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Mar 27 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLOINA
IN THE SUPREME COURT

Appeal from Richland County
Honorable Eugene C. Griffith, Circout Court Judge

Appellate Case № 2023-001872

State of South Carolina, ... Respondent,

vs.

William B. Oswald,. . . . . Appellant.

Motion to Transfer Case

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, William B. Oswald moves before the South Carolina Supreme Court to transfer this matter to the South Carolina Supreme Court based upon the following:

In the brief filed in this matter, William B. Oswald has called into question the validity and the consistency of *State v. Perry,* 430 S.C. 24, 842 S.E.2d 654, (2020), *State v. Durant,* 430 S.C. 98, 844 S.E.2d 49 (2020) and *State v. Cotton*, 430 S.C. 112, 844 S.E.2d 56 (2020) all decided by this Court on May 6, 2020. The three cases do not appear to be consistent. As Counsel has argued in the brief filed in this matter, "[T]he dissent in *Perry* became the majority opinion in *Durant* and *Cotton*." Br. of Appellant, at 15. Counsel has further argued in the brief filed in this matter, "By placing special emphasis on similarity in these cases, this Court has created confusion in both the bench and bar as to what other bad acts in all criminal cases, and

not just criminal sexual conduct cases, are admissible in a criminal trial." Br. of App. at 12. Counsel has further stated, "If showing a connection between the two separate acts is required, and the similarity establishes that connection, then there is no basis for ever keeping a similar act out even after a Rule 403 analysis." Br. of App. at 13.

In discussing the confusion generated by the three cases, counsel has argued, "If the dissent [in *Perry*] would modify *Wallace* to require a connection, but if the connection can be established by proving the crimes are similar, then no connection needs to be proven. All that needs to be proven is the crimes are similar. And proving similarities to prove the crimes are connected because they are similar, appears to be a circular argument. The analysis does not answer the question of what is a similar crime being used to prove, other than similarity?" Br. of App. at 15.

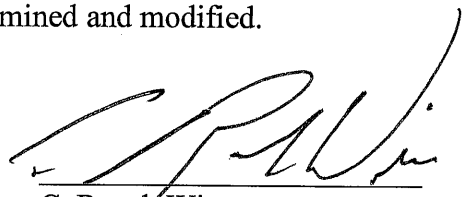
In this case, the State has argued, "The existence of a common scheme or plan is probative because it corroborates the testimony of the victim of the charged crime by showing the defendant utilized the same method in the past." Br. of Resp. at 9. Support for this use of bolstering can be found in the dissent in *Perry* when the dissenter said, "I fail to see how the majority's apparent reliance on uniqueness, rather than a high degree of similarity, remedies its criticism of common scheme or plan evidence. The majority is missing an inferential step—one that is satisfied through either a repeated pattern of highly similar or unique criminal activity—that being 'where there is a pattern of continuous conduct shown, that pattern clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in a similar fashion.'" *State v. Perry*, 430 S.C. 24, 67, 842 S.E.2d 654, 677 (2020)(Kittredge, J. dissenting).

Justice Kittredge cited to *State v. Tutton*, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003) for the proposition that another alleged sexual act may be used to bolster the testimony of the minor child. *Tutton,* in using the reference, was referring to the very unique facts found in *State v. McClellan*, 283 S.C. 389, 323 S.E.2d 772 (1984). *Tutton* found the two alleged crimes were not similar and reversed the conviction. No such unique facts existed in *Perry* or *Cotton*. Arguably, they did not exit in *Durant*. *Perry* was reversed and *Cotton* and *Durant* were affirmed.

The use of another crime to bolster the testimony of a witness, appears to be at odds with *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006), abrogated by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) and *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001), both of which held that simply having a witness repeat what the child witness said is hearsay and prejudicial bolstering. Another crime is more prejudicial than the statements found to be prejudicial.

This Court should transfer this case to the South Carolina Supreme Court so the three cases can be re-examined and clarified. The South Carolina Court of Appeals is bound by the precedents of this Court and therefore not able to clarify the exact holding of the three cases nor are they able to modify them to the extent they need to be re-examined and modified.

March 26, 2025



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CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for the Attorney for the Appellant in the above entitled case. That on March 27, 2025, I did send via e-mail, a copy of the Motion to Transfer Case to Joshua Abraham Edwards jedwards@scag.gov and Alan Wilson, SC Attorney General Office at awilson@scag.gov.and SC Court of Appeals at ctappfilings@sccourts.org

March 27, 2025

/s/ *Sandy Traynham*
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Secretary

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