

responsible it was not intentional and he did not mean to hurt his wife. ROA. 103, L. 9–12, ROA. 103, L. 15–17. "If I hurt her, it ain't been planned." ROA. 103, L. 4–14, 22. He then admitted that they had been "fussing and fighting" that night so he hit her and slapped her across the face. He described his hand as being open when he hit her. ROA. 103, L. 15, 104, L. 1–11. King said she "slipped and felt like dead weight" when he put her into and took her out of the shower, and that he grabbed her by the neck while getting her out when she accidentally fell and hit her mouth. ROA. 73, L. 3–24.

He later related a third version of events to investigators when he said he threw her on the bed where she somehow slipped and slid between the bed and the couch. ROA. 74, L. 2–5. Even though he initially denied knowing where her lip injury came from, he later admitted to getting a green towel to wipe up her mouth "because it was busted." ROA. 74, L. 8–10. He was the only one in the hotel room with her between 11:00 PM and 8:00 AM the next morning. ROA. 104, L. 17–19.

STANDARD OF REVIEW

"In criminal trials, the appellate court sits to review errors of law only." *State v. Wharton*, 381 S.C 209, 213, 672 S.E.2d 786, 788 (2009). "The conduct of a criminal trial is left largely to the sound discretion of the trial court, and [reviewing courts] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way." *State v. Bridges*, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). As such, appellate courts are "bound by the trial court's factual finding unless they are clearly erroneous." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned . . . absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The power . . . to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record." *State v. Stanley*, 365 S.C. 24, 33–34, 615 S.E.2d 455, 460 (Ct. App. 2005). "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." *State v. White*, 371 S.C. 439, 447, 639 S.E.2d 160, 164 (Ct. App. 2006).

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). Abuse occurs when the determination of the trial court lacks factual support or is controlled by an error of law. *State v. Kirton*, 381 S.C. 7, 23, 671 S.E.2d 107, 114 (Ct. App. 2008). Evidence is relevant and admissible if it "logically or reasonably tends to prove or disprove a crime charged or any fact material to the issue." *State v. Tillman*, 304 S.C. 512, 405 S.E.2d 607, 611 (Ct. App. 1991).

ARGUMENT

I.

The trial judge properly denied the defense's motion for a mistrial because he described the trial as a "search for the truth" at the beginning – positionally not found to be reversible error – and he did not connect the phrase to a jury instruction about the State's burden of proof, the Appellant's presumption of innocence, or the definition of reasonable doubt, keeping the burden of proof on the State.

Appellant argues the trial judge erred in denying his motion for a mistrial because the trial judge's use of the phrase "search for the truth" impermissibly shifted the burden of proof to the Appellant. The State disagrees with this allegation of error. The trial judge, the defense, and the State all spent considerably more time throughout the trial instructing and advising the jury that the Appellant was innocent until proven guilty and that the State had the burden of proving him guilty beyond a reasonable doubt. The judge's use of the phrase came during his opening remarks to the jury, directly after which he told them his remarks were "not a charge on the law." Therefore, if his remarks were made in error, the error was harmless. There is no evidence in the record that demonstrates the jury applied the phrase in a manner inconsistent with the State's burden of proof beyond a reasonable doubt. This Court should affirm the trial court.

Relevant Facts

Before the trial began, Circuit Court Judge Edgar Dixon made a few comments to the jury in order to familiarize them with what they were about to experience. *See generally* ROA. 26–35. He explained that the criminal trials they may have seen on TV were full of drama and intense action that might:

> [b]e true at times [but] this trial is not for entertainment. It is a fundamental part of our democracy. **A search for the truth** in an effort to make sure that justice is done between the parties before this Court. **Searching for the truth** and making sure justice is done is often slow, deliberate and repetitive . . . .
>
> The attorneys appearing before you . . . are officers of this Court, sworn to uphold the integrity and fairness of our judicial system and to help you in **the search for the truth** . .

> . . These instructions are intended as an introduction to the trial. *They are not a charge on the law.* This is merely an explanation of the procedure that we will follow . . . to help you better understand what's happening . . . .
>
> The Defendant has pled not guilty to this indictment. Therefore, the State has the burden of proving each of the elements of the indictment beyond a reasonable doubt. It is your duty . . . to decide whether the State has met its burden.

ROA. 27, L. 13–19, L. 25, 28, L. 1–4, L. 12–19, 29, L. 1–6 (emphasis added).

The defense objected to the trial court's opening remarks and moved for a mistrial. ROA. 77, L. 2–7. They argued the remarks were an "unconstitutional shift of the burden of proof" but did admit the distinction in case law between the Court making the statement in opening remarks versus at the end of the trial during jury instructions. ROA. 76, L. 14–22. In response to the motion, the State highlighted the Court's thorough review of the presumption of innocence and reasonable doubt and stated a mistrial was not permitted. ROA. 77, L. 10–15. The State also noted, "Your Honor . . . you prefaced those comments with, 'this is not a charge on the law.'" ROA. 78, L. 11–13.

The Court denied the defense's motion, noting:

> I'm always impressed when the Jury listens to anything that I say . . . I think it's just a cautionary thing to tell them that I want them to get to the bottom of this. But that is the charge that we were given when I first got on the bench and I've made my cases to it as I've gone along and when you mentioned that you had something to take up, I figured that that's where we were going with this.
>
> I'm not going to grant a mistrial. I think my closing charge on the law should take care of that . . . we'll go forward with it. You've got a pretty good jury. I don't know that it will get better next time, if there was a next time.

ROA. 178, L. 17–18, L. 11–25, 78, L. 4–9.

The State addressed their burden of proof beyond a reasonable doubt in their opening statement, ROA. 37, L. 7–12, and the defense addressed the Appellant's presumption of innocence at length in theirs. ROA. 39, L. 1–25, 40, L. 1–25, 41, L. 1–7. The defense said, "If [we] were to

dim the lights . . . and I could project on each of the four walls in this courtroom one thing, that would be the word innocent." ROA. 39, L. 1–4. "[T]he presumption of innocence is the law. It's real. It's not just a concept." ROA. 39, L. 13–15. During closing arguments, defense counsel advised the jury on the presumption of innocence, the State's burden of proof, and reasonable doubt:

> [I]n this country, in this county, we citizens, we never shift the burden of proof of guilt an accused . . . . No man, no woman could or should be forced to have to come in here into a court and try to prove that they're innocent. The founding fathers of this country, they knew this. They made it the law and the law still holds today. All men are presumed innocent and no man is called to prove he did not commit a crime . . . .
>
> Proof of guilt beyond a reasonable doubt is the standard and make no mistake, today you are the anchor that must hold the State of South Carolina accountable and stand firm in the rule of law and the presumption of innocence.

ROA. 163, L. 1–3, L. 14–20, 164, L. 6–10.

After the closing arguments concluded, the judge instructed the jury on the law. He notably said, "The presumption of innocence is like a robe or righteousness placed about the shoulders of the Defendant. This presumption of innocence remains with the Defendant until it has been stripped from him by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt." ROA. 170, L. 1–6. "Your sole purpose is to determine whether the State has proven the Defendant's guilt to the charge of murder beyond a reasonable doubt from the evidence that has been presented to you in this case." ROA. 180, L. 13–17.

Analysis

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The power of the trial court to declare a mistrial should be used with the greatest caution

under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." *State v. Stanley*, 365 S.C. 24, 33–34, 615 S.E.2d 455, 460 (Ct. App. 2005). A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial. *Id.* at 585–86; 698 S.E.2d at 865. "[It] is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." *Stanley*, 365 S.C. at 33–34. "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." *State v. White*, 371 S.C. 439, 447, 639 S.E.2d 160, 164 (Ct. App. 2006).

South Carolina appellate courts analyze cases where judges use "search for the truth" phrases by determining when and how the phrase was used and whether it was connected to reasonable doubt or innocent until proven guilty explanations. *State v. Beaty*, 423 S.C. 26, 33, 813 S.E.2d 502, 505–506 (2018) "[I]instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). A determination must be made whether there was a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt." 343 S.C. at 27, 538 S.E.2d at 251; *Estelle v. McGuire*, 502 U.S. 62, 72 (1991). "Jurors do not sit in solitary isolation booths parsing instructions for subtle shades of meaning in the same way that lawyers might. Differences among them in interpretation of instructions may be thrashed out in the deliberative process, with commonsense understanding of the instructions in the light of all that has taken place in the trial likely to prevail over technical hairsplitting." *Boyde v. California*, 494 U.S. 370, 380–81 (1990).

South Carolina courts have found the level of possible error differs when the phrase is used at the end of the trial during the jury charge versus at the beginning in the judge's opening comments to the jury. *Cf.. Aleksey*, 343 S.C. at 20, 27–29, 538 S.E.2d at 251–52 (2000) and *Beaty*, 423 S.C. at 33–34 (2018), 813 S.E.2d at 505–506. The error is more likely to be harmless when a trial judge uses the phrase at the beginning of a trial when the jury is first learning about the relative structure of the trial rather than when they are being told what the law is by the judge at the end. *Aleksey*, 343 S.C. at 27-29, 538 S.E.2d at 251–52; *Beaty*, 423 S.C. at 33–34, 813 S.E.2d at 505–06. No South Carolina court has held the "search for the truth" language to be reversible error when it was given at the beginning of the trial, as the jury is less likely to have applied the phrase in a manner inconsistent with the State's burden, effectively altering [their] perception [of it], "substituting justice and fairness for the presumption of innocence and the State's burden of proving the [D]efendant's guilt beyond a reasonable doubt." *State v. Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (regarding the danger of "inaccurate and misleading" jury instructions on the law). The error is more likely to be insubstantial at that juncture, unlikely to have affected the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (providing appellate courts will "not set aside a convictions due to insubstantial errors not affecting the result."); *State v. Needs*, 333 S.C. 134, 157–158, 508 S.E.2d 857, 869 (1998).

In *State v. Aleksey*, the court held jury instructions on reasonable doubt given at the end of the trial (that charged the jury to "seek for the truth" or "search for the truth") ran the risk of unconstitutionally shifting the burden of proof to the defendant because the jury was more likely to have applied the phrases in a manner that prejudicially affected him. 343 S.C. 20, 27–29 (2000), 538 S.E.2d at 251–52. However, even though the *Aleksey* court found the phrase was error when used at the end of the trial, it analyzed the entire record and found the error to be harmless. *Id.*

Although the phrase was used during the charge on the law, it was not given in conjunction with either the reasonable doubt or circumstantial evidence instruction, and thus the defense did not prove beyond a reasonable doubt that the language affected the result of the trial. *Id.* at 27–29, 538 S.E.2d at 251–52.[2]

In *State v. Beaty*, the judge used the language in question at the beginning of the trial:

> [This] trial . . . is a **search for the truth** in an effort to make sure that justice is done. **Searching for the truth** and ensuring that justice is done is often slow, deliberate, and repetitive. [The attorneys] are sworn to uphold the integrity and he fairness of our judicial system and to help you as jurors to **search for the truth**."

Beaty, 423 S.C. at 34, 813 S.E.2d at 505–506 (emphasis added).

While the court held these comments to be improper yet harmless error,[3] they also held that "the disputed comments can be distinguished from *Aleksey* because they were a mere statement to the jury and not a charge on the law. Further, the remarks were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in *Alekse*y." *Id.*

Like in *Beaty*, the court held in *State v. Patterson* the trial court's use of the phrase "search for the truth" in opening remarks was harmless error. *State v. Patterson*, 425 S.C. 500, 511, 823 S.E.2d 217, 223 (Ct. App. 2019) "[The] trial court's improper comments came at the beginning of trial rather than during [the] charge on State's burden of proof at the end, which is when such a

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[2] The court similarly disfavored jury instructions that encouraged the jury to "seek some other rational or logical explanation other than the guilt of the accused" in *State v. Needs* but, like in *Aleksey*, the court found it was harmless error because the trial judge instructed jurors twenty-six other times that the State had the burden of proving the defendant guilty beyond a reasonable doubt. 333 S.C. 134, 151–52, 154–55, 508 S.E.2d 857, 865–68 (1998).

[3] "[It] could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice." *Beaty*, 813 S.E.2d at 506.

"We therefore instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt." *Id.*

statement would have the most prejudicial effect." *Id.* The *Beaty* and the *Patterson* courts both declined to find reversible error as the defense did not prove beyond a reasonable doubt the language had any effect on the final result. *Beaty*, 813 S.E.2d at 506, *Patterson*, 823 S.E.2d at 224.

"It is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations." *State v. Hamilton*, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (Ct. App. 2001)[4] (quoting *United States v. Hasting*, 461 U.S. 499, 510 (1983)). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it 'could not reasonably have affected the result of the trial.'" *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 150–51 (1985). A conviction may not be reversed due to "insubstantial errors not affecting the result." *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). "Whatever doesn't make any difference, doesn't matter." *State v. Jolly*, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991).

Here, if the trial judge's remarks were error, like *Beaty* and *Patterson*, the error was harmless and insubstantial. The record as a whole does not show they had any effect on the outcome of the case or that the jury applied the remarks in a manner that was inconsistent with the State's burden of proof. The remarks occurred at the beginning of the trial, the State's burden of proof was appropriately discussed at length throughout the entire trial, the language was not connected to the reasonable doubt instructions, and the State, the defense attorney, and the judge all took a considerable amount of time to tell the jury about the Appellant's presumption of

[4] Overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

innocence.[5] The defense has not shown the Appellant was prejudiced by the remarks nor that the alleged prejudice could not be removed any other way. They have also not shown evidence of urgent circumstances warranting the extreme measure of a mistrial. Therefore, a mistrial was not necessary and this Court should affirm.

II.

The trial judge properly instructed the jury to disregard a witness's one-sentence statement that her sister was "beaten and stuff" by the Appellant because the State immediately helped the witness course correct, the statement was vague, and the record does not show it prejudiced the Appellant by affecting the outcome of the trial. If it was error, it was harmless and did not warrant the extreme remedy of a mistrial.

Appellant argues the trial judge erred in denying his motion for a mistrial because the witness's statement about visiting her sister in the hospital after being beaten was impermissible. The State disagrees with this allegation of error. The judge ruled before trial that testimony about generalized difficulties in the relationship between the Appellant and the victim were admissible but that details of such difficulties were not.[6] After the witness made the statement in question, the defense objected and the judge instructed the jury to disregard her answer. He never specifically ruled the statement qualified as a "detail" of the difficulty. However, even if her remark was error,

[5] The transcript is three hundred and eleven (311) pages long and the judge's pretrial comments spanned nine pages. His comments including the "search for the truth" language only took up two of them. *See generally* ROA. 26–35. The judge spent four pages covering the State's burden of proof and the Defendant's presumption of innocence, *See generally* ROA. 28–32, and later spent nine pages instructing the jury on law regarding the State's burden of proof, the Appellant's presumption of innocence, and reasonable doubt. *See generally* ROA. pp. 167–182.

Defense counsel spent five pages instructing the jury on the presumption of innocence, the State's burden of proof, and reasonable doubt. *See generally* ROA. 39–41, 163–164. In all, more than eighteen pages of the transcript include comments and instructions to the jury to regard the Appellant as innocent until proven guilty.

[6] The objection and challenged error are arguably not immediately obvious from the record. It is unclear whether the defense objected to the specific statement or the testimony at large and neither the defense, the trial judge, nor the appellate defense make this clear.

it was harmless. There is no evidence in the record that demonstrates the Appellant was prejudiced by it. There is independent, competent, and conclusive evidence, however, that Appellant was guilty of the crime. The timing of the death could only have occurred when the two parties were in the room and it was not a natural death: the autopsy determined the cause of death was homicide by strangulation. The Appellant made statements from which it could be determined that he committed the crime and that he knew he did it. The Appellant admitted to being angry with her that night, to striking her in the face, and to grabbing her by the neck. This Court should affirm the trial court.

Relevant Facts

Before trial, the State moved to admit the "prior history of difficulties between the parties under current South Carolina case law . . . ." ROA. 3, L. 8–10.

> [The] prior difficulties between the parties . . . go to prove animus and motive in a homicide case . . . . [T]he couple had been married for 35 years and I'm not seeking to have law enforcement testify to it, but the victim's sister, Bessie Bates, can testify about the fact that they had a tumultuous relationship . . . .
>
> [I]n a domestic homicide case, it's extremely relevant and probative to talk about the relationship because it goes into the cycle of abuse basically.

ROA. 3, L. 23–25, ROA. 4, L. 3–13.

The State proffered Ms. Bates in order to elucidate the testimony they sought to admit. ROA. 5–9. The State asked her, "How would you describe [the victim and defendant's] relationship?" She answered, "As long as I can remember, there was days they had some pretty good days but for the most part, it was arguing, fighting, fussing." ROA. 6, L. 17–20. "Did you ever give [the victim] any advice about Dale?" "Yes. There was several times I told her, went to see her and she –." The State: "Without telling me what she said, what was your advice to her?"

ROA. 6, L. 21–25. “Oh, that she needed to move away from the situation.” The State: “Did you give her that advice once, twice, a number of times?” “Several times.” ROA. 7, L. 1–5.

The State argued the testimony was admissible pursuant to *State v. Smith*, 337 S.C. 27, 522 S.E.2d 598 (1999) and *State v. Williams*, 2018 WL 2049985, C/A No. 2015-001727 (Ct. App. 2018).[7] They argued, “[T]he probative value certainly outweighs the prejudicial value in determining and allowing the jury to hear the testimony about the state of their relationship . . . .” ROA. 15, L. 22–25.

> I don’t have the luxury of knowing what the defense is going to present, and I have to prove murder. I have to prove malice aforethought and state of mind and that comes into play and this is proper evidence admissible to prove state of mind and intent.
>
> That whole slew of cases that examined evidence of prior disputes, ill feelings and hostile acts in the homicide case is to establish a turbulent relationship between Defendant and Victim in order to point towards state of mind. Those are all – that’s good South Carolina case law.

ROA. 20, L. 24–25, ROA. 21, L 1–10.

The defense objected, arguing they wanted to defend on the indictment alone, as “by the time the State gets to closing arguments, we’ll have a full-fledged violent drunk who beats his wife . . . .” ROA. 18, L. 19–21, 23–25. The Court admitted the testimony over the objection, finding “the convictions came in [in *Smith*] . . . to establish the Defendant’s state of mind and to rebut his claim of accident . . . .” ROA. 20, L. 3–7. The Court continued by saying:

> I do think in trying to prove malice and things like that, the State will get to put in the testimony of the prior difficulties and the prior – the *generalized prior difficulties* that the sister talked about and the testimony about the events two months before, which I think would be appropriate.

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[7] The State: “I think *State v. Williams*, in particular, where the Court pulled the evidence and marital discourse was admissible, a husband’s trial for the murder of his wife, it’s just that the details of the difficulties are not admissible and I certainly think that the advice to her sister over the years of marriage was completely admissible.” ROA. 21, L. 13–19.

> [The State] is going to have some leeway about going as to any bad, any crimes or anything like that . . . . [I]f we want the Jury to get kind of a full flavor of it, we need to at least give them a chance to get acquainted with it.

ROA. 23, L. 6–13, ROA. 24, L. 17–19, L. 22–25 (emphasis added).

During the trial, the State asked Ms. Bates, "How would you describe [the victim and defendant's] relationship?" She answered, "The truth is, their relationship was not the best of relationships." ROA. 131, L. 22–25. "I didn't see them fighting directly, but when I would see my sister, yeah, you could tell that she – it wasn't good." ROA. 132, L. 4–6. "Did you ever give your sister any advice about her relationship with Dale?" "Yes . . . Seeing – witnessing the times when I had to go to the hospital and to check after her *for being beaten and stuff like that*." ROA. 132, L. 7–13 (emphasis added). The defense objected and **the Court said, "Don't say anything, Ms. Bates. I'm sorry. Are you going to redirect your question?" The State: "Yes. Yes, sir." The Court; You all disregard that last answer. Go ahead." ROA**. 132, L. 14–19 (emphasis added). The State: "Not getting into any details of fights or things that you did not personally observe, did you give [the victim] any advice about her relationship with Dale? . . . What advice was that?" ROA. 132, L. 23–25. Ms. Bates said, "That you need to – you need to come out of the situation that you're in." ROA. 133, L. 2–5. The defense moved for a mistrial and the judge denied it, noting, "I cautioned them to disregard that answer." ROA. 143, L. 11–13, ROA. 144, L. 4–5.

Analysis

"We start by presuming the cure worked, for we also presume *juries follow their instructions." State v. Young*, 420 S.C. 608, 623, 803 S.E.2d 888, 896 (Ct. App. 2017). *Richardson* v. *Marsh*, 481 U.S. 200, 206 (1987) (emphasis added). While "an instruction to disregard incompetent evidence usually is deemed to have cured the error in its admission," a mistrial may

still be required if "on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced." *State v. Simpson*, 325 S.C. 37, 43, 479 S.E.2d 57, 60 (1996). However, even without a curative instruction, an error not shown to be prejudicial to the defendant does not constitute grounds for reversal. *State v. Patterson*, 367 S.C. 219, 228, 625 S.E.2d 239, 243 (Ct. App. 2006). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected . . . ." Rule 103, SCRE.

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." *State v. Stanley*, 365 S.C. 24, 33–34 (Ct. App. 2005). The judge must first exhaust all other methods to cure possible prejudice before aborting a trial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

"It is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations." *State v. Mitchell*, 378 S.C. 305, 316–317, 662 S.E.2d 493, 500 (Ct. App. 2008) (quoting *United States v. Hasting*, 461 U.S. 499, 510 (1983)). "The harmless-error doctrine . . . promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986). A reviewing court must consider the entire record and determine whether, absent the error, the jury would have returned a verdict of guilty. *Hasting*, 461 U.S. at 512. "Where guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than that the accused is guilty, a

conviction will not be set aside because of insubstantial errors not affecting the result." *State v. Howard*, 296 S.C. 481, 485, 374 S.E.2d 284, 286 (1988). "The Constitution entitles a criminal defendant to a fair trial, not a perfect one." *State v. White*, 371 S.C. 439, 449, 639 S.E.2d 160, 165 (Ct. App. 2006).

Here, the trial judge held that generalized testimony about the prior difficulties between the Appellant and the victim was admissible. He properly ruled that the evidence went to the state of mind and intent of the Appellant and was admissible because it helped the trier of fact determine whether the State proved Appellant's malice aforethought.[8] He found the testimony relevant and probative and that the probative value was not substantially outweighed by any prejudice to the Appellant. Therefore, Bessie Bates' testimony that the Appellant and victim had been fussing and fighting for years was admissible.

If it was error for Bates to testify about having to visit her sister at the hospital for being beaten, it was harmless error. The trial judge did not specifically rule on the record whether the statement "for being beaten and stuff" qualified as a detail of the generalized difficulties. If it was an inadmissible detail, however, there is no evidence in the record to show that, but for this error, the jury would have found the Appellant not guilty of murder. Instead, the Appellant's own statements and the autopsy competently and conclusively proved Appellant was guilty of strangling his wife. He was the only person in the room that night and admitted to fighting with her about taking showers at night after drinking in the past. He changed his story about what had happened multiple times, but eventually admitted his anger toward her that night. He admitted he

[8] Our Supreme Court found in a different *State v. Williams* that evidence of marital discord between a victim and a defendant is admissible to show that animus existed between them but that the details of such disputes were not. *State v. Williams*, 321 S.C. 327, 335–36, 468 S.E.2d 626, 31 (1996).

slapped her. He also admitted to grabbing her neck when she got out of the shower. He said he would have to live with what he had done for the rest of his life and claimed it was an accident. The autopsy conclusively showed she had been strangled to death and the injuries corresponded to certain things the Appellant's said about what happened that night. A mistrial for Bates' statement was not absolutely necessary as no grievous error was shown to have occurred and his guilt was independently proven by competent and conclusive evidence.

In *State v. Harris*, this Court upheld a trial court's decision to deny a mistrial when the State elicited, according to the defendant, improper character evidence testimony. *State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). The defendant, later convicted of murder and ABWIK, cross-examined a child about the relationship they shared. *Harris*, 382 S.C. at 119, 674 S.E.2d at 538. On redirect, the State asked the child, "[The defendant] hit you, didn't he?" *Id*. This Court found the trial court's immediate instruction to the jury to disregard the question properly cured any error or prejudice to the defendant. *Harris*, 382 S.C. at 119–20, 674 S.E.2d at 538–39. The facts and issue of the case currently before this Court are substantially similar. In *Harris*, the witness did not respond to the question. In this case, the witness also never explained the advice she gave to the victim. The advice remained a question and substance was never established because the court stepped in and had the State redirect the question. This Court should therefore affirm the trial court's decision to deny a mistrial just as it did in *Harris*.

In *State v. Howard*, the defendant was on trial for murder and a co-defendant impermissible testified to another murder the defendant might have been involved in. *State v. Howard*, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). The first time the witness mentioned it, the court instructed the jury to disregard what they had heard. *Id*. However, the State later brought up the same impermissible statement and the judge did not give a curative instruction at that juncture. *Id.*

Nevertheless, our Supreme Court found that, after a review of the entire record, it could not be established that the defendant had been prejudiced by the error, so reversal was not warranted. 296 S.C. at 485, 374 S.E.2d at 286. They also ruled that guilt had been independently proven by the defendant's own statements and physical evidence, which was even more reason to affirm the trial court's denial of a mistrial. *Id.* Here, the witness only "likely" went out of bounds and the judge gave a curative instruction immediately after to cure any alleged prejudicial effect. Guilt, here, was also independently and conclusively proven by the Appellant's own statements and physical evidence. In *Howard*, the court found the evidence did not warrant a mistrial even though testimony was given implicating the defendant in an entirely separate murder. Therefore, like in *Howard*, this Court should affirm the trial court's decision to deny the motion for a mistrial. If it wasn't prejudicial enough in *Howard* the statement certainly is not prejudicial enough here.

If there was an error here, any prejudicial effect of the witness's statement was cured by the trial judge's instruction. Such an instruction is deemed to cure error unless on the facts of the particular case – looking at the record as a whole – the defense can prove that the Appellant was prejudiced or that a substantial right of his was affected, notwithstanding the instruction. Here, he has not done so. In order for this Court to grant the Appellant relief, he must show the error contributed to the verdict obtained. He has not done so. In fact, guilt was conclusively proven by his own statements and the autopsy which competently showed the victim was strangled. If error did occur, in order to be entitled to a mistrial, he must have been able to prove that the error could not be corrected in any other way. Instead, this Court should affirm the trial court as South Carolina juries are presumed to have followed their instructions. The curative instruction did what it was designed to do.

III.

The trial judge properly admitted testimony of Appellant's arrest for domestic violence two months before the victim's murder because the testimony was relevant and highly probative of his motive, intent, and lack of accident, helping to the jury to determine the element of malice aforethought.

Appellant argues the trial judge erred in allowing the State to introduce evidence that he was arrested for domestic violence two months before the murder because it was improper character evidence under 404(b), SCRE. The State disagrees with this allegation of error. The evidence was logically relevant to his motive, intent, lack of mistake, and lack of accident and helped the trier of fact determine the State's element of malice aforethought. It also helped the jury understand the context in which the crime occurred. The trial judge properly ruled that the probative value of the conviction was not substantially outweighed by its prejudicial effect pursuant to good South Carolina case law and allowed the arrest in. This Court should affirm.

Relevant Facts

As noted above, before trial, the State moved to admit the "prior history of difficulties between the parties under current South Carolina case law as well as prior domestic violence incidents, which is subject to a 404(b) analysis." ROA. 3, L. 8–12. "[The] prior difficulties between the parties . . . go to prove animus and motive in a homicide case." ROA. 3, L. 23–25. [I]n a domestic homicide case, it's extremely relevant and probative to talk about the relationship because it goes into the cycle of abuse basically." ROA. 4, L. 3–13. They sought to admit testimony from Naomi King, the defendant and victim's daughter, and the responding officer, Sergeant Tricia Brubaker, in order to prove by clear and convincing evidence that the defendant was arrested for Domestic Violence Second Degree on March 17, 2017, two months prior to the victim's murder. ROA. 4, L. 19–24.

They proffered Sergeant Brubaker's testimony, *see generally* ROA. 10–14, and argued the incident was admissible pursuant to *State v. Smith*, 337 S.C. 27, 522 S.E.2d 598 (1999) because the court in that case upheld the admission of a prior domestic violence conviction in a murder trial to prove "intent and lack of mistake or accident." ROA. 15, L. 4–15.

> This is a situation where a strangulation . . . occurs and [the defendant] is the only person in the room that can tell us what happened and he does make statements that don't correspond with the medical findings and tries to . . . make a case for an accident or some sort of mistake . . . . the probative value [of which] certainly outweighs the prejudicial value in determining and allowing the jury to hear the testimony about the state of their relationship and what happened just shy of two months prior.

ROA. 15, L. 15–25, ROA. 16, L. 1. The State told the court, "I want to put the prior DV into evidence to show intent and lack of mistake or accident under 404B." ROA. 16, L. 17–19.

The defense argued against admissibility because they did not intend to rely on a defense of accident. ROA. 17, L. 9–25, ROA. 18, L. 1–8. The State countered by saying:

> The problem is that I don't have the luxury of knowing what the defense is going to present, and I have to prove murder. I have to prove malice aforethought and state of mind and that all comes into play and this is proper evidence admissible to prove state of mind and intent.
>
> That whole slew of cases that examined evidence of prior disputes, ill feelings and hostile acts in the homicide case is to establish a turbulent relationship between Defendant and Victim in order to point toward state of mind. Those are all – that's good South Carolina case law.

ROA. 20, L. 24–25, ROA. 21, L. 1–10.

The State continued:

> The prior DV, while not a conviction . . . we can prove through clear and convincing evidence, which is defined in Lecture as – "the degree of proof which will produce in the mind of the tryer [of] fact, a firm belief as to the allegations sought to be established."
>
> So, you don't have to have an actual conviction or that prior DV to come in and whether or not the Defense intends to ask for a charge on accident, whether or not Dale King intends to take the stand and try and claim it was an accident, there was mentioned by him, "Oh, it must have been an accident," to [Investigator] Dowling and any questions about that are certainly there for cross-examination.

ROA. 21, L. 20–25, 22, L. 1–11.

The Court admitted the testimony, ruling that "I do think in trying to prove malice and things like that, the State will get to put in the testimony . . . about the events two months before, which I think would be appropriate." ROA. 23, L. 6–13. "I think that if we want the Jury to get kind of a full flavor of it, we need to at least give them a chance to get acquainted with it." ROA. 24, L. 22–24.

During trial, Naomi King Belk testified that on the night of March 18, 2017, she was in her parents' hotel room when they got into an altercation after drinking all day. ROA. 135–136. They were "exchanging words" . . . and she "heard [her] mom getting hit" so she called 911. ROA. 137, L. 7–11. She testified to seeing bruises on her mother's face that were caused by her father, Dale King. ROA. 137, L. 15–20. Then, Sergeant Brubaker related how she responded to an anonymous complaint of domestic disturbance and heard "a male subject yelling at someone" upon her arrival." ROA. 138, L. 4–12. Dale King answered the door and "denied that there was a disturbance . . . ." ROA. 139, L. 22. She related the injuries she observed to Veronica King: "It was a larger contusion. I then observed a swelling and a mark to her left eye area and I could see some fresh blood and some swelling to her lower left lip area." ROA. 140, L. 14–17. She told the jury she arrested the defendant, Dale King, for Domestic Violence Second Degree. ROA. 142, L. 3–4. The defense objected and moved for a mistrial and the court denied it. ROA. 196, L. 1–25, 197 L 1–22, 198, L. 8–19. Of note for this issue, the court charged the jury on prior bad acts, criminal intent, and malice. *See generally* ROA. 171–72, 176–77, ROA. 178–79.

Analysis

Generally, evidence of crimes, wrongs or other acts is not admissible to prove the character of a person to show action in conformity therewith. *State v. Jenkins*, 322 S.C. 414, 416, 472 S.E.2d

251, 252 (1996); 404(a), SCRE. However, prior bad act evidence is admissible to show the res gestae of the offense for which the defendant was charged. *State v. Johnson*, 306 S.C. 119, 126, 410 S.E.2d 547, 552 (1991). It is also admissible when it "tends to establish motive, intent, absence of mistake, a common scheme or plan . . . or the identity of the person charged with the commission of the present crime. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923); 404(b), SCRE. If it is to be admitted under the res gestae theory, the temporal proximity of a prior bad act must be closely related to the charged crime. *State v. Sweat*, 362 S.C. 117, 132, 606 S.E.2d 508, 516 (Ct. App. 2004).

The test to determine whether prior bad acts are admissible is the logical relevancy of such acts to the charged crime. *State v. Timmons*, 327 S.C. 48, 52, 488 S.E.2d 323, 325 (1997); 404(b), SCRE. In order that guilt of a particular offense may be inferred from its similarity to other offenses, the similarity must establish "such a connection between the crimes as would logically exclude or tend to exclude the possibility that the present crime could have been committed by any other person than the accused." *Lyle*, 125 S.C. at 411, 118 S.E. at 808.

Before guilt may be inferred from other similar crimes not the subject of a conviction, they must be established by legal, competent, clear and convincing evidence. *Lyle*, 118 S.E. at 811; *State v. Beck*, 342 S.C. 129, 137, 536 S.E.2d 679, 683 (2000). When evidence of other bad acts is admitted for a specific purpose, the trial judge should "instruct the jury to limit its consideration of this evidence to the particular purpose for which it was offered." *Johnson*, 306 S.C. at 126, 410 S.E.2d at 552; *State v. Hamilton*, 327 S.C. 440, 447, 486 S.E.2d 512, 516 (Ct. App. 1997).

Evidence of prior episodes of domestic violence are relevant and admissible to prove motive and intent as they tend to make the State's version of a case more probable. *State v. Sweat*, 362 S.C. 117, 127, 606 S.E.2d 508, 514 (Ct. App. 2004). Evidence is admissible if it is logically

relevant to establish a material fact or element of the crime and it need not be necessary to a State's case in order to be admitted. *State v. Bell*, 302 S.C. 18, 23, 393 S.E.2d 364, 369 (1990). The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused. *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). If the court does not clearly perceive the connection between the prior episode and the crime charged, then the accused should be given the benefit of the doubt and the evidence should be rejected. *State v. Brooks*, 341 S.C. 57, 61–62, 533 S.E.2d 325, 327–28 (2000).

Determination of the relevancy of a prior bad act is largely within the discretion of the trial judge and the decision should only be reversed for abuse of discretion. *State v. Anderson*, 253 S.C. 168, 182, 169 S.E.2d 706, 712 (1969). The reviewing court is bound by the trial court's factual findings concerning whether there is clear and convincing evidence of other bad acts unless those factual findings are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). Questions concerning the admissibility of evidence are treated as questions of fact. *Id.*

In *State v. Sweat*, this Court upheld the prosecution's admission of the defendant's prior domestic violence episode against the victim, whom he was on trial for robbing and assaulting.[9] *State v. Sweat*, 362 S.C. 117, 121, 606 S.E.2d 508, 510 (Ct. App. 2004). The prior episode had occurred two months prior to the crimes before the jury. 362 S.C. at 122, 606 S.E.2d at 511. This Court found the evidence was admissible to show motive and intent to maliciously inflict harm upon his ex-girlfriend and her new boyfriend. 362 S.C. at 124, 606 S.E.2d at 512. It also found the prosecution admitted sufficient evidence that the prior episode occurred and that the probative value of the evidence was not outweighed by its prejudicial effect. *Id.* The case currently before

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[9] The defendant was convicted of first degree burglary, ABWIK, and ABHAN. *Sweat*, 362 S.C. at 121, 606 S.E.2d at 510.

this Court is identical to the facts in *Sweat* in that the evidence of the episode admitted in *Sweat* was not evidence of a conviction, only clear and convincing evidence that it occurred. *Id.* Also, only two months had passed between the domestic violence episode and the crimes for which the defendant was on trial in *Sweat* just like only two months passed between incidents here. This Court should affirm the trial court for the same reasons it affirmed the court in *Sweat*.

In *State v. Smith*, the prosecution introduced evidence that the defendant, who was on trial for murder and ABWIK, had received a conviction for domestic violence three months before the shooting for which he was on trial, and three others before that. *State v. Smith*, 337 S.C. 27, 31, 522 S.E.2d 598, 600 (1999). The defense argued there were no similarities between the prior convictions and the murder and therefore their admission would be improper under 404(b), SCRE. *Id.* However, our Supreme Court upheld the admission of the conviction three months before because it was logically relevant to the defendant's intent and absence of mistake or accident at the time of the shooting. 337 S.C. at 33, 552 S.E.2d at 601. They found the probative value of the prior conviction was not outweighed by unfair prejudice to the defendant and affirmed the trial court's decision. *Id.*

This Court should affirm the trial court. This evidence was admissible under 404(b), SCRE, because it tended to establish the motive, intent, absence of mistake, and lack of accident of the Appellant the night of the crime and the jury had the right to hear the evidence. They are the fact finders, and if evidence aids the fact finder in determining whether evidence is logically relevant to the crime before them, meaning it excludes or includes the possibility the defendant was the one who committed the crime or made the State's version of the case more probable, it is admissible. If the prior bad act sought to be admitted is not a conviction, it is admissible if the prosecution

proves it by clear and convincing, competent evidence and the judge gives the jury a limiting instruction during his charge on the law.

Here, all of the above is true and occurred during the trial of Dale King. The incident was admissible to provide the trier of fact context for the crime, as its temporal proximity was very close in time to the murder for which he was on trial. The incident helped prove the State's element of malice aforethought and the Appellant himself claimed the strangulation was an accident in more than one of his statements to law enforcement and his brother-in-law. This Court should affirm the trial court's admission of the prior bad act.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

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Columbia, South Carolina
May 6, 2021

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-002078

THE STATE ....RESPONDENT

v.

DALE EUGENE KING..APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 6th day of May, 2021.

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