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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2022-000181

THE STATE, ...RESPONDENT,

v.

JARVISE TERRELL JENKINS,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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Rules

[1] Pursuant to the Supreme Court of the United States' new disavowal of *passim*, Respondent will refrain from using it.

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge err in allowing six different witnesses to testify about prior difficulties between Appellant and the deceased including testimony that the relationship was toxic, testimony about physical violence, to include a prior choking of the deceased, stalking behavior, advise to the deceased to get a protective order, prior threats to kill the deceased, to include a copy of a threatening Facebook message from eight months prior, when, viewed together, the probative value of all the prior difficult testimony and evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE?

II. Did the trial judge err in admitting testimony that Appellant choked and threatened to kill another woman when the State failed to establish a logical connection between the other testimony and the crime charged such that the evidence of other testimony reasonably tended to prove a material fact in issue as required by Rule 404(b)?

III. Did the trial judge err in admitting testimony that during the course of Appellant choking and threatening to kill another woman he asked if she thought this was the first time he had done this when the testimony did not meet the identity exception to Rule 404(b)?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether Judge Miller properly allowed witnesses to testify about prior difficulties between Appellant and Anelia when some were mere generalities highlighting the animus between them that was relevant to help the jury figure out who the perpetrator could be, and when others were so close in time to the crime that they went directly to proving malice existed in Appellant's heart.

II. Whether Judge Miller properly allowed the introduction of April Cook's testimony regarding how Appellant abused her when the State proved both that Appellant had a common scheme or plan of abuse with both women and when the State proved a logical connection existed that materially proved a fact: the identity of the perpetrator.

III. Whether Judge Miller properly allowed Appellant's confession to April Cook that "he had done this before" while strangling Cook a mere 9 months after he murdered Anelia when it was a statement against Appellant's interest and more than surpassed the standards for the common scheme or plan and identity exceptions of Rule 404(b).

STATEMENT OF THE CASE

Appellant was indicted at the April 2021 term of the grand jury for Hampton County for the murder of his girlfriend Anelia Garvin.[2] (2019-GS-25-00536). He was prosecuted by Deputy Solicitor Hunter Swanson, and was represented by Courtney Gibbs, Esq. Jan. 30 Tr. 1. Appellant proceeded to trial by jury before the Honorable Edward W. Miller from January 30 to February 1, 2023, and was found guilty as charged. Jan. 30 Tr. 1; Feb. 1 Tr. 133-134. He was sentenced by Judge Miller to fifty years' imprisonment. Feb. 1 Tr. 139. Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

[2] The transcript lists Anelia's name as spelled both with an "n" and an "m", so Respondent confirmed with the Solicitor's Office that her name is in fact Anelia, not Amelia.

STATEMENT OF FACTS

Anelia Garvin was found strangled to death in her tub on Pepper Street, naked and face down, around 3:45 A.M. on December 5, 2018. No water was found in her lungs. She was last seen at 4 A.M. on December 4, 2018, and was found 24 hours later after Appellant lit the house on fire and the smoke alarm went off. A cigarette butt was found near the tub with the Appellant's DNA on it. Appellant and Anelia had dated for several months before this, and multiple friends and family members testified pretrial and at trial to the "toxic" nature of their relationship. Appellant was arrested after a 9-month investigation in what the State admitted was a wholly circumstantial case. Jan. 31 Tr. 12, 22, 34-35, 53-55; Feb. 1 Tr. 17, 74-76, 96-97.

The Months Leading Up to Her Death

Appellant sent a Facebook message to Anelia's friend Erica about seven or eight months before her murder, saying, "Lol, wow… why? Cause she just done too much. Drama pool. I want to choke her until her head fall off. Laughing my – off." Jan. 31 Tr. 113-116.

The Three Days Before She Was Found – December 2 to 4, 2018

On Sunday, December 2, 2018, Anelia put her cousin Kimberly Williams on speakerphone while she was arguing with Appellant 48 hours before her murder. Kimberly heard Appellant threaten to kill Anelia as she was asking him to leave. He said, "I'll kill you, bitch. You're not leaving. Here is the death do us part . . . ." Kimberly knew the relationship was toxic, as she had witnessed Appellant being controlling and violent toward Anelia in the past, including once where she had watched Appellant strangle Anelia. Cell phone records showed Appellant was with Anelia at her house on Pepper Street when he made the above statement. Jan. 31 Tr. 97-103; Feb. 1 Tr. 33-36.

The next night, about 27 hours before she was found dead, Anelia worked her last shift at Love's Travel Center and got off at midnight. One of her co-workers noticed she was outside

upset around 10 or 11:00 P.M. Appellant had been sitting outside the Love's with his car backed up to Anelia's for the past three hours. The co-worker went outside to see why she was upset and gave her the advice that if she felt "that way" about Appellant, "she needed to have a protective order, and that she possibly didn't need to go home if she didn't feel safe doing that." The manager had to ask Appellant to leave the parking lot. Jan. 31 Tr. 70-72, 77, 120, 123.

Anelia called her cousin Alexis Williams after she got off work, and the two met up at the Pepper Street house to get ready for the club. Anelia's phone was going off a lot, but she ignored it. The pair went to get potato chips at a nearby Shell Station, and they both saw Appellant drive into the station, and then follow them as they pulled out. Alexis told Anelia to call someone, because "this was getting out of range. Like, he would keep following us." Cell phone records proved Appellant was where Alexis said he was that night, even though Appellant denied it.

Anelia got upset, so she called her uncle, Christopher Williams, and he called Appellant to tell him to back off. The pair then picked up Mariah Boles on the way to the club and she also noticed how much Anelia's phone "was going off." After the three left the club a few hours later, Alexis dropped Anelia back off at the Pepper Street house around 3 or 4:00 A.M. and Anelia's Aunt Shelia let her in the front door. Shelia thought it was weird how Anelia did not have her keys. That was the last time anyone saw Anelia Garvin alive. Jan. 31 Tr. 74-81, 87, 90-96.

<u>The Day She Was Found: December 5th at 3:30 A.M.</u>

A little less than 24 hours later, the smoke alarm went off in the Pepper Street home Anelia shared with her grandfather around 3:30 A.M. as smoke filled the house. Anelia lived in the back left master bedroom, and her grandfather found her face down in the bathtub behind a locked inner door that he kicked down, which was strange because Anelia did not take baths. Rigor mortis had set in. There was still water in the tub, and the back left of the trailer was burnt

– and the home smelled of gas. Accelerants and a gas can were found, showing someone tried to intentionally set the home on fire. Jan. 31 Tr. 12-14, 16-17, 22-23, 45-46, 48-55, 59-60, 94; Feb. 1. Tr. 108.

There was an outside door that indirectly led into Anelia's bedroom, and it was usually deadbolted with three separate locks, but it was unlocked on the morning of December 5th. There were no signs of forced entry, and Anelia's grandfather testified he usually checked the door to make sure it was locked each night. The AC unit was not in the window in Anelia's bedroom as it always and usually was, and the window was also not locked. Anelia's car was in the driveway, but her keys and phone were nowhere to be found. Cell phone records for the same number as the number traced on December 2nd showed Appellant was around Anelia's home at least between 12:39 A.M. and 1:24 A.M. on December 5th, and then his phone went dark. The house was set on fire around 3:30 A.M. Jan. 31 Tr. 29-39, 42-43, 58-61, 67-69, 105; Feb. 1 Tr. 37-43; State's Exhibits 11 and 12, State's Exhibit 16.

Officers had responded to this trailer before for malicious injury to personal property. The defense floated the theory at trial that Anelia's uncle Christopher Williams killed her, as the two had been in a recent altercation where he had busted out her car window.[3] Williams fixed the car, but he was due in court on the day she was found dead: December 5th. Williams testified he both tried to wake up and also call her when she did not show up to court on the 5th, but that she did not answer. The defense also introduced the fact that Williams had a prior conviction for

[3] While not an officially sanctioned third party guilt defense, Appellant brought out his theory on cross-examination of multiple witnesses. Therefore, "[w]here one party introduces evidence a to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially." *State v. Albert*, 303 N.C. 173, 277 S.E.2d 439, 441 (1981) (quoted recently by this Court in the unpublished *State v. Blake*, Case No 2018-001943 (filed January 17, 2024)).

domestic violence second degree, and a prior for assault and battery second degree. Jan. 30 Tr. 19-20, 63-69, 128-135.

Nine Months Later

Nine months later in September of 2019, Appellant got into an argument with his new girlfriend, April Cook, whom he had started dating a mere three months after he killed Anelia. Appellant told April she had made him feel less of a man, so he walked into the room and punched her in the face. She was five months pregnant. He turned her over onto her stomach on the bed, hit her in the face again, strangled her, and then dragged her off the bed. "He stood over me . . . almost like he was drooling from the mouth. He wasn't himself; he was very distorted." He then said, **"You think this is the first time I did this? You think this is the first time? I'm trying to figure right now how to get your body back to Walterboro."** He also had told April that water was in the tub when Anelia died, and only law enforcement had known about that fact previously. Appellant was arrested a month later for the murder of Anelia Garvin. Feb. 1 Tr. 5-15, 17 (emphasis added).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only. *State v. Cutter*, 261 S.C. 140, 199 S.E.2d 61 (1973)." *State v. Sweat*, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004); *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001). The question of whether the trial judge properly admitted evidence under *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), is a question of law. *State v. Tutton*, 345 S.C. 319, 327, 580 S.E.2d 186, 190 (Ct. App. 2003)."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. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014); *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). For an appellate court to reverse based on the erroneous admission or exclusion of evidence, prejudice must be shown. *State v. Taylor*, 333 S.C. 159, 172 (1998).

ARGUMENT

I. Judge Miller did not err by allowing witnesses to testify about prior difficulties between Appellant and Anelia because they went to the animus between them and to Appellant's state of mind–specifically the buildup of malice aforethought–and helped the jury figured out who the perpetrator could be.

Appellant argues Judge Miller erred when he let five witnesses (the sixth testimony from Brian Townsend was not contemporaneously objected to) testify to prior difficulties between Appellant and Anelia Garvin in the months leading up to her murder. The State disagrees and submits Appellant's argument is without merit. Judge Miller properly ruled that the factual background of their relationship was admissible to aid the jury in deciding who was the possible perpetrator, as it was a "who done it" trial, and to prove the animus between the parties. Furthermore, the evidence was admissible to show the build up to malice aforethought in Appellant's mind (and to show the state of his mind) that culminated in his strangulation of Anelia Garvin. There is no limit as to how far inquiring minds may go back to find malice aforethought. This Court should affirm.

On the first day of trial, January 30, 2023, the defense moved to exclude any prior "ill feelings, ill will, previous difficulties between the parties" under Rule 403, SCRE, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), before the trial began. Jan. 30 Tr. 24, Tr. 37. The State responded by stating that instances between a victim and a defendant were widely held to be admissible in domestic violence homicide cases, and alerted the judge that they anticipated multiple family members and friends of the victim to testify regarding the ill will and hostile feelings between the parties. Jan. 30 Tr. 24-25. The defense then objected to specifics, which are discussed below, before stating, "We're agreed on several things [already that] we aren't getting

into." Jan. 30 Tr. 25. The defense said the concern was the "overwhelming propensity evidence and prior bad acts, and just a propensity for violence." Jan. 30 Tr. 25-26. [4]

The parties and the court went through the specific prior difficulties between Appellant and the victim one by one and the judge ruled on each. Below is a summary of the pretrial and during trial testimony with the relevant objections:

Kimberly Williams

The defense first objected to Kimberly Williams' testimony (arguing it was unduly prejudicial among other objections not raised here) that she heard Appellant threaten to kill the victim on speakerphone on December 2, a few days before her death, while Appellant was in the room with the victim. 'I'm going to kill you . . . death do us part." The defense said, "What concerns me is this quickly can become a propensity case where they're all going to testify, they don't like him, he was a bad boyfriend, he was violent, without specific, you know . . ." The State noted Appellant threatened to kill the victim in the manner she died two days before she was found dead. Judge Miller said he would be inclined to allow a limited and brief incident factual background of the prior difficulties, then later stated it was his inclination to allow "the testimony of the family, pre-homicide testimony within limits, and also the testimony of Ms. Cook." Jan. 30 Tr. 34-47.

During trial, Ms. Williams testified the relationship between Appellant and the victim was "toxic" because Appellant was controlling and would take her phone, follow her, and was

[4] To summarize, the defense's main objections to the prior difficulties and statements were, first, regarding April Cook, "not intimately connected with the charged conduct," as Cook was a different victim, and argued the difficulties were not closely related enough to the charged conduct in temporal proximity. They also, second, objected to improper character evidence and undue prejudice of the prior difficulties in general. The defense renewed all prior objections on the first and the last days of trial. Jan. 30 Tr. 33, 37; Jan. 31 Tr. 6; Feb. 1. Tr. 101, 135.

jealous, and the defense objected and renewed their previous objection when the State asked whether Appellant would get physical. Williams also testified she saw Appellant strangle[5] Anelia in the past and testified she had previously seen bruises on Anelia's face, arms, and neck. She had also witnessed Appellant follow her and Anelia in Anelia's vehicle. The specific speakerphone conversation was testified to again, and the defense renewed their objection. Williams expounded on the statement, and further said Appellant told Anelia, "Yes, I'll kill you, bitch. You're not leaving. Here is the death do us part, you might get: 12." The judge said, "same ruling." Jan. 31 Tr. 97-105.

Brian Townsend, Love's Travel Center Manager

Anelia's manager Brian Townsend testified that he "gave her advice that if she felt that way [about Appellant], she needed to have a protective order, and that she possibly didn't need to go home if she didn't feel safe doing it." Appellant now objects to this testimony, but the defense did not object to it at trial. Jan. 31 Tr. 72.

Alexis Williams, Anelia's Cousin

Alexis Williams, cousin of the deceased, testified Appellant and the victim fought a lot. "I told Anelia to, you know, call somebody, like, because this was getting out of range. Like, he would keep following us. So she called out –."The defense renewed their pretrial objection at this point and the judge overruled it. She also testified she had seen Appellant follow the victim home without her consent in the past. *Id*. Jan. 31 Tr. 74-82.

[5] The transcript says "choking" but the correct legal term is "strangle" or "strangulation."

Mariah Boles, Anelia's Friend

Mariah Boles testified she had seen Appellant get violent with the victim in the club in the past. "If something got out of hand between the two he would grab her up, but –" The defense renewed their objection, and the judge said, "Same ruling." Jan. 31 Tr. 83-88.

Erica Davenport, Life-long Friend of Anelia

Erica Davenport, Anelia's life-long friend, testified without objection that, "I never seen them fight, but I do remember when she came to the house one day with a black eye, and it came from him, and I remember myself putting makeup around her eye." Text messages sent on Facebook from Appellant to Anelia around 7 or 8 months before Anelia's murder were admitted after the defense objected, and the judge said, after a 403 discussion, "Well I'm going to let it in for what it's worth." Erica stated one of the texts said, "LOL, wow. Why? Cause she just done too much. Drama pool. I want to choke her until her head fall off. Laughing my – off." Erica told him not to do that. Jan. 31 Tr. 106-109, 111-117; State's Exhibits 28 and 29 (text messages from Appellant to victim).

Stephanie Garvin, Anelia's Co-Worker at Love's Travel Center

Stephanie Garvin, Anelia's co-worker, testified without objection that she and Anelia had to previously ask Appellant to leave Love's Travel Center after he had backed his car in next to the victim's and refused to leave after three hours. Anelia got very panicky and nervous when it was time for her to leave because "he wouldn't leave when she texted him to leave and go." She said (also without objection) that Appellant and Anelia's relationship was "rocky, very, very rocky," and said she'd seen verbal and physical fights between the pair. Regarding physical violence, she testified about an incident where she and Anelia were leaving the club and Appellant "chased us halfway out of Walterboro," and "ran us off the road. And when he ran us

off the road, he got out of the car and busted the window out of the car. And we had to rush – come back and rush Anelia to the hospital." The defense objected to this statement alone, but the judge did not rule. *Id*. Jan. 31 Tr. 119-123.

Argument

"In homicide cases, evidence that the accused and the decedent had previous difficulty is admissible. The evidence is admissible to show the animus of the parties and to aid the jury in deciding who was the probable aggressor." *State v. Taylor*, 333 S.C. 159, 168, 508 S.E.2d 870, 874 (1998). Specific details are generally inadmissible. *Id*.; *State v. Clinkscales*, 231 S.C. 650, 654, 99 S.E.2d 663, 665 (1957) (collecting cases affirming that it is "well settled" that evidence the accused and deceased had previous difficulties is admissible). The purpose of the admission is to also show the jury "what demeanor each party had reason to expect from the other when they met, and the fatal difficulty occurred." *Clinkscales*, 231 S.C. at 654, 99 S.E.2d at 665.

Appellant argues the cumulative prejudicial effect[6] of the objected-to witnesses' testimony should be the reason he gets a reversal, but the State disagrees. It is commonly known that anger in general escalates until it is abated in some manner, whether by a volatile action or by an intentional and peaceful offloading. Patterns of anger generally repeat and build with more and more force to a crescendo unless the cycle is broken. The State, therefore, properly introduced a carefully curated selection of prior difficulties between the parties to show a buildup of abuse that culminated in malice aforethought in Appellant's mind, and the subsequent death of the victim. The jury had every right to hear evidence of the very probative buildup of malice.

[6] The cumulative error doctrine was not raised at trial, and thus is not preserved as an issue on appeal. *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

The five objected-to testimonies should be separated out. First, Kimberly Williams did not give any specific details about Appellant and Anelia's relationship – she merely said she knew they had a toxic one; Appellant was controlling (his reputation in the community), and would take her phone, follow her in his car, be jealous, strangle her, and inflict bruises on her. Those are all descriptions of his general and widely-known patterns of behavior – no specific details were given. That is distinct from Williams' specific testimony about how she heard Appellant threaten to kill Anelia in the exact manner she died a mere 48 hours before her death, which goes to premeditation and the element of malice. A Rule 403, SCRE, analysis is a balancing test, and here, on balance, the probative effect was not substantially outweighed by the risk an *unfair* risk of prejudice, and Judge Miller correctly ruled as such.

Next, Alexis Williams, Anelia's cousin, testified Appellant would keep following them in his car and had seen Appellant follow Anelia home before without her consent; Mariah Boles testified Appellant grabbed Anelia once in the club; Erica Davenport testified she saw Anelia with a black eye. These are all also general descriptions of the prior difficulties (that a lay person could validly testify were textbook domestic violence behaviors) and in no way crossed a line. Instead, they went to Appellant's mindset[7] in the months and days leading up to the death of Anelia and helped lay the groundwork for the res gestae of the crime to be introduced.

The third set of statements are Erica Davenport's testimony about Appellant's admission that he wanted to strangle Anelia 7-8 months before he did, in fact, strangle her, Stephanie Garvin's testimony that Appellant had run her and Anelia off the road recently, and that Appellant stalked Anelia at her workplace less than 48 hours before her death. Those three

[7] The State argued this at trial via arguing the identity and common scheme or plan exception. At the very least, however, this Court may use this as an additional sustaining ground to affirm under Rule 220(c), SCACR.

accounts go directly to proving the malice aforethought that was in Appellant's mind via a continuous chain of consistent facts and circumstances that led up to and built up to Anelia's death at his hands. Evidence of Appellant's state of mind was admissible, as was direct evidence of malice aforethought. Judge Miller also correctly allowed the above statements into evidence.

This Court upheld the admission into evidence of prior examples of child abuse and neglect by the defendant in the weeks before the fatal injuries to his child in *State v. Martucci* for that reason. *State v. Martucci*, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008).

> Martucci's hostility, cruelty, and abuse toward Child could be established by evidence that, during the weeks before he died, Martucci abused Child by slapping his face, taping his mouth shut, and dunking his head in the bathtub until he choked to stop him from crying.
>
> The presence of bite marks and bruises, and the fact that Martucci kept Child's skin covered and rarely let him out of the house in the apparent attempt to conceal the abuse, <u>is further evidence of Martucci's state of mind to inflict the fatal injuries</u>.
>
> Because Martucci disputed the motive and intent to commit homicide by child abuse, evidence of the prior abuse or neglect was highly probative of his guilt on the homicide charge. The evidence was necessary to establish a material fact or element of the crime charged.

Id. at 253, 669 S.E.2d at 609 (emphasis added).

Similarly, Appellant here claimed he did not commit the crime. Therefore, evidence that Appellant said out loud that he wanted to strangle the victim twice in the months and weeks leading up to her death, stalked her, and threatened to kill her a mere 48 hours before she died was evidence of his state of mind to inflict the injuries and was more probative than prejudicial.

This case is different from *State v. Cooley*, where the conviction was reversed and remanded over the admission of specific instances of spousal abuse, because that *Cooley* was not a "who done it case," and the specific instances were years before trial. *State v. Cooley*, 342 S.C. 63, 68-69, 536 S.E.2d 666, 669 (2000). The remoteness in time was the factor that put the

admissibility of the prior incidents over the substantially more prejudicial than probative line. *Id*.; *see also State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999) (excluding prior bad acts that occurred more than a year before the crime King was on trial for.) By contrast, here, all the prior difficulties testified to were at the furthest out 8 months old. Their relationship was still new.

Nor is this case like *State v. Taylor*, where the Court affirmed the conviction but ruled that testimony *offered by the appellant* that the victim hit him on the head with a beer bottle previously was properly excluded, because that testimony was offered to show the victim was the aggressor, not the appellant. *State v. Taylor*, 333 S.C. 159, 167-168, 508 S.E.2d 870, 874 (1998). Here, the evidence was offered to show the animus between the parties only and was offered to help the jury decide "who done it." Violence by the victim was not discussed at trial at all.

Instead, this case is like the custody-dispute-turned-murder case of *State v. Brooks*, where evidence the defendant said he wanted to take the child with him when he moved was admitted, as was his and his ex-wife's subsequent argument on that matter, and the detail that he then struck his ex-wife over it on a specific day, and then cursed another person over it, among other specific instances. *State v. Brooks*, 79 S.C. 144, 144, 60 S.E. 518, 518 (1908). As the difficulties occurred <u>just eight months</u> before the defendant killed his ex-wife, the risk of prejudice did not substantially outweigh the probative value. "The evidence was properly admitted under the well-settled rule admitting evidence of previous quarrels, ill feeling, or hostile acts between the parties to show the animus probably existed between them at the time of the homicide." *Id*.; *State v. Adams*, 68 S.C. 425, 47 S.E. 676 (1904); *State v. Emerson*, 78 S.C. 90, 58 S.E. 974 (1904).

Even if an error were made, it was harmless as Appellant has not shown prejudice. *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364 (1990). "Whether 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 'reasonably could not have affected the result of the trial.'" *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (citation omitted). General testimony about prior difficulties is admissible under our case law in domestic violence cases. So, the jury would know Appellant and Anelia had a toxic relationship either way. Further, the day-before and two-days-before conduct would certainly have been admissible as the direct res gestae of the event, and as evidence that went toward premeditation and/or the element of malice. So, the jury would know Appellant was stalking Anelia outside of her work and had made threats to kill her in the exact manner that she died only hours earlier. Therefore, what is left to cause prejudice?

There was independent evidence of Appellant's guilt as well. Cell phone records placed him at the scene a mere three hours before the house was set on fire, and then his phone went dark. Appellant knew the layout of the house as he had been there many times before, and there were no signs of forced entry. A cigarette butt with Appellant's DNA on it was found right next to the tub where she was found strangled. Then, as will be discussed next, Appellant confessed to his new girlfriend April Cook that the tub had water in it, which was a detail no one knew at that point except for the grandfather and the police, and he also confessed to having strangled someone before to Cook. That is plenty of independent and competent evidence that a reasonable jury could find Appellant guilty of murder by, even without the range of prior difficulties that are listed above. This Court should affirm.

II. Judge Miller properly allowed the introduction of April Cook's testimony that Appellant strangled her because the State proved both that Appellant had a common scheme or plan of abuse with both women and because the State proved a logical connection existed that materially proved a fact: the identity of the perpetrator.

Appellant argues Judge Miller erred by allowing April Cook to testify that Appellant had strangled her and threatened to kill her nine months after Appellant killed Anelia as the State failed to prove a logical connection between the two crimes under Rule 404(b), SCRE. He also argues, alternatively, that the prejudice outweighed the prejudicial effect under Rule 403, SCRE. The State disagrees and submits Appellant's argument is without merit.

In *State v. Lyle*, the Court held in order to prove one of the many exceptions to the prohibition against the introduction of prior bad acts at trial, common scheme or plan, the State must prove a logical connection existed between crimes, *and* the evidence of the crimes charged must serve some other purpose than propensity to commit the crime charged. *Lyle*, 125 S.C. at , 118 S.E. at . The similarity must establish such a connection between the two 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." *Id.*

Trial

Before the trial began on January 30, 2023, the prosecution summarized[8] April Cook's testimony for the judge and told him she would testify to Appellant's controlling and verbally and physically abusive behavior, including how he had strangled her. The State argued Appellant's relationship with April Cook shared similar qualities with his relationship with Anelia, including how he relied on her for money, showed up at her work, sat outside of her

[8] The State told the court it had April Cook available if the court wanted to hear her testimony directly. Jan. 30 Tr. 29.

work for a long time, threatened to kill her, and, of course, how he strangled both of them. Jan. 30 Tr. 28-29, Tr. 32-33.

The State further argued the testimony was a mix of Rule 404(b), SCRE's common scheme or plan exception *and* a statement against interest that met Rule 404(b)'s identity exception, and the defense objected. Judge Miller said, "I understand it's been said that [Appellant's] conduct with the deceased victim before and at the time of death is similar to his conduct with the other lady, which did not result in homicide, am I right?" Jan. 30 Tr. 29-30. He then ruled that Cook's testimony met the common scheme or plan exception, even though he noted the testimony was prejudicial. "I would agree that [it was bordering on propensity] except for his admission, his statement that he's done it before." Jan. 30 Tr. 31. He finally ruled that Cook's testimony was admissible. Jan. 30 Tr. 37, 42. April Cook testified on the third day of trial, to all of the above, and the defense renewed their above objections. Feb. 1 Tr. 3-15.

Rule 404(b)'s Identity Exception

> Rule 404(b), SCRE's exceptions to the ban on prior bad acts are as follows:
>
> Generally speaking, evidence of other crimes is competent to prove the specific crime charged when it tends to establish: **(1)** motive; **(2)** intent; **(3)** the absence of mistake or accident; **(4)** a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; **(5)** the identity of the person charged with the commission of the crime on trial.

Lyle, 125 S.C. at 406, 118 S.E. at 807. Evidence of other crimes is admissible at trial if the State proves they were part of the res gestae of a general scheme of crime in a manner that would prove the identity of the perpetrator. *Lyle*, 118 S.E. at 808. The evidence must also serve the purpose of establishing criminal intent and must be established by legal and competent evidence. *Id*. Here, both women were in proven romantic relationships with Appellant, and there was testimony introduced that he strangled both, which is a very specific way of abusing a woman.

Appellant had a general scheme of abuse he inflicted upon women: he would control them, take their phones, ask them for and be dependent upon them for money, threaten to kill them, follow them around in his vehicle without their permission, and strangle them when he got angry. The State here introduced evidence of this intentional pattern of very specific abuse of both women by legal and competent evidence. Our case law does not require the State to prove fetishes or ritualistic behavior, *e.g*., to avail itself of this exception. Therefore, it is admissible under the identity exception of Rule 404(b), SCRE. *See also State v. Gadson*, 439 S.C. 278, 886 S.E.2d 719 (Ct. App. 2023) (Affirming the introduction of a subsequent sexual assault of a different victim as it was relevant to establish the defendant's identity as the perpetrator.) The evidence would certainly help the jury decide whether Appellant was the one who killed Anelia.

Common Scheme or Plan

Most of our case law regarding the definition of the common scheme or plan exception was written in the context of a sexual assault, which more often than not involved fetishistic or ritualistic behavior. That same degree of specificity or oddity is not common in domestic violence cases as a generally known fact about human behavior. Therefore, this Court's application of this exception to this type of factual scenario may very well be a case of first impression in this state. But to continue, in *State v. Perry*, the main case Appellant relies on, the Supreme Court reversed Judge Miller's decision to admit a sexual assault against another stepdaughter that had occurred 20 years previously under the common scheme or plan exception. *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). Judge Miller would have had that opinion about his prior trial in hand when making his decision in this case. Comparing the Supreme Court's reasons for concern about a 20-year separation between crimes to the current fact of a mere 9 months of separation would certainly not have been difficult, though, and in this case,

unlike in *Perry*, the State also put forth a legitimate purpose for the evidence of April Cook's assault that would have helped his decision: a confession and a statement against interest. That went toward proving the element of malice. The State also did not merely contend the crimes were similar like they did in *Perry*. *See State v. Benton*, 338 S.C. 151, 526 S.E.2d 228, 229 (2000).

The State here met the standard from *Perry* that they put forth a scheme or plan common to both crimes. *Perry*, 430 S.C. at 44, 842 S.E.2d at 665. Appellant attempts to separate his strangulation of April Cook from the statement he uttered to her while strangling her by dividing the two into Issues 2 and 3. But the main logical connection to the crime at hand (decisively proving common scheme or plan) is the fact that Appellant was in a proven romantic relationship with Anelia and she was found strangled to death; then Appellant told his next girlfriend a mere nine months later he had done it before while also strangling her. Both pieces of evidence demonstrate a common scheme with a logical connection that "reasonably tends to prove a material fact in issue." *State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020) (affirming the introduction of defendant's sexual assault of another victim who had also had the similar relationship to him of having been a teenaged member of his church). This Court should affirm.

III. Judge Miller properly allowed Appellant's confession to April Cook that "he had done this before" while strangling Cook a mere 9 months after he murdered Anelia because it was a statement against Appellant's interest and more than surpassed the standards for the common scheme or plan and identity exceptions of Rule 404(b).

Appellant argues Judge Miller erred by admitting Appellant's confession to April Cook that he had strangled before because it did not meet the identity exception of Rule 404(b) and it was more prejudicial than probative under Rule 403, SCRE. The State disagrees and submits Appellant's argument is without merit.

Pretrial, the State argued April Cook's testimony of Appellant confessing to have strangled before when he asked her whether he thought "this [was] the first time [he had] done this," was a statement against interest that met Rule 404(b)'s identity exception. Jan. 30, 2023 Tr. 29. Judge Miller then said, "The admission that he's done it before, I'm going to kill you, I've done it before, that's very, very probative, it's also very, very prejudicial. Jan. 30 Tr. 31-32.

The State also discussed this with the court on the third day of trial, arguing again that the statement was admissible under a mixture of Rule 404(b)'s common scheme or plan exception and the identity exception because it was an identity case. Jan. 30 Tr. 29. The defense countered by arguing that April Cook was an entirely different victim. The court responded, "Well, if I'm not mistaken, [Appellant] makes a statement which could be construed as an admission of guilt, am I right about that?" Jan. 30 Tr. 29. "I understand it's been said that his conduct with the deceased victim before and at the time of her death is similar to his conduct with this other lady, which did not result in homicide, am I right?" Jan. 30 Tr. 30.

The defense again argued it was a totally separate incident with a different victim, so it was not relevant, and it was more prejudicial than probative. Jan. 30 Tr. 30-31. "My issue with the admission… [is with] when it was said. There are allegations that maybe it happened during the alleged conduct, but from reading her statement she's also going to say he confessed during,

throughout their relationship. I don't know what time, when this was given, when statements were given." Jan. 30 Tr. 30-31. The defense also objected to the circumstances (or res gestae) surrounding the statement coming in. Jan. 30 Tr. 31-33. Judge Miller asked how it would be admitted, then, as it would be "totally out of context," and the defense replied. Jan. 30 Tr. 32.

The State argued, "Of course I wouldn't want it in if it weren't prejudicial. All evidence will point to guilt. To take it out of context, there would be a res gestae issue. Assuming that everything is testified to by family and friends" and the foundation was laid by April Cook regarding similarities between the relationships, "it comes in under Rule 404(b) common scheme or plan and admission by party opponent." Jan. 30 Tr. 32. The State concluded by noting that SLED did not charge Appellant until after April Cook reported how Appellant strangled her, as "the information that he had done it before, that he disclosed this to Ms. Cook that kind of put us over the line on a circumstantial case." Jan. 30 Tr. 33. Judge Miller ruled April Cook's testimony was admissible. Jan. 30 Tr. 42. April Cook testified on the third day of trial, February 1, 2018, to all of the above, and the defense renewed their above objections. Feb. 1 Tr. 3-15.

As has been said in Issue II of this brief, Appellant's statement was admissible under Rule 404(b), SCRE's common scheme and identity exceptions. It was more probative than prejudicial considering the mere 9-month time gap and its confessional nature. Further, however, it was also admissible as a statement against interest. Rule 802, SCRE, permits hearsay to be admitted if the declarant is unavailable as a witness, and the "statement which was at the time of its making… so far tended to subject the declarant to civil or criminal liability… that a reasonable person in the declarant's position would not have made the statement unless believing it to be true." Rule 804(b)(3), SCRE, *State v. Anderson*, 440 S.C. 124, 141, 889 S.E.2d 615, 624 (Ct. App. 2023). Corroborating circumstances clearly indicating the trustworthiness of the statement must

sometimes also be admitted alongside the evidence. Rule 804(b)(3), SCRE. Whether the statement has been sufficiently corroborated is a question "left to the discretion of the trial judge 'after considering the totality of the circumstances under which a declaration against penal interest was made.'" *State v. McDonald*, 343 S.C. 319, 324 n. 5, 540 S.E.2d 464, 466 n.5 (2000).

Here, Appellant confessed to having strangled another woman before a mere 9 months before his previous girlfriend was found strangled to death. The State could not force Appellant to testify, so he was an unavailable witness, and the statement subjected Appellant to at least criminal liability, as it was the main piece of evidence that led to his arrest for the murder of Anelia Garvin, so its truth is not reasonably doubted, and the State provided testimony by April Cook that indicated the trustworthiness of the statement. Finally, it was an opposing party statement. Whatever way you slice it, Judge Miller had a plethora of valid legal ways to properly admit the statement into evidence. This Court should affirm.

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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