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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

The Honorable Walter J. McLeod, IV, Circuit Court Judge

THE STATE,

Respondent,

v.

MORGAN DAYLE CARR,

Appellant.

Appellate Case No. 2023-00733

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Rules

Other Authorities

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in refusing to grant a mistrial based on testimony that Appellant had previously stolen Decedent's Durango, where Appellant was on trial for the murder of Decedent and the theft of his Altima, since Rule 404(b), SCRE prohibits the admission of evidence of other crimes, wrongs, or acts to show propensity?

II. Whether the trial court erred in admitting evidence of prior bad acts contained in the Facebook messages, regarding Decedent's Jeep, where Appellant was on trial for the murder of Decedent and the theft of his Altima, since the evidence should have been excluded pursuant to Rule 404(b), SCRE?

III. Whether the trial court erred in admitting Facebook messages, where the State offered the messages pursuant to the business records exception to the hearsay rule, since the State did not lay the required foundation?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether Judge McLeod properly denied Appellant's motion for a mistrial based on a single, brief and unsolicited statement by a witness implying that Appellant previously stole another vehicle from the Victim?

II. Whether Judge McLeod properly admitted evidence of statements Appellant made in Facebook messages referencing the Victim's Jeep?

III. Whether Judge McLeod properly admitted Facebook messages between Appellant and others because Appellant only challenged the evidence on hearsay grounds, and never disputed that the records were Facebook records investigators obtained from Facebook?

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The Lexington Grand Jury indicted Appellant Morgan Dayle Carr in 2019 on one count of murder and one count of armed robbery arising from the shooting death of Robert All on July 11, 2018. The case was called for a jury trial on April 24, 2023, before the Honorable Walton J. McLeod, IV, Circuit Court Judge.

Pre-Trial

After a hearing regarding the voluntariness and admissibility of statements Appellant gave to law enforcement in the days after the murder, Judge McLeod ruled that the statements were voluntary and admissible. (R. pp. 13-77). The assistant solicitor then stated: "I served notice to move in evidence pursuant to business record," and "I didn't receive any objections, no additional motions to suppress." Appellant's counsel responded: "We received notice of the telephone of Robert All and Facebook records of Robert All, Morgan Carr, Robin Cunningham and Timothy Watford;" "We have no objection to those;" and "we might have objections to them at the trial point, but not regarding the notice part." (R. p. 78).

Trial

Jimmy Jeffers testified he and his family lived on Toole Smith Road in Swansea, South Carolina, and at around 11:00 p.m., on July 11, 2018, they heard gunshots outside the home. Mr. Jeffers described the sound of the first shot as "a thud," "there was a pause and then it was a rapid couple shots back-to-back and then another pause and then another shot." He looked out the window of his front door and saw a car sitting in the road approximately eighty yards away from the home. The car lights were on, and he saw silhouettes of people running around the car as they passed in front of the car lights. The car eventually left "real fast." Mr. Jeffers testified he wanted to check on

his mother-in-law, so he drove down his driveway and as he pulled out onto the road, he saw a body lying on the side of the road and he called 911. (R. pp. 89-104).

Detective Adam Spires of the Lexington County Sheriff's Department testified he was a patrol sergeant on July 11, 2018, and he responded to the 911 call on Toole Smith Road in Swansea. When he arrived at the scene, he saw a white male lying in the roadway who appeared to be deceased. The victim was lying face up and had what appeared to be a gunshot wound to the head. The victim's pants pockets were turned inside out, and he had no identification, wallet, phone, or keys on him. Detective Spires took photographs of the victim before emergency services personnel transported the victim to the hospital. Detective Spires and another officer then secured the scene. (R. pp. 140-146).

Captain Laintz testified he was part of the Major Crimes Unit of the Lexington County Sheriff's Office in July 2018, and in that capacity, he interviewed Appellant on the morning of July 12th after the victim was identified as Robert All. At that time, law enforcement did not believe Appellant was involved in the murder and they just wanted to get information about the victim. Appellant stated she did not know what happened to the victim, and Captain Laintz thought her reactions to information indicating something had happened to the victim were appropriate. (R. pp. 152-158).

Captain Laintz testified that as the investigation progressed, law enforcement obtained information contradicting Appellant's statements, and the investigation changed. Corey Robinson was arrested for the murder, and he provided information leading to the murder weapon. In addition to Robinson, Robin Cunningham and Appellant were ultimately charged with murder. (R. pp. 159-170).

Investigator Cameron Sherban of the Lexington County Sheriff's Department testified he was in Major Crimes in July 2018, and he worked on the Robert All murder. Around 7:20 p.m. on July 12th, another officer took a written statement from Appellant while they were sitting in a car outside

Appellant's residence. Appellant was not under arrest at the time, but they read the Miranda rights to her to be cautious and she voluntarily waived all her rights. At that time, law enforcement knew Appellant had a relationship with the victim and were just trying to get more information. Appellant voluntarily gave a verbal statement, but because her story started to change each time, she told it, they asked her to prepare a written statement. In her written statement, Appellant admitted she was present at the scene when the murder occurred, but stated she was terrified of Robinson and did not fight him. (R. pp. 175-194, State's Exhibit 1 [Written Statement], R. p. 857).

Theresa Wilson testified she knew Corey Robinson from drug transactions and met Appellant through Corey Robinson. On the night of July 11th, Corey came up to her house on Toole Smith Road in a car with two other men and a female. Appellant was in the front passenger seat and Corey was in the back seat behind the driver. (R. pp. 197-200).

Wilson testified she thought they were there to get a van back that Corey and Appellant had brought there in exchange for drugs. While Wilson was speaking with Corey, Appellant got out of the car and came over to them. Appellant said, "let's go" to Corey, and told Wilson "[w]e'll be right back with the car." Wilson testified that Corey looked really nervous and scared and he was sweating really bad. Appellant was fine and appeared to be in charge, and she did not appear scared. After they left Wilson's home, Wilson heard gunshots. Wilson further testified that it probably would have required Corey and Appellant to bring her another vehicle in order to get the van back. (R. pp. 200-206).

The forensic pathologist who performed the autopsy on the victim testified the cause of death was a laceration to the brain due to a gunshot to the head. She stated there was a total of four gunshot wounds that went in the back of the victim's body. He further testified that any of the wounds could have been fatal, but the gunshot to the head would have rendered the victim unconscious and unable

to move, so being found face up suggested the victim was turned over after he was shot. The pathologist determined the cause of death was homicide. (R. pp. 220-250).

Jason Eversfield testified he and the victim were best friends, and the victim moved into Eversfield's home in 2017, where he lived until his death. He stated the victim and Appellant had a complicated, on and off relationship, but they consistently dated. When the victim first moved into Eversfield's home, the victim had a Durango that was totaled and he shared Eversfield's car to get around, Eversfield rented a Nissan Altima and on July 11th, the victim was with him at CarMax, where Everfield was buying a car. The victim took the Nissan and said he would see Eversfield later at the house. Eversfield identified the victim's body from his tattoos. (R. pp. 208-219).

Meghan Carter testified she knew Appellant, Corey and the victim, and she lived with Appellant at the time of the victim's death. She stated Appellant told her that the victim had been killed in a drug deal gone bad. Carter testified Appellant's demeanor changed the day after the murder depending on who she was talking to on the phone, i.e., if she was talking to someone about tattoos, Appellant would flirt, laugh and act fine; if she was around her mother and kids, Appellant was hysterically crying about the victim. (R. pp. 318-327).

The solicitor asked Carter if she had any conversations with Appellant about the victim's car prior to the victim's death. In response, Carter asked: "[t]he one that she had already stole?," . . . [t]he Dodge and then the new one." The solicitor stated he was asking about the rental car, specifically the Nissan Altima rental car, and Carter indicated she believed the victim had picked her up in it. (R. pp. 327-328).

Appellant moved for a mistrial, arguing the jury was tainted because the solicitor asked about a previously stolen vehicle. The solicitor responded that he had no prior knowledge that Appellant had stolen another car from the victim, and he was asking Carter about the conversation she had with

Appellant about stealing the rental car on July 11th. Judge McLeod denied the mistrial motion, but stated they could readdress it later. (R. pp. 328-333).

Carter then testified she had a conversation with Appellant about the Nissan the day before the victim's death, and Appellant said she and Corey wanted the car because they did not have one. On July 11th, Appellant messaged Carter on Facebook asking for a gun for Corey, and Carter tried to get in touch with a friend who might have one for sale. After multiple messages back and forth, Appellant told Carter she was riding with Corey that night and she was "not leaving his side." Carter stated Appellant was talking as if the victim was still alive. (R. pp. 333-345, State's Exhibit 51, R., p. 860).

Appellant called Carter on July 12th crying hysterically and told her to hurry over to Appellant's house. When Carter arrived at the house, Appellant was in the yard on her knees and crying. When the person who brought Carter to the house left, however, Appellant's demeanor changed. (R. p. 345).

Matthew testified he is Corey Robinson's younger brother. He stated they were not close growing up, but they started getting closer about a month before the murder. Corey was in a relationship with Appellant, and the victim dropped them off at Matthew's residence on July 10th. When Corey and Appellant started to shoot up drugs in his home, Matthew told them to leave, but because they did not have transportation, they went outside the home and sat in a car. Matthew could hear them talking through an open window in the home. Appellant told Corey she wanted him "to beat up Robert and take his car and kick his ass." The conversation made Matthew uncomfortable, so he told them they had to leave. Appellant came inside the home and used Matthew's phone to log into Facebook and she contacted the victim to ask for a ride. The victim came to pick them up in a silver Nissan. (R. pp. 366-373).

Corey, Appellant, Robin Cunningham and a man named Timothy came to Matthew's home in the early morning hours of July 12th, and they were in the victim's car, which Corey was driving. Matthew testified Corey was distraught and would not look at him, and when he tried to have a conversation with Corey, Appellant intervened. (R. pp. 373-375).

Appellant stated she was "good" and "happy," and asked Matthew if "we had a bowl that she can smoke her weed." He described her as "very giddy," and when she got of the car, Appellant "did a little twirl," "twirled around and was all happy-like," and she was "in a really uppity mood." Matthew testified that Appellant did not appear to be afraid of Corey and he never saw Corey threaten her at all. Matthew saw a gun in the car on Corey's lap, but he never saw Corey point the gun at Appellant. (R. pp. 375-377).

Matthew testified his brother called him later that morning (4:00 a.m.) and asked if he had seen the news. When Matthew told him he had not seen the news, Corey stated, "don't believe a word," and "[Appellant] set me up." (R. pp. 378-380).

Matthew's fiancée, Alaina Williams, testified she was present when Corey, Appellant, Robin Cunningham and Timothy came to the house in the early morning hours of July 12th. Appellant was the first person to get out of the car, and she "was happy," "twirling," and laughing. Ms. Williams stated it "almost like she was celebrating," but Corey was in the driver's seat and depressed. She testified Appellant did not appear to be scared of Corey, and "seemed like she was having a good time." (R., pp. 388-390).

Sergeant Brandon Miller of the Lexington County Sheriff's Department testified he participated in the investigation of the victim's murder. On July 18th, he assisted with an interview of Appellant, who was under arrest for obstruction of justice at that time based on the inconsistency of the stories Appellant had provided to law enforcement. The interview lasted two and a half hours, and Appellant's story changed several times, but she ultimately admitted she was present during the

murder. Appellant stated she did not know Corey was going to shoot the victim and she did not get out of the car after Corey shot the victim. After continued questioning, Appellant stated that after Corey shot the victim, she told him to go through the victim's pockets to get the car key fob. (R. pp. 392-419).

Investigator Sherban testified he obtained Facebook records for the accounts of the victim, Appellant, Robin Cunningham, Corey Robinson and multiple other individuals who communicated with Appellant before, on and after the day of the murder. Appellant objected to the exhibits, arguing the communications from other people were inadmissible hearsay. She further objected on the ground the State failed to establish the necessary foundation to admit the other people's communications because there was no evidence the individuals "actually said these things." Appellant conceded the records were "authentic Facebook records," but again argued the State had to prove the people communicating were actually the people who the records indicated owned the accounts. After extensive argument regarding each exhibit, Judge McLeod overruled the objections, finding Appellant's communications at or around the time of the murder were relevant and highly probative. Investigator Sherban then testified about Appellant's communications with multiple people around the time of the murder. (R. pp. 421-564, State's Exhibits 51-81, R., pp. 860-980).

In a series of messages with Tim Watford, Appellant referenced a Jeep the victim had prior to the Altima and stated that the next chance she got "the Jeep is mine." Appellant objected on the ground that it was prior bad act evidence. The State argued the statement went to Appellant's state of mind. (R. pp. 568-571).

Appellant then moved for a mistrial based on Investigator Sherban reading into the record a portion of one of the communications that the parties had agreed would be redacted, and even though the solicitor immediately cut him off and moved on to the next statement, the jury saw counsel jump up and go over to speak with the solicitor, and that left the impression the defense was trying to hide

something. Judge McLeod denied the mistrial motion, finding the parties had diligently tried to make appropriate redactions, the witness did not read the entire statement, and the State moved on, and the prejudice to Appellant was slight and inconsequential under the circumstances. (R. pp. 572-574).

Michael Phipps testified he is a forensic technology analyst with the Lexington County Sheriff's Department Crime Scene Unit. He performed a data extraction on a cellphone belonging to Corey Robinson. Part of the data extracted was a communication string between Corey and Appellant on July 13th in which Appellant told Corey she loves him and will not "rat" him out, and she wished they could just go back so all the "shit would go away." (R. pp. 601-619, State's Exhibits 81 & 82; R. pp. 972 & 981).

After the State rested its case, Judge McLeod denied Appellant's motion for a directed verdict. Appellant then again moved for a mistrial on the basis of Carter's reference to a stolen Durango. The State responded that the solicitor stopped Carter immediately, and didn't revisit or highlight it. The State further argued that a mistrial was an extreme remedy and suggested the possibility of a curative instruction. Judge McLeod denied the mistrial motion, but indicated he would consider a curative instruction if an appropriate one could be put together. (R. pp. 620-626).

Corey testified on Appellant's behalf, and testified he held Appellant and Cunningham at gunpoint after he shot the victim, they had nothing to do with the murder and did not know he was going to shoot the victim. On cross-examination, Corey acknowledged law enforcement interviewed him for two and a half hours after he was arrested, and he never told them he held a gun on Appellant and Cunningham, and he told them Appellant and Cunningham got out of the car to help him find the car key fob, but he testified that was a lie. (R. pp. 627-705).

The jury convicted Appellant of murder and armed robbery. Judge McLeod sentenced Appellant to forty years' incarceration on the murder conviction and thirty years' incarceration on the armed robbery conviction. (R. pp. 832-855).

STANDARD OF REVIEW

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and the trial court's decision will not be overturned on appeal absent an abuse of discretion resulting in prejudice to the defendant. *State v. Makins*, 433 S.C. 494, 860 S.E.2d 666, 670 (2021). Likewise, the trial court's ruling on the admission or exclusion of evidence based on the South Carolina Rules of Evidence is reviewed for abuse of discretion and will not be reversed on appeal absent a finding the trial court acted outside the discretion granted to trial courts because it is not supported by the evidence or is controlled by an error of law. *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310, 312 (2023).

ARGUMENT

I. Judge McLeod did not abuse his discretion in denying Appellant's motion for a mistrial based on a single, brief and unsolicited statement by a witness implying that Appellant previously stole another vehicle from the victim.

Appellant argues that Judge McLeod erred in refusing to grant a mistrial based on unintentionally elicited testimony that Appellant had stolen a previous and different vehicle belonging to the victim.

Standard of Review

"The decision to grant or deny a motion for a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Patterson*, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999). Our Supreme Court "favors the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case." *Id*. citing *State v. Howard*, 296 S.C. 481, 374 S.E.2d 284 (1988). "Among the factors to be considered in ordering a mistrial are the character of the testimony, the circumstances under which it was offered, the nature of the case, and the other testimony in the case. *Id*., 337 S.C. at 226-227, 522 S.E.2d at 851 citing *Howard, supra*.

"A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." *Id*., 337 S.C. at 227, 522 S.E.2d at 851. *See State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). *See also State v. Kirby*, 269 S.C. 25, 236 S.E.2d 33 (1977) (power of court to declare a mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes). "The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." *Id*., 337 S.C. at 227, 522 S.E.2d at 851 citing *State v. Kelsey*,

331 S.C. 50, 502 S.E.2d 63 (1998). "The burden is on the movant to show not only error but resulting prejudice in order to justify a mistrial." *Id*., 337 S.C. at 227, 522 S.E.2d citing *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

Relevant Facts

The State called Meghan Carter to testify in its case. Carter testified that she was living with Appellant at the time of the victim's death, residing in Appellant's mother's house with Appellant for "one to two weeks, couple of weeks." (R. pp. 320-321).

Assistant Solicitor McNair asked Carter if she had any conversations with Appellant about the victim's car prior to his death. In response, Carter asked: "[t]he one that she had already stole? The Dodge and then the new one?" Assistant Solicitor McNair stated he was asking about the rental car, specifically the Nissan Altima rental car, and Carter indicated she believed the victim had picked her up in it. (R. pp. 327-328).

After Carter's testimony regarding the Dodge Durango, defense counsel moved for a mistrial outside the presence of the jury, arguing that the jury was tainted because the solicitor asked about a previously stolen vehicle. (R. p. 328). Assistant Solicitor McNair responded that he had no prior knowledge that Appellant had stolen another car from the victim, and he was asking Carter about the conversation she had with Appellant about stealing the rental car at issue in the case. (R. p. 329). Assistant Solicitor McNair further argued that the testimony would likely be admissible anyway, as it goes towards Appellant's plan and intent to steal the victim's vehicle, whether it was the vehicle he drove previously or the one at issue in the case. (R. p. 329). Assistant Solicitor McNair added that a curative instruction could fix the issue, and the trial could proceed. (R. p. 329).

Defense counsel noted that he did not believe the information was intentionally elicited, however the jury had heard information that Appellant had previously stolen a vehicle while on trial

for the armed robbery of the victim's car and argued that a curative instruction would not remedy the unsolicited testimony. (R. pp. 329-330). He further argued that a *Lyle*[1] analysis had not been addressed considering the testimony encroached that of "prior bad acts." (R. p. 330). Judge McLeod noted that *Lyle* was not applicable considering the State did not intend to introduce the information. (R. p. 330).

Judge McLeod denied the mistrial motion, but stated they could readdress it later when the evidence was presented as a whole, and instructed the parties to question the witness in efforts of preventing unintentional elicitation of testimony which doesn't help the trial. (R. pp. 331-333). When the jury returned, no curative instruction was given at that time. (R. p. 333).

After the State rested their case, Appellant renewed the mistrial motion based on Carter's testimony arguing that the testimony was "highly prejudicial" with no effective way to cure it. (R. pp. 622-623). Judge McLeod denied the motion and added that he would propose a curative sentence for a jury instruction. (R. p. 625). Assistant Solicitor Fuller added that there is language in the bench book using "verbiage […] that it's not to be considered." (R. p. 625). Judge McLeod stated the following:

> We've used curative instruction in the jury charges before to try to clarify to the jury what is and what is not an issue for their consideration of material, and that's what the point will be for this. All right?

(R., pp. 625-626). No further comment was made on the matter by either party.

In the jury instructions, Judge Mcleod made no specific reference to Carter's comment about the Dodge Durango and only charged the jury with general instructions on direct and circumstantial evidence as well as the evidence not to be considered in deciding the facts of the case. (R. pp. 810-

[1] *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

811; *See* jury instructions, R. pp. 808-827). Defense counsel raised no objection to the jury instructions and moved for a mistrial on a separate matter. (R. p. 828).

Discussion

Appellant contends that Judge McLeod erred in denying the mistrial motion on the grounds that Carter's testimony violated Rule 404(b), SCRE, which prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving her propensity to commit the crime for which she is currently on trial. *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). However, the matter was not preserved for this Court's review.

In denying the defense's mistrial motion, Judge McLeod advised the parties that he would charge the jury "to try to clarify to the jury what is and what is not an issue for their consideration of material," to which neither party raised issue. (R., pp. 625-626).

As an initial matter, defense counsel attested a curative instruction would not remedy the issue and the only appropriate remedy available would be for the Court to grant a mistrial. (R. pp. 622-623). The record is void of any request on behalf of defense counsel for the Court to give a curative instruction on Carter's inadvertent comment, rather defense counsel simply moved for a mistrial. Additionally, the record is void of a request to strike Carter's comment. *See* 75 Am. Jur.2d Trial § 467 at 642 ("a motion for mistrial does not automatically include a motion to strike as a lessor prayer for relief") *see also State v. Wingo*, 304 S.C. 173, 403 S.E.2d 322 (Ct.App.1991) ("alleged improper testimony not preserved for appellate review where defendant did not move to strike testimony after his objection was sustained"). Thus, it must be construed that defense counsel accepted the denial of the motion in conjunction with Judge McLeod's proposition of a general curative instruction in the charge to the jury. To this effect, any complaint to the challenged testimony

was waived as defense counsel did not move to strike the comment nor did defense counsel explicitly request that a curative instruction be given.

When the jury instructions were given, defense counsel made no objection or indication as to the sufficiency of the curative instruction nor did defense counsel renew a motion for a mistrial based on the issue after the court gave the jury the curative instruction. (R., p. 828). *See State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) ("finding the issue is not preserved for review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial"). As such, the lack of any further objection indicates that the jury instructions adequately resolved the issue. *See State v. Wilson*, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) ("[Because] the law assumes a curative instruction will remedy an error, failure to accept such a charge when offered, or failure to object to the sufficiency of that charge, renders the issue waived and unpreserved for appellate review."). Therefore, Judge McLeod's denial of Appellant's mistrial motion is not preserved for review.

Even so, as to Appellant's argument on appeal that Carter's question regarding the Durango was inadmissible under Rule 404(b), Appellant overlooks the glaring issue that Carter's testimony was not intentionally elicited, much less that the State intended to introduce the testimony to show a common scheme or plan, the exception under Rule 404(b) on which Appellant bases her argument. Additionally, considering the weight of the evidence against Appellant, Carter's isolated comment unlikely prejudiced Appellant. *See State v. Wyatt*, 317 S.C. 370, 453 S.E.2d 890 (1995) ("error without prejudice does not warrant reversal").

II. Judge McLeod did not abuse his discretion in admitting evidence of statements Appellant made in Facebook messages referencing the victim's Jeep.

Relevant Facts

Investigator Sherban testified he obtained Facebook records for the accounts of the victim, Appellant, Robin Cunningham, Corey Richardson and multiple other individuals who communicated with Appellant before, on and after the day of the murder.

Defense counsel objected to the exhibits, arguing the communications from other people were inadmissible hearsay. Defense counsel further objected on the ground that the State failed to establish the necessary foundation to admit the other people's communications because there was no evidence the individuals "actually said these things." (R. pp. 445-446).

Appellant conceded the records were "authentic Facebook records," but again argued the State had to prove the people communicating were actually the people who the records indicated owned the accounts. After extensive argument regarding each exhibit, Judge McLeod overruled the objections, finding Appellant's communications at or around the time of the murder were relevant and highly probative. Investigator Sherban then testified about Appellant's communications with multiple people around the time of the murder. (R. pp. 421-564, State's Exhibits 51-81, R., pp. 860-972).

In regard to the messages between Tim Watford and Appellant, (State's Exhibit #65, R. p. 899), upon introduction into evidence, defense counsel primarily raised an objection as to the validity of the messages. (R. pp. 445-446). Defense counsel also added that the messages were "overly prejudicial. But "You've got the man," I don't know that that holds muster, but there is no foundation, and hearsay." (R. pp. 445-446). Judge McLeod overruled the objection as to the Watford messages, admitting the messages subject to objection. (R. p. 450). Notably, Judge McLeod stated:

> The relevancy of the defendant's conduct of communications at or about the time of the events in this case are certainly high probative

> value. And the conversations from the people she's had the -- or the statements, if they are statements -- they're really questions, but to the extent that you can argue they're statements, they aren't offered for a truth value. It's just showing that she was -- the defendant was having these conversations at the time she was having them.

(R. pp. 450-451).

As to the communications that contained references specifically to the Jeep, (State's Exhibits #77-80, R. pp. 946-971), defense counsel renewed the objection on the grounds that the messages were not relevant and were more prejudicial than probative, in addition to being inadmissible as evidence of prior bad acts. (R. pp. 568-569).

State's Exhibits #77 & 78 (R. p. 946 & 952) include messages between Appellant and Tim Watford. In those messages, Appellant referenced a Jeep the victim drove prior to the Altima that was recovered after his murder. (R p. 570, State's Exhibit 78, R, p. 952). Appellant messages Watford that she is mad at the victim stating, "bc he is supposed to be here to help me but he aint done shit, all hes doing is sitting in his jeep getting high." After a few more messages, Appellant, writes "Next chance I get this Jeep is mine." (R. p., 570, State's Exhibit 78, R, p. 952).

State's Exhibits #79 & 80 (R. p. 953 & 967) show communications between the victim and the Appellant days prior to the victim's death. The communications show Appellant asking the victim to come over to her house, which he plans to do until he finds out that Corey Richardson is also with Appellant at the house. The victim messages Appellant, "Why would I come over there when I know he wants to steal the jeep?" As the conversation continues into the next day, the victim sends the following message to Appellant: "I said the other day when you told me to come on an corey was there it felt like I was trying to be set up." Appellant responded, "I TOLD YOU WHO WAS HERE.. WTF?? Lol. And set you up? For real?? Have I ever done you like that? No. Why the fuck would I set u up. Ive had chances and haven't. wtf is your problem."

Judge McLeod found the communications to be more probative than prejudicial stating that: "I think the probative value of the communications being had back and forth between the defendant and that person on social media outweighs the prejudicial effect based upon the case that we're here for, the probativeness of -- the defendant's conduct leading up to and immediately after the incident on July 11th." (R. p. 569).

Assistant Solicitor Fuller added that defense counsel previously objected it was a prior bad act and separate and apart, and she had indicated to the Court, relying on *State v. Beck*[2], that those communications were "fair game." (R. p. 570). The assistant solicitor further noted that, "I think *Beck* goes into a four-month time frame of a discussion of a plan to do exactly what was done, and this is exactly that, and that's what this communication is about." (R. p. 570). The State also notes that, "The defense theory is that this was the love of her life; she would never do anything; she would never set him up. And that was part of what we discussed there. But just to making sure we have a complete record for the ruling." (R. p. 571).

No further ruling was made by the Court.

Discussion

Appellant contends that the Jeep-related messages (State's Exhibits #77-80, R. pp. 946-971) should have been excluded as inadmissible prior bad act evidence.

Appellant fails to show that the issue is properly preserved for this Court's review. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003).

State's Exhibits #77-80 (R. pp. 946-971) were not admitted pursuant to Rule 404(b), SCRE,'s exception that prior bad acts are admissible "when it tends to establish motive, identity, a common

[2] 342 S.C. 129, 536 S.E.2d 679 (2000).

scheme or plan, the absence of mistake or accident, or intent." *See* Rule 404(b), SCRE. Judge McLeod did not find that the references to the Jeep were prior bad acts of Appellant, nor did he allow them in pursuant to a Rule 404(b) exception. Judge McLeod provided a Rule 403, SCRE analysis: "I think the probative value of the communications being had back and forth between the defendant and that person on social media outweighs the prejudicial effect based upon the case that we're here for, the probativeness of -- the defendant's conduct leading up to and immediately after the incident on July 11th." (R. p. 569). However, no mention of admissibility pursuant to *Lyle* was made by the Court nor was clarification requested from either party. Thus, there is no act for this Court to review. The issue is not preserved.

Even so, further review of the State's presentation of the Jeep related messages, shows that the messages were not intended to be used to show that Appellant and Corey previously conspired to steal the victim's Jeep, but that the victim felt as if he was being set up to have his car stolen, and State's Exhibits #79 & 80 (R. p. 953 &967) demonstrate his concern in the messages between him and Appellant. As such, Appellant cannot show a *Lyle* analysis is warranted considering the intent was not to show that Appellant had previously conspired to steal the victim's Jeep, but to show that the victim was suspicious that he was being set up by Appellant in the days leading up to his murder.

Further, in accordance with the State's theory, Appellant and Corey had an ongoing plan to steal the victim's car, and the plan came to fruition on the night of July 11, 2018. Appellant conspired to steal a vehicle from the victim, the type of vehicle - whether it be the Altima or the Jeep - is overall irrelevant to the State's case. The State only intended to show that Appellant conspired with Corey to steal the victim's vehicle, which ultimately led to his death. Thus, messages referencing the victim's Jeep are not inadmissible under *Lyle*, as the plan to steal the vehicle was the same plan that led to the victim's death, not a separate action the Appellant previously took. Thus, for purposes of

conducting a *Lyle* analysis, the scheme to take the victim's vehicle directly led to the victim's death; the only identifiable change was that the victim exchanged his Jeep for an Altima. The act cannot be considered separate and apart from the crime for which Appellant has been convicted, as the plan to steal the victim's vehicle never changed.

Lastly, because the Altima was stolen after the victim's murder, and the car became a motive for the murder, other testimony and evidence was presented which referenced the vehicle the victim was driving, whether it be the Jeep or the Altima. Judge McLeod admitted the same messages (State's Exhibits #77 & 78, R. p. 946 & 952) are the same messages as State's Exhibit #65, (R. p. 899) finding that the messages were relevant and probative to show "the defendant was having these conversations at the time she was having them." (R. pp. 450-451).

Matthew Robinson, Corey's brother, testified that he heard Appellant tell Corey that she wanted him to "beat up Robert and kick his ass." (R. p. 371). After Matthew heard the conversation, he told Appellant and Corey they had to leave, and Appellant used Matthew's phone to message the victim on Facebook, asking him for a ride. (R. p. 372). The victim showed up at Matthew's residence driving a silver Nissan. (R. pp. 372-373). Appellant suffered no prejudice in this regard, as a substantial amount of evidence at trial supported the State's theory that Appellant was mad at the victim, and conspired to a steal his vehicle, which ultimately led to his death.

The messages in State's Exhibits #77-80, (R. pp. 946-971) are intended to show the time frame of the victim's suspicion of Appellant setting him up to steal his vehicle, not that Appellant previously conspired to steal a different vehicle, but that the conspiracy remained intact to steal the victim's car regardless of the type of car. Thus, the conspiracy to steal the victim's car did not end, the victim simply drove a different vehicle.

III. Judge McLeod did not abuse his discretion in admitting Facebook messages between Appellant and others because Appellant challenged the evidence on hearsay grounds and agreed that the records were authentic Facebook records investigators obtained from Facebook.

Appellant contends Judge McLeod erred in admitting Facebook records showing messages between Appellant and others "without requiring the State to first meet its burden to lay the necessary foundation through authentication," and "[t]he State failed to show the records were accurate," and the records were hearsay. The authenticity of the records was never disputed at trial, and Appellant's statements and responses were not hearsay, regardless of who Appellant was communicating with at the time.

Preservation

Appellant's contention that the records were not properly authenticated as Facebook business records is not preserved for review. To the contrary, Appellant expressly acknowledged the authenticity of the records.

When discussing State's Exhibit #65 which included Facebook messages between Appellant and Tim Watford, counsel stated:

> Under business records, so they are authentic. I am not saying that these are not authentic Facebook records. What I am saying is we have nothing to say Tim Watford asked her this.
>
> *********
>
> I am not debating that they are authentic Facebook records. Again, they came from Facebook. I agree that they have those records, and I agree that they got those records when they pulled Morgan Carr's account.

(R. p. 446, 449). Counsel's only reference to "foundation" was a contention that the State had to prove the person Appellant was communicating with actually said the things in the messages from

that person because someone other than the account holder could have taken over the account and sent the messages. (R. pp. 445-447, 449).

While a party need not use the exact name of a legal doctrine in order to preserve it, it must be clear that the argument was presented on that particular ground, and a party may not argue one ground at trial and an alternate ground on appeal. *State v. Field*, 429 S.C. 578, 840 S.E.2d 548, 550 (2020). Appellant's argument at trial was that the documents contained inadmissible hearsay rather than that the State failed to properly authenticate the records for purposes of the business records hearsay exception and the business records statute. Even Appellant's "foundation" argument went to hearsay because she contended the person making the statements in the messages was not present to testify that he made the statements. In other words, the person's statements were out of court statements and the declarant was not in court to validate the statements.

Appellant's authentication/foundation argument is a red herring because her hearsay argument is meritless. Having conceded the authenticity of the records at issue, Appellant cannot now assert the State failed to meet the requirements of the business records hearsay exception or the business records statute, and to the extent Appellant premises her argument regarding admission of the Facebook records on the lack of testimony from the custodian of the Facebook records, it is not preserved for appellate review.[3]

Hearsay

Appellant's contention that the documents contained inadmissible hearsay ignores the State's express purpose for presenting the Facebook messages. More importantly, it also ignores the fact

[3] If Appellant had raised the lack of testimony from a custodian of records for Facebook at trial, the State could have easily obtained and presented that evidence. Appellant's concession that the records were authentic Facebook records rendered that evidence unnecessary for the business records hearsay exception.

that Appellant was a party to every exchange of messages, a fact she never disputed. When that fact is considered in light of the express purposes of presenting the messages, Appellant's hearsay argument is meritless.

The State's express purpose in offering the messages was to counter Appellant's claims that she would never hurt the victim because he was "the love of [her] life," and she was devastated by his murder. (R. p. 460, State's Exhibit 1, R., p. 857). The Facebook messages between Appellant and others, particularly Appellant's statements in the messages, completely belied those claims.

For instance, on June 29, 2018, less than two weeks before the murder, Appellant exchanged messages with Timothy Watford. After Appellant commented that "Rob" (the victim) was sitting outside her house in the Jeep getting high, they discussed Watford coming over to Appellant's house that night, and the following exchange occurred:

Watford:	"Please don't make me sleep alone tonight."
Appellant:	"I can't help it when I have the kids babe. But maybe one night this weekend. But remember [Appellant's mother] goes out of town Saturday for 2 weeks.
Watford:	Ok
Watford:	Yes mam… How we get rid of your homeboy?
Watford:	Cuz I am a screamer!!
Appellant:	So am I lol and idk yet that's what I've been thinking about
Appellant:	Next chance I get, this Jeep is mine

(State's Exhibits 77 & 78, R. pp. 946 & 952).[4] The context of the messages, particularly Appellant's statements, indicates Appellant and Watford had an on-going sexual relationship at the same time Appellant claimed the victim was the "love of [her] life," the "homeboy" Appellant was thinking

[4] The spelling and punctuation in the messages quoted herein are in the original text.

about getting rid of was the victim (Rob), and Appellant intended to steal the vehicle Rob was driving at the time.

On July 11, 2018, Appellant exchanged messages with Robin Cunningham (a co-defendant in the murder), beginning at 5:47 p.m., approximately five hours before the murder. Those messages included the following exchanges:

Appellant: hey you

Cunningham: Hey baby what u up to

Appellant: just sitting at the house. Wish you were here

Cunningham: You have no idea I need you

Appellant: need me?? for what baby

Cunningham: I need you here w me b4 I do sumn stupid

Appellant: where r u

Cunningham: My house

Appellant: come here

Cunningham: I don't have a ride rn sweetheart

Appellant: ugghhh baby!!!!!!

Cunningham: I know ima get one tho you know someone that might come get me?

Appellant: not that I an think of

Cunningham: Okay think I got someone coming who you with

Appellant: no one right now

Cunningham: Ooh baby can't wait to get you alone (winking kissy face emoji x 2)

Appellant: me either!!!!

Cunningham: I told you reserve me a spot on the stalker list lmao jk I know that shitgot to be good lol I'm coming to you first baby

Appellant: I hope so! let me know when your otw baby

Cunningham: Okay love I will

(State's Exhibits 67 & 72, R. pp. 907 & 929). Again, the messages indicate Appellant had an ongoing romantic relationship with Cunningham on the night the victim, who Appellant claimed was the "love of [her] life" was murdered.

Significantly, at the same time Appellant was exchanging messages with Cunningham, she was messaging the victim to get him over to her house where she and Robinson were waiting. On July 11th at 10:34 a.m. Appellant messaged the victim "wyd," which started an exchange of messages that continued until the victim arrived outside Appellant's house at approximately 9:24 p.m. Cunningham arrived at the house at approximately 9:39 p.m. At 10:19 p.m., the victim, who was sitting outside in his vehicle, messaged Appellant "Come outside real quick." (State's Exhibits 68 & 72; R. pp. 910 & 929). The murder occurred at approximately 11:00 p.m. (R. pp. 90-91).

Then, on July 12, 2018, beginning at 12:22 a.m. (approximately 1.5 hours after the murder), Appellant engaged in multiple messages with Watford, Chad Crawford, Opie Taylor, Meghan Carter and Corey. At 12:35 a.m., Appellant told Meghan Carter she was "riding with Corey tonight.. not leaving his side." She then stated: "I will win his heart back. Im in love with him and I cant live this dumbass, cruel life without him. hes my rock." (State's Exhibit 51, R., p. 860).

At 3:36 a.m., Appellant and Corey exchanged multiple messages, including the following:

Corey: I really do care for you I'm gotta take a ride alone and if I make it back everything will be ok I promise and tell Timi what happened after I leave so he will understand

Appellant: I really wish you wouldn't. I love you Corey. And I told you

I have your back and I got you im proving that. I hope you see that. Id do what ever it takes to prove it to you. I want to be with you I want to spend my life with you Corey .

Appellant: when I said I love you, i meant it

Corey: I'm not gonna have a life to live I'm not going back to prison

Appellant: I know your not. that's not an option. I know if yo leave here without me, your going to do something stupid

Corey: No I'm going to get some money and dope and bullets and drive fast one time

Appellant: why can't I go with you? youve done all that with me babe

Appellant: I want to know exactly how you feel about me and want from me … will there ever bee another chance for us .. thats all I want

Corey: Anything's possible I'll see u wen I get back love ya

Appellant: please corey. i love you too

Approximately an hour later, the following exchanges occur:

Appellant: come home

Corey: wats wrong

Appellant: tim knows

Corey: ok wats he saying

Appellant: call the house

Corey: Wats he planning on doing

Appellant: just talking, i swear on everything

Corey: Have you heard anything about that

Appellant: no

(State's Exhibits 69 & 73, R. pp. 923 & 933).

At 4:33 a.m., Appellant exchanged messages with Opie Taylor, Shaun Shearer and Chad Crawford, telling them she has been "busy cooking and cleaning after these boys," and she is "about to tattoo." When Chad Crawford tells her he needs a tattoo, Appellant tells him to come to her house. At 5:31 a.m., Appellant tells Carter she is "still tattooing." (State's Exhibits 60, 61, 65, 66, 73; R. pp. 889, 891, 899, 901, 933).

Approximately an hour later, the following exchanges between Appellant and Corey occur:

Appellant: where are you

Appellant: Tim is trying to call you. hes getting pissed

Appellant: i need you to call me please. EMERGENCY!

After several unanswered phone calls to Robinson, at 2:04 p.m., Appellant messages Corey: "call me now corey. please baby, don't do this right now. I NEED YOU BABY." (State's Exhibits 69, 73, R. pp. 923, 933).

As discussed above, it was undisputed that the Facebook records were authentic and the messages at issue came from Appellant's Facebook account. The solicitor argued the statements and questions from the other parties to the messages were not offered for the truth of the matter, but the focus was on Appellant's responses. (R. p. 447). Judge McLeod found that the relevancy of Appellant's conduct and communications at the time of the events was highly probative, and the other parties' statements were not offered for the truth, but to show Appellant was having the conversations at the time they occurred. (R. pp. 449-451).

Appellant's list of information Investigator Sherban did not provide regarding the Facebook records and the message participants' personal information is yet another red herring. Since the authenticity of the Facebook records was never challenged, Investigator Sherban was not asked to testify about how Facebook records are prepared or maintained. Further, since the identity of the

participants other than Appellant was not the focus of the evidence, verification of their personal information was not relevant or necessary. It was undisputed that Appellant made the statements attributed to her in the records, and that was the focus of the evidence.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm Appellant's conviction and sentence.

Respectfully submitted,

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March 3, 2025

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
The Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2023-000733

THE STATE,

Respondent,

v.

MORGAN DAYLE CARR

Appellant.

PROOF OF SERVICE

I, Kaylee C. Kemp, hereby certify that I served the Final Brief of Respondent with the Certificate of Service, on Appellant's counsel, Joanna K. Delany, Esquire, via email at *jdelany@sccid.sc.gov ,* on March 3, 2025.

I further certify that all parties required by Rule to be served have been served.

This is the 3rd day of March 2025.

s/Kaylee C. Kemp
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From: Brandy Rankin
Sent: Monday, March 3, 2025 3:17 PM
To: Delany, Joanna
Cc: smcinnis@sccid.sc.gov; Kaylee Kemp
Subject: The State v. Morgan Dayle Carr - Final Brief of Respondent - Appellate Case No. 2023-00733
Attachments: FBOR CARR.pdf

Dear Ms. Delany,

Please find attached the Respondent's Final Brief and Proof of Service. These documents will be sent to the South Carolina Court of Appeals today, March 3, 2025 along with a copy of this email. Thank you and have a great day!

Sincerely,

Brandy Rankin

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