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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Chesterfield County
Honorable Michael G. Nettles, Circuit Court Judge

Opinion No. 2025-UP-024 (S.C. Ct. App. Filed January 29, 2025)

Lower Court Case No. 2021-GS-13-00461

STATE OF SOUTH CAROLINA

RESPONDENT

V.

ANDRE JUNIOR COVINGTON,

RESPONDENT

APPELLATE CASE NO. 2022-000831

APPENDIX

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Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE JUNIOR COVINGTON,

APPELLANT

APPELLATE CASE NO. 2022-000831

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in admitting the video deposition of a jail house snitch and allowing the State to publish the contents of a letter the snitch claimed he received from Appellant offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice?
2. In this murder case where the body was never recovered, did the trial judge err in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence of guilt?

STATEMENT OF THE CASE

In April of 2021, the Chesterfield County Grand Jury indicted Appellant, Andre Junior Covington, for murder, indictment #2021-GS-13-0461. (R. p. 601). On April 4, 2022, Appellant proceeded to jury trial before the Honorable Michael G. Nettles. Kyle Hobbs represented Appellant at trial. Kernard Redmond prosecuted the case. The jury found Appellant guilty. Judge Nettles sentenced Appellant to forty-five (45) years in prison. A timely notice of intent to appeal was served on June 10, 2022. This appeal follows.

STANDARD OF REVIEW

Rule 404(b) evidence

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b).” Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).

Directed Verdict

“A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776

(2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

In a murder case, the corpus delicti consists of two elements: the death of a human being and the criminal act of another causing the death. State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974). The corpus delicti must be established by the best proof obtainable, direct evidence is not essential, and such may be sufficiently proved by circumstantial evidence when that is the best obtainable. Id. Furthermore, circumstantial evidence may be sufficient to establish the corpus delicti of murder even though the cause of death can not be determined. State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988); State v. Thomas 222 S.C. 484, 73 S.E.2d 722 (1952).

ARGUMENTS

1. **The trial judge erred in admitting the video deposition of a jail house snitch and allowing the State to publish the contents of a letter the snitch claimed he received from Appellant offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice.**

In June of 2019, Terris Parsons. “TP,” disappeared. TP has not been seen or heard from since June of 2019. A body was never found. TP’s girlfriend, Latoya Broadie, told police that TP went out to buy cigarettes on June 2, 2019, at 9:45 PM and never returned. (R. p. 110, line 9 – p. 111, lines 1-15). TP was driving a champagne colored 2010 Buick Lacrosse. (R. p. 157, lines 18-21). Broadie was able to access TP’s phone records and the next morning she called one of the numbers displayed from the night before. (R. p. 116, line 5 – p. 117, 118, lines 1-25). The police determined that Appellant was the last person to talk with TP and decided to interview Appellant. (R. p. 153, lines 16-21; State’s Exhibit #80, Interview 1). Appellant denied seeing TP on the evening of June 2, 2019. (State’s Exhibit #80, Interview 1). Video surveillance showed TP’s car going to Appellant’s house on Chapman Street and then both TP’s car and Appellant’s blue Mustang leaving the Chapman Street house in Cheraw. (R. p. 158, line 21 – p. 159, lines 1-22). The police re-interviewed Appellant and his then girlfriend, Lillie Moore, and they were both subsequently charged with obstruction of justice. (R. p. 163, lines 1-23; State’s Exhibit #80, interview #2).

The police also received information that TP’s car may have been seen at an abandoned car wash in Morven, North Carolina. (R. p. 156, lines 9-19). A detective testified that TP’s phone may have been in Morven, North Carolina. (R. p. 228, lines 8-19). The police were unable to locate TP or his car in Morven, North Carolina. (R. p. 156, lines 23-25). The police interviewed Robert Wilson who admitted that on June 2, 2019, he dropped his son off at the son’s home in

Morven, North Carolina. (R. p. 510, lines 2-10). Wilson admitted that while he was in Morven he called TP at about 9:57 PM. (R. p. 510, lines 10-12). Wilson admitted that he deleted text messages from June 2, 2019. (R. p. 510, lines 7-8).

On June 25, 2019, Moore led police to a cream colored car at an abandoned house in Florence. (R. p. 167, line 1 – p. 168, lines 1-25). The car was registered to TP. (R. p. 426, lines 1-5). According to Moore, on June 2, 2019, Appellant asked her to follow him on Highway 52 to Morven, North Carolina as he drove the cream car and she followed in Appellant's blue Mustang. (See State's exhibit #81 – video deposition of Lillie Moore and Bruce Romero).¹ Moore denied seeing TP that night. According to Moore, she brought Appellant back home to Cheraw in the blue Mustang. Moore claimed that the next morning Appellant received a phone call from a young lady and Appellant stated that, "He never showed up." (See State's Exhibit #81). According to Moore, on the evening of June 3, 2019, she and Appellant went back to a car wash in Morven, North Carolina to move the cream car. (See State's Exhibit #81). Moore stated that this time she drove Appellant's Lexus. (See State's Exhibit #81). According to Moore, she followed Appellant to Florence where Appellant parked the cream car behind a house. (See State's Exhibit #81). Moore stated that she drove Appellant back to Cheraw in the Lexus. (See State's Exhibit #81).

On November 26, 2019, Appellant was charged with kidnapping. (R. p. 446, line 25 – p. 447, lines 1-12). At this time Appellant was detained at the Marlboro County Detention Center. (R. p. 437, lines 2-9). On March 18, 2020, Captain Wayne Jordan interviewed Bruce Romero,

¹ Instead of requiring the State to meet its burden of proof and require witnesses Lillie Moore and Bruce Romero to appear at trial, defense counsel agreed to the video depositions of these two witnesses on February 9, 2022, prior to trial. (R. p. 210, line 16 – p. 211, 212, lines 1-25). This matter will need to be addressed in PCR.

who was also detained at the Marlboro County Detention Center. (R. p. 438, line 17 – p. 439, lines 1-18). Romero gave Captain Jordan a letter he claimed was from Appellant. (R. p. 439, lines 19-23). A video deposition of Romero was played at trial. (R. p. 461, line 11 -p. 462, lines 1-12). The video deposition is included in State's exhibit #81 with Lillie Moore's video deposition. While trial counsel did not object to the procedure and use of the video deposition, counsel did object to the content of the Romero deposition and reference to the letter based on Rule 404(b) and 403, SCRE. (R. pp. 71-83).

The judge overruled the objection and found that a redacted version could be published to the jury. (R. p. 210, line 1 – p. 211, lines 1-11). Counsel renewed the objection when the Romero video deposition was played for the jury and before the letter was published. (R. p. 461, line 25 – p. 462, lines 1-2). The prosecutor read to the jury the content of a redacted letter Romero claimed was given to him by Appellant. (R. p. 462, line 18 – p. 463, lines 1-4). At the close of the State's case counsel renewed the objection to the content of the Romero deposition and the letter. (R. p. 488, lines 8-11). The objections were again overruled. (R. p. 490, lines 4-7). The trial judge erred in admitting the video deposition of Bruce Romero and allowing the State to publish the contents of a letter Romero claimed he received from Appellant offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Romero became a jailhouse snitch. Romero met Appellant while they were both at the Marlboro County Detention Center. (See State's Exhibit #81). Romero claimed that while they were in jail Appellant gave him a copy of his kidnapping arrest warrant and a letter. (See State's Exhibit #81). In the video deposition Romero stated that he believed the letter could help him

with the serious charges he was facing. (See State's Exhibit #81). At trial the prosecutor read the purported letter to the jury stating:

First, let me tell you how I can help you in a major way. If they don't have any witnesses they don't have a case. You follow me. I can make that happen. Trust me. That can be done while you're out on bond for the State bonds for the State charge, which, you know, the charge will get dismissed because there is no one to take the stand against you. Are you still with me.

Once again, I'm telling you that if I get out, there will be nobody to take the stand. I can make witnesses disappear. They wouldn't have a case because they have to be able to take the stand. Trust me. I want this paper back.

(R. p. 462, line 18 – p. 463, lines 1-4). Romero claimed on the video deposition that Appellant wanted Romero to give him one thousand dollars (\$1,000.00) so he could hire a lawyer and get a bond. (See State's Exhibit #81). The Romero video deposition and contents of the purported letter should have been excluded. The error in the trial judge refusing to exclude this evidence requires reversal of the conviction and remand for a new trial.

In ruling that the letter was admissible the trial judge stated:

With regard to the letter, I am gonna allow the redacted – we've had discussions in chambers about that and we're gonna allow the redacted version of it to be published before the jury. And the reason for that is I specifically find that the prejudicial value does not over-override the probative value with regard to this particular piece of evidence. And when you look at all of the evidence, and the fact that there was a warrant and the letter, it's probative with regard to identity and that the reason why I'm admitting it.

(R. p. 210, lines 1-10). The trial judge erred. The evidence does not meet the identity exception, or any other exception of Rule 404(b). Any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

Rule 404(b) of the South Carolina Rules of Evidence provides, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a

common scheme or plan, the absence of mistake or accident, or intent.” Appellant’s purported claim that he could make a witness disappear in order to convince Romero to give him money is evidence of other crimes, wrongs, or acts pursuant to the rule. The Romero evidence serves no legitimate purpose and fails to meet an exception to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. The Romero evidence should have been excluded.

In State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020), the South Carolina Supreme Court confirmed the logical connection test for the admission of evidence pursuant to Rule 404(b), SCRE, established in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In Perry the Court wrote:

Historically, to justify a finding that evidence of other crimes, wrongs, or acts is offered for a legitimate purpose, and thus should not be excluded pursuant to Rule 404(b), South Carolina courts have required a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged. See, e.g., Gaines, 380 S.C. at 29, 667 S.E.2d at 731 (“To be admissible, the bad act must logically relate to the crime with which the defendant has been charged.”); State v. Brooks, 341 S.C. 57, 61, 533 S.E.2d 325, 327-28 (2000) (“If the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.” (quoting Lyle, 125 S.C. at 417, 118 S.E. at 807)).

430 S.C. at 31, 842 S.E.2d at 658.

Evidence that Appellant tried to con Romero into giving him money by claiming that he could make a witness disappear has no logical relevance or connection to some disputed fact or element in the murder of TP. There is no allegation that TP was murdered to prevent him from testifying against someone in a trial. The Romero evidence fails to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

The trial judge erred in finding that the letter was probative of identity. Appellant’s purported claim that he could make a witness disappear, supported by nothing more than the

allegation contained in the arrest warrant for kidnapping, does not refute the defense of alibi as the evidence of two other forgeries in the same city on the same day did in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). While Appellant denied seeing TP on the night of June 2, 2019, the purported interaction between Appellant and Romero took place some time in March of 2020. The State failed to demonstrate that the Romero evidence served some purpose other than using Appellant's character to show his propensity to commit the crime charged.

If Appellant's attempt to con Romero into giving him money to make bond is somehow construed to show identity for the murder charge, any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE. In State v. Perry, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020), the South Carolina Supreme Court wrote:

The State must also convince the trial court that the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes. Rule 403, SCRE. Whether the State has met its burden "should be subjected by the courts to rigid scrutiny," considering the individual facts of and circumstances of each case. 125 S.C. at 417, 118 S.E. at 807.

Under rigid scrutiny, considering the individual facts and circumstances of this case, any possible probative value of the Romero evidence is substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show Appellant's propensity to commit the crime charged. The Romero evidence does not meet the clear and convincing standard required by State v. Smith, 300 S.C. 216, 387 S.E.2d 245 (1989). The State relied heavily on the Romero evidence in closing argument, referring to the evidence as the "cherry on top." (R. p. 532, lines 1-25; p. 535, lines 4-10). As TP's body was never found, the State relied on a "pattern of life" assessment to establish death. (R. p. 433, line 19 – pp. 434-436, lines 1-5). While Moore's video deposition testimony about Appellant attempting to conceal the cream car may raise

suspicion, there is no forensic evidence linking Appellant to the murder of TP. The trial judge erred in refusing to suppress both the Romero video deposition and letter. The error is not harmless.

2. In this murder case where the body was never recovered, the trial judge erred in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence of guilt.

The present case is a “no body” murder case. The State presented no evidence of violence or other means of death used upon TP. TP’s body and no part of his body has ever been found. The State relied on testimony from family members and a “pattern of life” assessment to establish death. (R. p. 433, line 19 – pp. 434-436, lines 1-5). At the close of the State’s case Appellant moved for a directed verdict of acquittal. (R. p. 490, line 8 – pp. 491 – 495, lines 1-9). The trial judge denied the motion for directed verdict stating, “Motion for directed verdict is denied. It is indeed a question of fact for the jury.” (R. p. 497, line 25 – p. 498, line 1). The lack of evidence was additionally argued in a post-trial motion for new trial. (R. pp. 588-594). The trial judge denied the motion stating, “Mr. Hobbs, taking into consideration all of the circumstantial evidence, and there was a bunch of it, clearly there was contact with him before the – he – the deceased went missing. The text messages confirmed that. We have video of him coming to his residence and there was confirmation in the texts that he was indeed there. He secreted evidence by lying in the -- in his statements and he secreted the car. All of which the jury took into consideration.” (R. p. 598, lines 6-14). The trial judge erred in refusing to direct a verdict of acquittal for murder when the State failed to present substantial circumstantial evidence of guilt.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E.21 (1916); State v. Weston, 367 S.C. 279,

292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 S.E.2d 30, 36 (2001). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant’s favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999).

The evidence relied on by the State in this case was exclusively circumstantial. The evidence consisted of: 1.) Appellant being the last person to communicate with TP; 2.) Appellant denying that he saw TP on the night of June 2, 2019; 3.) video showing TP’s car going to Appellant’s house and then showing both TP’s car and Appellant’s blue Mustang leaving the house; 4.) Moore’s testimony that she drove Appellant’s blue Mustang to Morven, North Carolina, following Appellant in the cream car and then bringing Appellant back to Cheraw in the Mustang; 5.) the fact that TP’s phone may have been in Morven, North Carolina; 6.) a phone call to Appellant from TP’s girlfriend the next morning and Moore overhearing Appellant state that “he never showed up”; and 7.) Moore’s testimony about moving the cream car to Florence. As discussed in issue one above, the Romero testimony and letter should have been excluded from the State’s evidence.

Alternatively, without waiving the challenge to the evidence, the Romero evidence combined with the other evidence presented by the State does not constitute substantial circumstantial evidence which reasonably tends to prove the guilt of Appellant or from which his guilt may be fairly and logically deduced. The circumstantial evidence merely raises a suspicion and was not sufficient to submit the case to the jury.

In State v. Weston, 367 S.C. 279, 293, 625 S.E.2d 641, 648 (2006), a “no body” murder case, the South Carolina Supreme Court wrote:

In a murder case, the corpus delicti consists of two elements: the death of a human being, and the criminal act of another in causing that death. State v. Martin, 47 S.C. 67, 25 S.E. 113 (1896). In State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987), this Court held that the circumstantial evidence surrounding the victim's sudden disappearance, considered with the unlikelihood of his voluntary departure as shown by his personal habits and relationships, was sufficient to establish the corpus delicti of murder or that the victim is dead by the criminal act of another. See State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974). See also State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996).

In the present case while the circumstantial evidence surrounding TP’s disappearance, including testimony from family members and the “pattern of life” assessment, may establish the first element required - death, this evidence does **not** establish the second element – the criminal act of another in causing that death. This missing second element is what distinguishes the present case from Weston, Owens, and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015).

In Weston, the Court wrote:

Further, the evidence presented by the state warranted submission of the case to the jury. Evidence was presented that Weston had gone to live with his mother in the fall of 1997, and that she became very upset and was depressed Weston was living with her. Friends and family advised Franchey to either change the locks, eject Weston, or find him another place to live. Two days before her disappearance, Franchey told a friend she had decided to tell Weston to leave. She was last seen alive on August 6, 1998. The same day, the maintenance supervisor of the apartment complex noticed that the trunk to Mrs. Franchey's vehicle was open, and was lined with clear plastic. The maintenance supervisor also testified that Franchey, a retired educator, did not have any bumper stickers on her car but that,

immediately after she disappeared, a sticker which read “My kid beat up your honor roll student” was on the car. The apartment manager testified that when she went to the apartment on Aug. 8th, the shower curtain in Franchey's bathroom was missing.

Randy Myers, an apartment complex resident, testified that at 4:30 a.m. on Saturday, August 8th, he saw Weston loading garbage bags into the trunk of Franchey's car. Several people also testified that they had never seen Weston drive Franchey's car before, Weston did not have a driver's license, and that immediately after Franchey disappeared, Weston was driving her car.

The apartment complex manager testified that, when she went to check on Franchey, she saw that Franchey's plants on her back patio were turned over, and there was an empty bleach bottle on the porch. When initially confronted by the apartment complex manager and Officer Jarvis, Weston told them his mother had “met some man and run off with him” leaving him a note on the coffee table. No other witness had any knowledge of an alleged boyfriend. Further, although the apartment complex manager and Jarvis remembered seeing Franchey's purse and glasses on her bed in the apartment on August 8th, Weston told police that his mother's purse was missing. The apartment complex manager also testified that Weston came into her office a day or two later, very disheveled, sweating profusely, his eyes huge, and stated, “I was really angry with my mother and now I'm just scared.”

Immediately after Franchey's disappearance, Weston called in sick to his job at Target for two days, saying he had a virus. He returned to work on Monday, August 10th, and was seen by employees to have a limp, a bruise under his eye, and scratches on his arms. He told his supervisor his cat had scratched him. He told another co-worker he had stepped off a curb and fallen into some bushes. When Jarvis and the apartment manager spoke to Weston at Franchey's apartment, Weston was wearing a heavy black jacket on a hot August day such that his arms were not visible. When Weston went back to work at Target, he bought a new shower curtain, and a rug. When police investigated the apartment, they found an area rug covering a hole in the carpet of the living room floor. Linoleum in the kitchen floor had also been torn up and was missing. Police tested the floor where the linoleum had been removed and found blood; blood was also found on drag marks leading from the hole in the carpet. Investigators subsequently tested a piece of blood-stained molding from the apartment which was determined to be was Franchey's. Blood was also found on the rubber ring that lined the trunk of Franchey's car.

Weston, 367 S.C. at 293–95, 625 S.E.2d at 649. The Court found this evidence “clearly sufficient to withstand a motion for directed verdict.” The State in Weston presented evidence of violence, including blood in the apartment and trunk, to satisfy the second element – the criminal act of

another in causing that death. The State failed to present evidence of the second element in the present case. There was no blood found in any of the cars, their trunks, any yards, or houses. The State failed to present evidence of violence to show that a criminal act of Appellant caused TP's death.

In Owens, another “no body” case, the State presented evidence of drag marks on the kitchen floor, human blood stains on the bedsheets, a ransom note demanding money and threatening to kill - with drafts in Owens' handwriting, marked ransom money found in Owens' possession, Owens' daughter pawning the victim's onyx ring and Gucci watch at Owens direction, head hair consistent with the victim found in the trunk of Owens' car, and statements by Owen. The Court found this evidence was sufficient to show that the victim died by the criminal act of another. As in Weston, the State in Owens presented evidence of violence to satisfy the second element - the criminal act of another in causing that death. In the present case the State failed to present evidence of violence to show that a criminal act of Appellant caused TP's death. There was no biological evidence linking Appellant to TP.

In Lynch, another “no body” case, the South Carolina Court of Appeals Court found that the trial judge did not err in denying the motion for directed verdict and wrote:

In addition, the State presented forensic evidence that an assault occurred at the apartment where Lynch lived with the victims. Lynch also admitted to police that he did not know anyone that wanted to harm the victims. Other damaging evidence included the fact that a male's DNA was found in the victims' apartment, and Lynch told police that he had not seen other males in the apartment.

Importantly, the State also presented substantial evidence of flight, which further distinguishes this case from the cases Lynch relies on in his brief. See State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (“[F]light ... is at least some evidence of guilt.”); State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (“Flight evidence is relevant when there is a nexus between the flight and the offense charged.”).

Lynch, 412 S.C. at 173, 771 S.E.2d at 355. In the present case the State presented no forensic evidence that an assault occurred and no evidence of flight. The State failed to present evidence of violence to show that a criminal act of Appellant caused TP's death.

In moving for a directed verdict of acquittal Appellant specifically argued both that the State failed to present substantial circumstantial evidence of a killing and that the State failed to prove malice. (R. p. 491, line 19 – p. 492, 493, 494, lines 1-23). “Murder” is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10. The trial judge erred in refusing to direct a verdict of acquittal. The State failed to present substantial circumstantial evidence of a killing and failed to present any evidence that the killing was done by Appellant with malice aforethought. In Weston, Owens, and Lynch the evidence of violence presented by the State went to malice. No such evidence was presented in this case.

CONCLUSION

Based on the above argument presented in issue two, this Court should reverse the conviction. Based on the argument presented in issue one, this Court should reverse the conviction and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of September, 2023.

CERTIFICATE OF COUNSEL

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

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Sep 26 2023

SC Court of Appeals



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This 26th day of September, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael O. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANDRE JUNIOR COVINGTON,

APPELLANT.

Appellate Case No. 2022-000831

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err in admitting the video deposition of a jailhouse snitch and allowing the State to publish the contents of a letter the snitch claimed he received from Appellant offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice?
- II. In this murder case where the body was never recovered, did the trial judge err in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence of guilt?

STATEMENT OF THE CASE

Appellant was indicted for murder (2021-GS-13-461). (R. p. 579). A five day jury trial was held before the Honorable Michael G. Nettles on March 4 through March 8, 2022. Appellant was represented at trial by attorney Kyle Hobbs. The State was represented by Deputy Solicitor Kernard Redmond. At the conclusion of the trial, the jury found Appellant guilty and Judge Nettles sentenced Appellant to forty-five (45) years in prison. (R. p. 579). Appellant filed post-trial motions for a judgment of acquittal and for a new trial. A hearing was conducted on June 1, 2022, and Judge Nettles denied the motions at the conclusion of the hearing. (R. p. 588-99).

This appeal now follows.

STATEMENT OF FACTS

At approximately 9:00 pm on June 2, 2016, Terris Parsons (hereinafter “Victim”) went out for cigarettes in his 2010 champagne colored Buick Lacrosse. His girlfriend with whom he had plans to marry, Latoya Broadie, had smoked his last cigarette so she handed him a 10 dollar bill and he left to go get more. (R. p. 108-110; p. 134). Surveillance footage showed that Victim did purchase those cigarettes. (R. p. 158). However, Victim never made it home that night. As surveillance evidence would later show, Victim’s last known location was at Appellant’s address. (R. p. 159; p. 231; p. 300-301). Despite considerable efforts by law enforcement, Victim’s body has never been discovered, nor were there useful forensic discoveries. Despite Victim’s close and numerous relationships with family and friends, his role as a father, his employment, and his financial plans, there is no evidence to suggest Victim is still alive.

The Development of the Case

When Victim did not return home June 2nd, Ms. Broadie grew worried and began a number of efforts to try and determine his whereabouts. This included obtaining a recent list of calls from

Victim's phone (which was linked to her account) and contacting those numbers the following day. (R. p. 116). One of those numbers belonged to Appellant. Ms. Broadie's made numerous calls to this phone with her own phone, but they went unanswered. When she tried the number while using her friend's phone, Appellant answered. Ms. Broadie had a short conversation with Appellant, but he would not answer Ms. Broadie's requests for information. Ms. Broadie ultimately contacted the police and filed a missing person's report. (R. p. 117-119; p. 153-155).

On June 4, 2019, as a result of Ms. Broadie efforts to acquire a recent contacts list, police requested Appellant come in for voluntary questioning. Appellant agreed and he drove himself to the police station. (R. p. 153-155). During the interview police also obtained consent to seize Appellant's phone. (R. p. 155; p. 174; p. 381). Appellant denied having any contact with Victim on the day of his disappearance. (St. Exhibit 80; R. p. 303). At the time, law enforcement officers did not have any evidence which contradicted this assertion and Appellant was permitted to leave. Law enforcement officers also interviewed Lillie Moore (Appellant's live-in girlfriend) and Robert Wilson.

However, further investigative efforts led to the acquisition of recordings from multiple surveillance cameras in the area. The surveillance footage demonstrated that once Victim left the Alco station with his cigarettes and candy, he proceeded to 4 Chapman Street – Appellant's home address. (R. p. 158-159; p. 164). Surveillance footage shows Victim's car reaching Appellant's residence at 9:18pm. (R. p. 340-341). This was the last known location for Victim, and in addition to the surveillance footage showing his arrival, there were also the direct communications between Victim and Appellant on the night of June 2nd. These communications include: 1) Appellant texted Victim at 7:22pm that he should be home at about 8:30; 2) Victim responded to Appellant at 7:23pm with a simple: "Okay"; 3) Appellant texted Victim at 8:58pm that he was home; and 4)

Victim responded again with an “okay” acknowledgment. (R. p. 339-340). After Victim’s arrival, a 9:40pm text from Victim’s phone was sent to Robert Wilson saying “I’m on my way”, and Mr. Wilson responded by asking Victim where he was on his way to. This text was never responded to.¹ (R. p. 341; p. 343).

At 10:06pm, Victim’s car is observed by the same surveillance cameras leaving Appellant’s home. (R. p. 342-343). However, it was followed at a distance by Appellant’s Blue Ford Mustang that possessed the unique identifiers of being a rag-top convertible with a decal sign on the side of the car. Multiple cameras tracked the two cars progress leaving away from the home. The cameras then caught the blue Ford Mustang returning back through town without the Buick at 11:34pm. (R. p. 344-345). In addition to this, Appellant placed a six second call from his phone to Victim’s phone at 11:53pm. (R. p. 345). Additionally, at 11:55pm, Victim’s phone received a text from Appellant stating that “If you don’t want the puppy just say that. Don’t have me waiting on you. Call me in the morning.” (R. p. 349).

In the days that followed, law enforcement received a tip that someone had possibly spotted Victim’s car in an abandoned carwash in Morven, North Carolina, a short drive up the road from Cheraw. This was investigated extensively, but they did not find the car at the carwash or anywhere else in the area. (R. p. 156).

On June 7th, with new knowledge gained from the surveillance footage, law enforcement sought to backtrack some of their previous efforts. They sought to reinterview Lillie Moore, and at that time she was not forthright in her responses. While her interview was ongoing, Appellant arrived at the station as well to ask what was taking so long with her interview. He was mirandized and questioned again as a result, and *again* asserted that he had not seen Victim on the night of

¹ Robert Wilson was investigated by police, but ruled out as a suspect.

June 2nd. Ultimately, both individuals were then charged with obstruction of justice and Appellant was later charged with kidnapping. (R. p. 446-447).

The Testimony of Lillie Moore

On June 25th, however, Ms. Lillie Moore contacted police, and in the presence of counsel provided police with a full explanation of the events she witnessed take place between June 2nd and June 3rd. She testified that she had never seen Victim and did not know Victim. However, on the night of June 2nd, between the hours of approximately 9pm and 10pm, Appellant asked her to follow him down Highway 52, and that he seemed reluctant to ask her to do so. (State's Ex. 81, at 11:31-11:33). Appellant explicitly asked her to leave both hers and his phone behind for the trip, however she did not obey the request and opted to simply turn off her phone, fearing she may need it for safety purposes. She followed him to Morven, heeding his instruction to not follow too closely, but instead at a distance enough to just keep his taillights in view. She was told that once they got down Highway 52, she was supposed to pick him up from the roadside when she sees him walking. (State's Ex. 81, at 11:34-11:36).

She explained that she was driving Appellant's blue Mustang, and that Appellant was not driving one of their personal cars; however, at the outset of following him she did not get a good look at the vehicle he was driving. That changed when she pulled up to the store in Morven, wherein she identified the car as being "crème" colored; she likewise identified Victim's Buick from the exhibits presented. She had never seen the car before that night. As she was pulling into the store parking lot and Appellant was pulling out, they spoke briefly and Appellant said that he would be ready for pick-up within the time it would take for her to turn around and get out of the parking lot. (State's Ex. 81, at 11:36 - 11:40).

However, Ms. Moore recognized that she was in need of gasoline, so she drove to nearest open gas station she could find and purchased gasoline. This happened to be back in Cheraw where they had originally left. Upon her return up Highway 52 she eventually encountered Appellant walking on the roadside, as she had been told to expect. Once Appellant was in the car he did not say anything, and they returned to the house. Ms. Moore testified that she was not aware of where Appellant had left the Buick that he had driven up to Morven. She asked what was going on, but Appellant did not respond. Once they returned Ms. Moore had to go back out to meet Appellant's sister in Cheraw who needed a ride. She was gone for 30 to 35 minutes and Appellant was not with her during that time. She also commented that upon her return, Appellant was in and out of the house that night, but she did not know for what purpose.² (State's Ex. 81, at 11:40 – 11:47). Ms. Moore also noted that Appellant had been operating a burn pile in the middle of the night that night. (R. p. 309; Ex. 81).

On June 3rd, the following morning, she overheard Appellant during a phone call with a woman and Appellant stated: "he didn't come; he didn't show up." On the evening of June 3rd, she and Appellant drove back to Morven in their Lexus for the purpose of moving the car he had driven there the night prior, but Appellant did not explain why. When they arrived, she saw that the car was parked in the back side of an abandoned carwash. Appellant got out, and assumingly had the key to crank the car, because he was able to do so with no apparent difficulty or delay. She then followed Appellant to Florence County where he parked the car behind what he called an abandoned house. They were there approximately five minutes, and Appellant then got in the car

² Ms. Moore also provided testimony that Appellant and another individual spent the next morning cleaning the yard and hauling what they had cleaned to the dump, and that later she was left at Appellant's mother's home while Appellant visited his brother elsewhere. (State's Ex. 81, at 11:47-11:50).

with her and they drove back to Cheraw. Appellant again refused to answer her question of what was going on. (State's Ex. 81, at 11:50 – 12:00).

When Ms. Moore reached out to law enforcement to provide a new statement, she also agreed to direct them to the car they had left in Florence. Though finding it presented a bit of difficulty, she was successful in leading the police to the car. Ms. Moore explained that she was fearful and did not tell law enforcement the information at first because of what might be going on in the situation with Appellant. At the time of her testimony, her charges remained pending and she had received no promises of leniency. (State's Ex. 81, at 12:03 – 12:07).

The Testimony of Fausten Romero

One further development would come in the case after Appellant was arrested. Fausten Romero testified that he was housed for a time at the Marlboro County Detention Center, and was pod-mates with Appellant. He had a cell right beside Appellant's and they communicated frequently. Mr. Romero testified that on one occasion Appellant slid him some papers and told him to read them. The first paper was Appellant's arrest warrant for Kidnapping; Appellant instructed him to read it and then hand it back. Mr. Romero complied. The second was a letter or note from Appellant that was redacted for trial and read into the record:

First, let me tell you how I can help you in a major way. If they don't have any witnesses they don't have a case. You follow me. I can make that happen. Trust me. That can be done while you're out on bond for the State bonds for the State charge, which, you know, the charge will get dismissed because there is no one to take the stand against you. Are you still with me.

Once again, I'm telling you that if I got out, there will be nobody to take the stand. I can make witnesses disappear. They wouldn't have a case because they have to be able to take the stand. Trust me. I want this paper back.

(State's Ex. 81, at 10:52 – 10:54; R. p. 462-463). Mr. Romero was presented with what was identified as State's Exhibit 1 and noted that it was the Kidnapping arrest warrant Appellant provided him. He then identified State's Exhibit 2 as the letter from Appellant.³ Appellant told Mr. Romero that he would need the letter back. However, when Appellant later asked for the letter back, Mr. Romero lied that he had torn it up, flushed it, and claimed that he wanted no part in the matter. In truth, he kept the letter and attempted to send it to law enforcement in the hopes of aiding his own legal circumstances. However, ultimately any real help he hoped to gain was moot, as he had served nearly all of his sentence by the time of his testimony. In any case, a note was put in his file for consideration despite his coming release. (State's Ex. 81, at 10:55 – 10:59).

Mr. Romero was asked during his examination what meaning he took from Appellant's papers that were handed to him. He testified that: "When I read this part, that's whenever I realized about the kidnapping, the warrant you know – I felt like that the reason he wanted me to read the kidnapping charge was you know to let me know, that you know, this is what can be done [in his own case].". Mr. Romero testified that he did not know how to respond to that, and that Appellant was looking for \$1000 to help with retaining a lawyer in return for his assistance. (State's Ex. 81, at 11:00 – 11:05). Mr. Romero reiterated that although Appellant never told him what he did, or admitted to guilt for his crime, he "felt like" in reading the warrant and the note together, "it was self-explanatory" that he was saying "this is my work, this is what I can do." Mr. Romero had no doubt that it was Appellant that handed the papers to him. (State's Ex. 81, at 11:07; at 11:18).

STANDARD OF REVIEW

The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion. *State v. Clasby*, 385 S.C.

³ Though the exhibit was not entered into evidence due to its nature as a charging document.

148, 154, 682 S.E.2d 892, 895 (2009) “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. *State v. White*, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007)(citing *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 623 S.E.2d 373 (2005). To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. *Id.* (citing *Fields v. Regional Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight. When [an appellate court] reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the non-moving party, and if there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, refusal by the trial judge to direct a verdict is not error.” *State v. Long*, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002)

ARGUMENT

I. The trial court did not err in admitting the testimony of Fausten Romero and the letter from Appellant regarding the offer to make a witnesses disappear.

To the extent the letter and testimony from Fausten Romero can even be considered 404(b) evidence, the trial court did not err in finding the evidence admissible as evidence of guilt.

However, the application of Rule 404(b) is unnecessary and represents a depreciative view of the evidence's value, as the letter and arrest warrant actually constitute circumstantial evidence of a confession by Appellant. As such, the evidence and testimony were properly admitted and Appellant's conviction and sentence should be affirmed.

"Under Rule 404(b), SCRE, evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *State v. Fletcher*, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008) (citing *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)). "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." *Id.* "Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." *Id.* (citing Rules 403 and 404(b), SCRE). "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *Id.* (citing *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364, cert. denied, 498 U.S. 881, 111 S.Ct. 227, 112 L.Ed.2d 182 (1990)).

The issue at hand arises via pretrial motions wherein Appellant objected to the admissibility of the evidence as being a prior bad act without an exemption under Rule 404(b) and *Lyle*. Appellant argued that the letter "does not reference anything about the case at hand" and that Victim "was not a witness in a case". He then argued that the disappearance of a witness and the disappearance of Victim are not a sufficient parallel, and that such is a "conjecture" of the State. He then argued that the letter would be an unduly prejudicial prior bad act tending to suggest a

decision on an emotional basis. (R. p. 74-77). In response, the Deputy Solicitor properly noted that the key element to this matter is not the letter (often referred to as a note), *but the warrant* and its indication that Victim “has not been seen since”. In short, the solicitor argued that providing the warrant, in tandem with context of the letter, is an assertion by Appellant that he can make someone disappear. Therein, the evidence goes to establish multiple exceptions to the 404(b) prior bad acts evidence rule, including identity. (R. p. 77-79).

The trial court took the matter under advisement and ultimately found the evidence admissible. The court found that “the prejudicial value does not over – override the probative value with regard to this particular piece of evidence. And when you look at all the evidence, *and the fact that there was a warrant and the letter*, it’s probative with regard to identity.” (R. p. 210)(emphasis added). The video testimony of Fausten Romero was later published for the jury. (R. p. 461).

Depending on the inference that one wishes to take from the evidence, the ruling of the trial court to admit the video testimony and letter was correct for two reasons. First, as the issue was objected to on the grounds of violating 404(b), the court viewed the evidence in the light of 404(b) prior bad acts. In so doing, and to the extent that evidence can be viewed in the spectrum of 404(b) analysis, the letter constitutes an offer by Appellant of making someone disappear (in the case of Mr. Romero, a witness that would be vital to his case) in exchange for money.⁴ That

⁴ Appellant wants this court to focus upon the supposed disconnect of Appellant’s “con” to the Victim’s murder. But the connection is not the “con” itself, it is the use of his own warrant to make the disappearance of a witness seem achievable and to make what Appellant suggests is a “con” appear legitimate. Even more detrimental to Appellant’s argument in this regard, is that he barely even mentions the accompanying warrant in his brief. As argued by the Deputy Solicitor, and identified by the trial court in its ruling, the warrant is the crucial part of this issue, and Appellant’s failure to address and challenge the impact of the warrant on the nature of the evidence greatly diminishes the efficacy of his argument for error by the trial court.

may indeed be inadmissible, had the letter been the only thing handed to Mr. Romero that day. However, as the court explicitly mentions, this letter was accompanied by Appellant's arrest warrant, and the warrant creates the logical connection between Appellant's existing crime and his prior bad act of offering similar services of a future crime. The warrant serves as the *bona fides* for Appellant's offer. As such, the letter and accompanying arrest warrant go to the establishment of identity in Victim's murder as an exception under Rule 404(b). In short, Appellant's use of the warrant to make the offer appear legitimate, constitutes evidence identifying Appellant as the individual responsible for Victim's disappearance.

While that inference from the evidence is acceptable, and the ruling of the court is entirely proper in relation to the objection that was raised, it does a great injustice to the evidence that is being presented. Appellant's provision of the warrant in tandem with the letter does not just simply provide a *bona fides* for Appellant's offer and substantiate the letter as evidence of identity. Taken together, the provision of the warrant in connection with the letter offering services of making a witness disappear is circumstantial evidence of a *confession* of his guilt for Victim's fate. Appellant is, by fairly clear inference, using his own arrest warrant for the kidnapping of Victim Parsons as a résumé or work history demonstrating a crime he has already successfully committed. This is not a difficult conclusion to reach, as Mr. Romero testified specifically that this was the inference he took away from Appellant's offer as well. (State's Ex. 81, at 11:00 – 11:07). Admittedly, it is not an "overt" confession – which is why Mr. Romero also testified that Appellant did not explicitly confess to his charges. However, circumstantial evidence of a confession does occur, and the inference or inferences that need be made to deem words or conduct a confession is an issue rightfully put before the jury. See *State v. Rogers*, 405 S.C. 554, 564, 748 S.E.2d 265, 270 (Ct. App. 2013). At a bare minimum it constitutes evidence of consciousness of guilt, and "[a]s a

general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.” *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976). The evidence and testimony were admissible as circumstantial evidence of guilt for which the jury could have interpreted to be an outright confession or evidence of consciousness of guilt.

The distinction between how the evidence is used: a) as *bona fides* to legitimize his offer thereby establishing evidence of identity, versus b) strictly evidence of guilt by way of a circumstantial confession is not substantial. What is substantial, however, is that one focuses upon a prior bad act, and the other focuses upon the admission of guilt for the crime being tried. Even though it was capable of doing so, the evidence did not need to pass through the scrutiny of Rule 404(b) analysis. Appellant cannot seek to *rely* upon the warrant as proof of his own credentials while not also suggesting that he is in fact guilty of “disappearing” Victim by way of murdering him. The ruling of the trial court was acceptable, but the more blatant interpretation of the evidence renders it simply admissible evidence of guilt.

II. The trial court correctly denied Appellant’s motion for directed verdict, as there was substantial circumstantial evidence tending to prove Appellant murdered Victim.

The fact that this is a “no body” case, does not detract from the substantial circumstantial evidence presented in this case that Appellant murdered Victim. The trial court correctly denied Appellant’s motion for a directed verdict at trial, and the conviction and sentence should be affirmed.

“A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.” *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001) (citing *State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001)). “If there is any direct evidence or

substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.” *Id.* Accordingly, a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *Id.* (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)). “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.*

The Supreme Court in *Weston* articulated that the lack of a recovered body does not necessarily prevent the satisfaction of the corpus delicti of a murder case. Where the sudden disappearance of the Victim is in contrast with the testimony establishing his pattern of life and relationships, so as to render voluntary disappearance an unlikely conclusion, the first element of the corpus delicti has been satisfied. Appellant has essentially conceded that the “pattern of life” testimony provided in the record is sufficient to satisfy the first element requiring the death of a human being.⁵ (See Brief of Appellant, p. 13). Appellant contests the sufficiency of the evidence toward the second element –the criminal act of another causing death”. However, Appellant’s arguments fail to demonstrate error on the part of the trial court.

When the circumstantial evidence from the record is *appropriately* itemized, it establishes the following facts:

1. On June 2nd, a little after 9pm, Victim was alive and well while buying cigarettes and candy at the Alco station mere minutes before he pulled up to Appellant’s home. (R. p. 158; p. 340);

⁵ To the extent Appellant argues that he has not conceded the first element. Respondent would argue that the State presented more than sufficient “pattern of life” evidence to satisfy the standard. Victim was a loving and involved father, he was in the process of financing a home with Ms. Broadie, they had plans on getting married, he was starting a new job, and he was frequently communicative with multiple members of his family. All communications and interactions of any kind abruptly ended while he was located at Appellant’s residence, and they have never resumed.

2. Surveillance footage demonstrated that after leaving the Alco station, Victim drove to Appellant's residence. (R. p. 158-159; p. 164; p. 340-341);
3. Victim and Appellant shared texts messages on the night of June 2nd that suggested Appellant expected a visit from Victim and confirmed that Appellant was home at the time Victim arrived. (R. p. 339-340);
4. Victim arrived at Appellant's home at 9:18pm by driving his Buick Lacrosse. (R. p. 340-341);
5. A 9:40pm text from Victim's phone was received by Robert Wilson stating: "Im on my way". Mr. Wilson responds: "to where?", and that text was never responded to. This exchange took place before any further movement is seen from Victim's vehicle. No further outgoing communications come from Victim's phone. (R. p. 341-343);
6. Video surveillance showed that Victim's car left Appellant's home nearly an hour after arriving, at 10:06pm, and was followed from behind by Appellant's blue Mustang. Ms. Moore's testimony demonstrated that Appellant was driving Victim's Buick to Morven for the purpose of abandoning it at the carwash. Ms. Moore testified that she was following the Buick at Appellant's reluctant instruction, that she was told to leave her phone at home, and that she never saw Victim that night. (R. p. 342-345);
7. Text message history showed that Appellant texted Victim, "If you don't want the puppy just say that. Don't have me waiting on you. Call me in the morning.", despite the evidence that Victim clearly arrived at Appellant's home that night. (R. p. 349);
8. Ms. Moore testified that after abandoning Victim's car in Morven, Appellant was picked up from the roadside and brought home by Ms. Moore in the Mustang, as was his plan. She further testified that he was home alone upon their return while she helped

his sister, and that after she returned, he was “in and out” a lot that night. She also testified that he was using a burn pile that night. (R. p. 309; State’s Ex. 81).

9. In addition to Appellant’s efforts to abandon Victim’s car in nearby Morven, and his efforts to send what can reasonably be inferred as a fake text to Victim in an attempt to support his lie that Victim had not shown up at his house, SLED was also getting ping data showing that Victim’s cellphone may have been in the Morven area of North Carolina. (R. p. 228);
10. Both Ms. Broadie’s and Ms. Moore’s testimony demonstrated that Ms. Broadie spoke with Appellant the following morning on June 3rd. (R. p. 117-119; p. 153-155; Ex. 81);
11. After receiving that phone call, Appellant had Ms. Moore drive up with him to Morven, collect Victim’s car, crank it with a key, and drive it nearly 50 miles away into Florence County in order to park it tightly behind an abandoned house. Despite her requests, Appellant would not tell Ms. Moore what he was doing or why. (Ex. 81);
12. When questioned for the first time on June 4th by police regarding their missing person’s case, the record evidence demonstrated that Appellant misled police when he denied seeing Victim on June 2nd. (R. p. 303; Ex. 80; et al.);
13. When questioned for the second time on June 7th by police regarding their missing person’s case, the record demonstrated that Appellant again misled the police when he denied seeing Victim on June 2nd. (R. p. 306; p. 327-328; Ex. 80; et al.);
14. Ms. Moore voluntarily chose to cooperate with law enforcement and led them to Victim’s hidden Buick in Florence, thereby corroborating the testimony she provided as to hers and Appellant’s actions over the course of June 2nd and June 3rd. (Ex. 81; p. 314-317).

15. Once in prison, Appellant provided fellow inmate, Fausten Romero, with an offer to disappear a witness along with a copy of his arrest warrant for kidnapping of Victim. Such was provided as proof to Mr. Romero that he is capable of making people disappear and thereby constituted circumstantial evidence of a confession that he is guilty of Victim's murder. (Ex. 81).

All of this evidence strongly supports the conclusion that Victim was last alive at Appellant's residence, and the lies, secrecy, and efforts to dispose of evidence prove that his life was ended by the malicious criminal actions of Appellant. All of which is bolstered by the inferred confession stemming from Appellant's use of his own arrest warrant as credentials for his ability to make another inmate's witness disappear. The trial court was correct to deny Appellant's directed verdict motion as there is in fact substantial circumstantial evidence of guilt. (R. p. 490-498). As the court similarly noted during the post-trial motion hearings, "there was a bunch of it" and the court then summarized the case against Appellant, which included his various efforts of dishonesty in covering up Victim's disappearance. (R. p. 598).

In denying a directed verdict motion "[a] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). There was more than enough evidence available to present the case to the jury, and the jury returned a guilty verdict beyond a reasonable doubt. The ruling of the trial court was correct and Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 26, 2023

RECEIVED**Sep 26 2023****SC Court of Appeals**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael O. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANDRE JUNIOR COVINGTON,

APPELLANT.

Appellate Case No. 2022-000831

CERTIFICATE OF COMPLIANCE

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

This 26th day of September, 2023.

s/ W. Joseph Maye

W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Andre Junior Covington, Appellant.

Appellate Case No. 2022-000831

Appeal From Chesterfield County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2025-UP-024
Heard November 5, 2024 – Filed January 29, 2025

AFFIRMED

Senior Appellate Defender Kathrine Haggard Hudgins
and Appellate Defender Jordan Millen Wayburn, both of
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Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody J. Brown, Assistant
Attorney General William Joseph Maye, all of Columbia
and Solicitor William B. Rogers, Jr., of Bennettsville, for
Respondent.

PER CURIAM: Andre Junior Covington appeals his conviction for murder and sentence of forty-five years' imprisonment. On appeal, he argues the trial court erred in (1) admitting the video deposition of Fausten Bruce Romero, a fellow inmate, and publishing the contents of a letter Romero testified he received from Covington offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice and (2) failing to direct a verdict of acquittal. We affirm.

FACTS

On the evening of June 2, 2019, Terris Parsons (Victim) communicated with Covington via phone calls and text messages, appearing to plan to meet up. Video surveillance recordings indicated Victim drove his car to Covington's house around 9 p.m. At 10:06 p.m., Victim's car left Covington's house; one minute later, Covington's car followed behind it. Video recordings showed the two cars traveling toward Morven, North Carolina. Officers interviewed Covington twice, and during both interviews, Covington denied having contact with Victim on the day of his disappearance.

Lillie Moore, Covington's partner, testified she did not know Victim, did not see him in the house that night, and had never seen his car until she saw it at the house that night.¹ She explained that around 9 p.m. on the night of the incident, Covington reluctantly asked her to follow him in his car while he drove Victim's car. Moore testified Covington led her to a store in Morven, where he told her to drive out of the parking lot and pick him up from the roadside. She explained she did not see where Covington left the car, and she did not know "what was going on." Moore drove them home in Covington's car. The State presented evidence that Covington had burned something in his back yard on the night of Victim's disappearance. Additionally, Moore testified Covington came in and out of the house all night. The next morning, Covington "cleaned the yard" and "dumped whatever [he] cleaned." However, Moore also testified that Covington was acting "normal" and was not acting strange.

The next day, Moore and Covington drove back to Morven in a different car owned by Covington, so Covington could move Victim's car. Covington picked up Victim's car, and Moore followed him to an abandoned house in Florence where

¹ Moore's video testimony was recorded prior to trial and was published to the jury without objection.

they left it; they then drove home in Covington's car. On June 25, Moore led officers to the abandoned house where Victim's "vandalized" car was "being hidden." However, there was no evidence of Victim there. No one has seen or heard from Victim since that night, and Victim's body has not been found.

At trial, Romero's video testimony deposition was published to the jury with redactions that were agreed upon by both parties.² In the deposition, Romero testified he and Covington were housed next to each other in the jail and would communicate often through the jail cell vents. He stated Covington personally passed him an arrest warrant charging Covington with kidnapping Victim, along with a letter.³ Romero explained the arrest warrant for kidnapping (1) stated "something about someone being missing," (2) indicated "the last person that the missing person was with" was Covington, and (3) mentioned Victim by name.⁴ The State read portions of the accompanying letter to the jury. The redacted letter stated:

First, let me tell you how I can help you in a major way.
If they don't have any witnesses they don't have a case.
You follow me. I can make that happen. Trust me. That
can be done while you're out on bond for the State bonds
for the State charge, which, you know, the charge will get
dismissed because there is no one to take the stand
against you. Are you still with me.

Once again, I'm telling you that if you got out, there will
be nobody to take the stand. I can make the witnesses
disappear. They wouldn't have a case because they have
to be able to take the stand. Trust me. I want this paper
back.

At the close of the State's case, Covington moved for a directed verdict. The trial court denied the motion. The jury thereafter found Covington guilty, and the trial court sentenced him to forty-five years' imprisonment.

² Both parties had agreed to take the video deposition of Romero prior to trial and subsequently relieved him of his subpoena. Covington objected to the video but agreed to the redactions based on the court's ruling to admit it.

³ Covington was originally charged with kidnapping Victim. The charge was later dropped.

⁴ The kidnapping arrest warrant was not entered into evidence and was not part of the record on appeal.

ANALYSIS

1. We hold the trial court properly admitted the video deposition of Romero and the letter under Rule 404(b), SCRE. First, we find the trial court properly found the letter, in combination with the arrest warrant and Romero's testimony, was relevant. *See State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) ("As a threshold matter, the trial [court] must initially determine whether the proffered evidence is relevant . . ."); Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Romero testified Covington personally delivered the letter and warrant to him. We hold the letter and arrest warrant, when read together, tend to show Covington had knowledge of, and was potentially involved in, Victim's disappearance because the arrest warrant mentioned Victim by name and stated Covington was the last person known to have contact with him.

Next, we find the combination of the letter along with the arrest warrant was probative of Covington's identity as the perpetrator of the crime against Victim under Rule 404(b). *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."); *id.* ("It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000) ("The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused."). Romero testified Covington passed him the arrest warrant, which charged Covington with kidnapping Victim, along with the letter. The warrant stated Covington was the last person to be with Victim on the night of his disappearance. Further, the letter stated Covington could make people "disappear."

Finally, we find the letter's probative value is not substantially outweighed by the danger of unfair prejudice to Covington. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."); *Brooks*, 341 S.C. at 62, 533 S.E.2d at 328 (stating evidence "must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant"). The combined letter and arrest warrant were highly probative circumstantial evidence because Covington impliedly identified himself as Victim's killer by suggesting that he made Victim disappear; this was an allowable inference for the jury to make. *See State v. Bright*, 323 S.C. 221, 226, 473 S.E.2d 851, 854 (Ct. App. 1996)

("Unfair prejudice from the introduction of evidence occurs when it has an undue tendency to induce a decision on an improper basis."). Accordingly, we hold the trial court did not err in admitting Romero's video deposition.

2. We hold the trial court did not err in failing to direct a verdict. When viewing the evidence in the light most favorable to the State, we find there was substantial circumstantial evidence that reasonably tended to prove Covington murdered Victim. *See State v. Rogers*, 405 S.C. 554, 562, 748 S.E.2d 265, 270 (Ct. App. 2013) ("In reviewing a denial of a directed verdict, we must view the evidence in the light most favorable to the State."); *State v. Bailey*, 368 S.C. 39, 44-45, 626 S.E.2d 898, 901 (Ct. App. 2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight."); *Rogers*, 405 S.C. at 562, 748 S.E.2d at 270 ("If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, we must find the trial court properly submitted the case to the jury."). The State presented evidence that (1) Victim drove to Covington's house; (2) Victim's last known location was Covington's house; (3) Covington denied seeing Victim that night, yet hid Victim's car; and (4) Victim has never been seen or heard from again. *See* S.C. Code Ann. § 6-3-10 (2015) ("'Murder' is the killing of any person with malice aforethought, either express or implied."); *State v. Weston*, 367 S.C. 279, 293, 625 S.E.2d 641, 648 (2006) ("In a murder case, the corpus delicti consists of two elements: the death of a human being, and the criminal act of another in causing that death."); *State v. Gallman*, 79 S.C. 229, 60 S.E. 682, 686 (1908) (explaining malice is "a wicked condition of the heart" and "a performed purpose to do a wrongful act, without sufficient legal provocation"); *Arnold v. State*, 309 S.C. 157, 169, 420 S.E.2d 834, 841 (1992) (stating one indicator of malice is to attempt to mislead police as to who committed the crime). Thus, the trial court did not err in denying Covington's motion for directed verdict on this charge.

AFFIRMED.

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

Feb 13 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Michael G. Nettles, Circuit Court Judge

Opinion No. 2025-UP-024
Filed January 29, 2025

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

ANDRE JUNIOR COVINGTON,

PETITIONER

APPELLATE CASE NO. 2022-000831

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Andre Junior Covington, respectfully request this Court grant rehearing. On January 29, 2025, this Court affirmed the conviction for murder. *State v. Andre Covington*, No. 2025-UP-024 (S.C. Ct. App. filed January 29, 2025). As to issue one, this Court found the trial court properly admitted a video deposition of Romero, a jailhouse snitch, and the contents of a letter Romero claimed he received from Petitioner offering to make a witness disappear. This Court found the letter and an accompanying arrest warrant for kidnapping were probative of Petitioner's identity in the murder pursuant to Rule

404(b), SCRE. Additionally, this Court found the probative value of the letter was not substantially outweighed by the danger of unfair prejudice, pursuant to Rule 403, SCRE.

First, counsel respectfully submit this Court misapprehended the facts and law in concluding that for purposes of a Rule 404(b) analysis there was a logical connection between the letter to Romero purporting the ability to make a witness disappear and the murder of Parsons. Respectfully, the attempt to establish the required logical connection to the murder by linking the letter to the arrest warrant for kidnapping is a step too far for purposes of admission pursuant to 404(b) because it depends on multiple improbable inferences. Second, counsel respectfully submit that in the Rule 403 analysis this Court overlooked the severe propensity prejudice of a letter offering to make entirely unrelated witnesses disappear in a murder case about a missing person.

As to issue two, this Court held the trial court did not err in failing to direct a verdict of acquittal. Counsel respectfully submit this Court overlooked the fact the State failed to present evidence of violence or other means of death used upon Parsons. Counsel respectfully submit this Court misapprehended the circumstantial evidence presented by the State as substantial because the evidence presented was not sufficient to prove murder in particular. Counsel respectfully seek rehearing on both issues.

1. Rule 404(b), SCRE

In June of 2019, Terris Parsons disappeared, and he has not been seen or heard from since. A body was never found. Petitioner was charged with kidnapping Parsons on November 26, 2019. (R. p. 446, line 25 – p. 447, lines 1-12). At this time Petitioner was detained at the Marlboro County Detention Center. (R. p. 437, lines 2-9). On March 18, 2020, Captain Wayne Jordan interviewed Bruce Romero, who was also detained at the Marlboro County Detention Center. (R. p. 438, line 17 – p. 439, lines 1-18). Romero gave Captain Jordan a letter he claimed was from

Petitioner. (R. p. 439, lines 19-23). A video deposition of Romero was played at trial and is included in State's Exhibit #81. (R. p. 461, line 11 -p. 462, lines 1-12). Trial counsel objected to the content of the Romero deposition and reference to the letter based on Rule 404(b) and 403, SCRE. (R. pp. 71-83). The judge overruled the objection stating:

With regard to the letter, I am gonna allow the redacted -- we've had discussions in chambers about that and we're gonna allow the redacted version of it to be published before the jury. And the reason for that is I specifically find that the prejudicial value does not over -- override the probative value with regard to this particular piece of evidence. And when you look at all of the evidence, and the fact that there was a warrant and the letter, it's probative with regard to identity and that's the reason why I'm admitting it.

(R. p. 210, lines 1-10). The trial judge erred in admitting the testimony and the contents of the letter because the evidence does not meet the identity exception or any other exception of Rule 404(b).

In the video deposition Romero claimed that while they were in jail Petitioner gave him a copy of his kidnapping arrest warrant and a letter. (*See* State's Exhibit #81). Romero stated he believed the letter could help him with the serious charges he was facing. (*See* State's Exhibit #81). At trial the prosecutor read the purported letter to the jury stating:

First, let me tell you how I can help you in a major way. If they don't have any witnesses they don't have a case. You follow me. I can make that happen. Trust me. That can be done while you're out on bond for the State bonds for the State charge, which, you know, the charge will get dismissed because there is no one to take the stand against you. Are you still with me.

Once again, I'm telling you that if I get out, there will be nobody to take the stand. I can make witnesses disappear. They wouldn't have a case because they have to be able to take the stand. Trust me. I want this paper back.

(R. p. 462, line 18 -- p. 463, lines 1-4). Romero claimed on the video deposition that Petitioner wanted Romero to give him one thousand dollars so he could hire a lawyer and obtain a bond. (*See* State's Exhibit #81).

In finding no error in the admission of the Romero testimony and letter, this Court first found the evidence was relevant. Then this Court wrote:

Next, we find the combination of the letter along with the arrest warrant was probative of Covington's identity as the perpetrator of the crime against Victim under Rule 404(b). *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."); *id.* ("It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000) ("The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused."). Romero testified Covington passed him the arrest warrant, which charged Covington with kidnapping Victim, along with the letter. The warrant stated Covington was the last person to be with Victim on the night of his disappearance. Further, the letter stated Covington could make people "disappear."

Covington, No. 2025-UP-024, at 4.

Rule 404(b) of the South Carolina Rules of Evidence provides, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Petitioner's purported claim that he could make a witness disappear in order to convince Romero to give him money is evidence of other crimes, wrongs, or acts pursuant to the rule. The Romero evidence serves no legitimate purpose and fails to meet an exception to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Considering Romero's express recognition of bias (believing the letter could help him), the evidence also does not meet the clear and convincing standard required by *State v. Smith*, 300 S.C. 216, 387 S.E.2d 245 (1989). The Romero evidence should have been excluded.

In *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), the South Carolina Supreme Court confirmed the logical connection test for the admission of evidence pursuant to Rule 404(b), SCRE, established in *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). In *Perry* the Court wrote:

Historically, to justify a finding that evidence of other crimes, wrongs, or acts is offered for a legitimate purpose, and thus should not be excluded pursuant to Rule 404(b), South Carolina courts have required a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged. *See, e.g.*, *Gaines*, 380 S.C. at 29, 667 S.E.2d at 731 ("To be admissible, the bad act must logically relate to the crime with which the defendant has been charged."); *State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327-28 (2000) ("If the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected." (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807)).

430 S.C. at 31, 842 S.E.2d at 658.

The trial court erred in finding the letter was probative of identity. Evidence Petitioner tried to con Romero into giving him money by claiming he could make a witness disappear has no logical relevance or connection to some disputed fact or element in the murder of Parsons. There is no allegation Parsons was murdered to prevent him from testifying against someone in a trial. That evidence is entirely disconnected from the alleged murder. It is unlike the evidence of other forgeries in Lyle that were logically relevant to the forgery with which he was charged because that evidence placed the defendant near the scene of the crime and defeated his alibi defense. The Romero evidence fails to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. The State failed to demonstrate that the Romero evidence served some purpose other than using Petitioner's character to show his propensity to commit the crime charged.

Counsel respectfully submit this Court overlooked the following language from *Perry* quoting *State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327-28 (2000), and in turn quoting *Lyle*:

"If the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected." 430 S.C. at 31, 842 S.E.2d at 658. There is no "clearly perceived" logical connection between the letter to Romero purporting the ability to make a witness disappear and the murder of Parsons. Respectfully, the attempt to establish the required logical connection by linking the offer letter to the alleged murder through an arrest warrant for kidnapping is a step too far for purposes of admission pursuant to 404(b). In particular, it goes too far because the purported connection is the bare allegation in a warrant for a different crime. The connection here is not clearly perceived and requires an inference that the letter is something more than an attempt to con Romero. If that theory represents *some* logical connection, it is an unreasonable one and therefore does not satisfy Rule 404. *See State v. Wallace*, 440 S.C. 537, 543, 892 S.E.2d 310, 313 (2023) ("[A]n . . . 'unreasonable' ruling clearly is outside of a court's discretion . . ."). Petitioner should have been given the benefit of the doubt and the testimony and letter excluded.

2. Rule 403

In addressing the Rule 403 analysis this Court wrote:

Finally, we find the letter's probative value is not substantially outweighed by the danger of unfair prejudice to Covington. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"); *Brooks*, 341 S.C. at 62, 533 S.E.2d at 328 (stating evidence "must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant"). The combined letter and arrest warrant were highly probative circumstantial evidence because Covington impliedly identified himself as Victim's killer by suggesting that he made Victim disappear; this was an allowable inference for the jury to make. *See State v. Bright*, 323 S.C. 221, 226, 473 S.E.2d 851, 854 (Ct. App. 1996) ("Unfair prejudice from the introduction of evidence occurs when it has an undue tendency to induce a decision on an improper basis."). Accordingly, we hold the trial court did not err in admitting Romero's video deposition.

Covington, No. 2025-UP-024, at 4-5.

Counsel respectfully submit the key part in this analysis that has been missed is that the trial court admitted evidence on three separate points: Romero's description of the exchange, the contents of the arrest warrant, and the contents of the letter. It is the contents of the letter to which Petitioner most strenuously objects, and it must be considered separately from the exchange and warrant. Even if the evidence was admissible under the threshold inquiry of Rule 404, the evidence should still have been barred by Rule 403. *See State v. Clasby*, 385 S.C. 148, 155–56, 682 S.E.2d 892, 896 (2009) (citation omitted) ("Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.").

Although through a string of inferences the jury might conclude Petitioner admitted to making Parsons disappear, the probative force of that conclusion is diminished by its unlikelihood and does not outweigh the severe prejudice from the letter. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."). This is because of the tenuous link between that direct evidence of another crime or wrong and the purported non-propensity purpose of the letter in conjunction with the warrant. The joint letter-and-warrant evidence might serve a legitimate purpose only under narrow circumstances: if the jury infers Petitioner's alleged conduct constituted an admission to making Parsons disappear. That inference depends on the jury (1) believing Romero's testimony, (2) believing Petitioner was admitting to the acts described in the kidnapping warrant rather than using a tool at his disposal to manipulate Romero, and (3) concluding that if Petitioner admitted to kidnapping Parsons he therefore also murdered him. That is a weak train of logic and severely diminishes the probative value of the evidence. *See* 16 Corpus Juris, *Criminal Law* § 1165, at 601

(1918) (explaining evidence of other crimes is admissible in a homicide case when "the two offenses are so inseparably connected that proof of one necessarily involves proving the other").

More importantly for Rule 403 purposes, the trial court entirely failed to consider the prejudicial effect of the letter and its "inherent tendency" to lead the jury to the spurious assumption that because Petitioner offered to make someone disappear at another point in time, he in fact made Parsons disappear here. *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). The jury was allowed to hear Petitioner—on some other occasion *after the alleged crime*—offered to make witnesses disappear: "If they don't have any witnesses they don't have a case. You follow me. I can make that happen. Trust me." That evidence has absolutely nothing to do with the disappearance of Parsons. Nonetheless, given the marked similarity to the crime charged, "Its effect is to predispose the mind of the juror to believe the prisoner guilty." *Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020) (quoting *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923)). That "inevitable tendency" is why the evidence should have been excluded where the alleged confession is not to the crime for which Petitioner was on trial. *Perry*, 430 S.C. at 30, 842 S.E.2d at 657 (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807); *Lyle*, 125 S.C. 406, 118 S.E. at 809 (quoting *Shaffner v. Commonwealth*, 72 Pa. 60, 65 (1872)) (explaining the rule exists in part because it is "unjust to the prisoner to compel him to acquit himself of two offenses instead of one").

The prejudicial effect of the letter was substantial for two reasons. First is the inevitable and improper power of propensity evidence. Informing the jury Petitioner offered to make unrelated people disappear in a disappearance case is extremely and unfairly prejudicial. Critically, that prejudicial effect exists *even if the jury does not make the purportedly legitimate inferences*. Even if the jury concluded Petitioner was just blustering to Romero in waving around his kidnapping warrant, it still heard he offered to commit "another crime equally heinous" which

"prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty." *Perry*, 430 S.C. at 30, 842 S.E.2d at 657 (quoting *Lyle*, 125 S.C. at 416, 118 S.E. at 807). This is critical. Evidence is admissible under Rule 404 on the theory that it serves "dual purposes"—the legitimate logical connection and the illegitimate propensity tendency—and the proper benefits outweigh the improper harms. *Perry*, 430 S.C. at 31, 842 S.E.2d at 657. But here there was a very substantial risk the jury would perceive no legitimate benefit even while the improper harm remained, and thus the trial court exceeded its discretion and committed an error of law.

Further, had the jury believed Petitioner actually admitted to kidnapping Parsons, the evidence that he can make witnesses disappear—implicitly permanently—is still improper propensity evidence that would illegitimately encourage and allow the jury to leap from kidnapping to murder without connection to the crime charged. Therefore, regardless of what the jury thought of the state's purported connection, Petitioner was always going to be saddled with a jury tainted by propensity evidence and allowed to infer his other, unrelated wrong meant he is guilty of the murder of Parsons. That is why the trial court erred as a matter of law under Rule 403—because the jury was presented with propensity evidence even if it disregarded the purported legitimate purpose *and* because that propensity function impermissibly and inherently allowed the jury to conclude he committed murder based on an admission of only an offer of an unrelated crime.

3. Directed Verdict

In affirming the denial of the directed verdict motion this Court wrote:

We hold the trial court did not err in failing to direct a verdict. When viewing the evidence in the light most favorable to the State, we find there was substantial circumstantial evidence that reasonably tended to prove Covington murdered Victim. *See State v. Rogers*, 405 S.C. 554, 562, 748 S.E.2d 265, 270 (Ct. App. 2013) ("In reviewing a denial of a directed verdict, we must view the evidence in the light most favorable to the State."); *State v. Bailey*, 368 S.C. 39, 44-45, 626

S.E.2d 898, 901 (Ct. App. 2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight."); *Rogers*, 405 S.C. at 562, 748 S.E.2d at 270 ("If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, we must find the trial court properly submitted the case to the jury."). The State presented evidence that (1) Victim drove to Covington's house; (2) Victim's last known location was Covington's house; (3) Covington denied seeing Victim that night, yet hid Victim's car; and (4) Victim has never been seen or heard from again. *See* S.C. Code Ann. § 6-3-10 (2015) ("Murder" is the killing of any person with malice aforethought, either express or implied."); *State v. Weston*, 367 S.C. 279, 293, 625 S.E.2d 641, 648 (2006) ("In a murder case, the corpus delicti consists of two elements: the death of a human being, and the criminal act of another in causing that death."); *State v. Gallman*, 79 S.C. 229, 60 S.E. 682, 686 (1908) (explaining malice is "a wicked condition of the heart" and "a performed purpose to do a wrongful act, without sufficient legal provocation"); *Arnold v. State*, 309 S.C. 157, 169, 420 S.E.2d 834, 841 (1992) (stating one indicator of malice is to attempt to mislead police as to who committed the crime). Thus, the trial court did not err in denying Covington's motion for directed verdict on this charge.

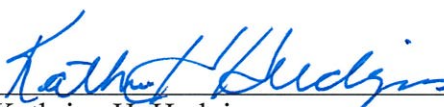
Covington, No. 2025-UP-024, at 5.

Respectfully, the Court's opinion overlooks the lack of evidence of violence. *See State v. Martin*, 47 S.C. 67, 25 S.E. 113, 115 (1896) ("The corpus delicti, in a case of murder, consists of two elements,—the death of a human being, and the criminal act of another in causing that death."). In every other "no body" murder case there has been clear evidence of violence satisfying the "criminal act of another" element of the corpus delicti. *State v. Owens*, 293 S.C. 161, 164, 359 S.E.2d 275, 276 (1987) (human blood stains); *State v. Weston*, 367 S.C. 279, 295, 625 S.E.2d 641, 649 (2006) (blood stains in the defendant's car); *State v. Lynch*, 412 S.C. 156, 168, 771 S.E.2d 346, 352 (Ct. App. 2015) (blood found all over the apartment defendant shared with victims). This case is different. Despite law enforcement officers searching Petitioner's cars, Parsons's car, and Petitioner's house and yard, they found no physical evidence Parson was ever even there, let alone murdered. There were no fingerprints, no DNA, no blood, and no indications of violence anywhere related to Petitioner. That cannot be "substantial circumstantial evidence" that Petitioner committed murder. *See State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004) (citations

omitted) ("The trial court has a duty to submit the case to the jury where the evidence is circumstantial if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced."). The "criminal act" element is central to the requirement that the state prove malice—yet here, there is no evidence of a disagreement or anger between Petitioner and Parsons and no evidence of a murder weapon.

With all due respect, the evidence on which the Court relied to find the trial court properly denied a directed verdict was not evidence of murder but, at most, evidence of different crimes. While it is suspicious that Petitioner drove Parsons car to another location, that is evidence of car theft not murder. Nor is lying to police evidence *of a killing*. That detail is the key. Petitioner's conduct identified in the opinion might reasonably rouse suspicion that he is guilty of something, but it is too distant and removed from the specific crime of murder. Further, if Parsons was in fact killed, there is not substantial evidence linking Petitioner to that killing.

Counsel respectfully seek rehearing, a grant of relief, and either a remand with instructions to enter a directed verdict in favor of Petitioner or for a new trial.



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ATTORNEYS FOR PETITIONER

This 13th day of February, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Michael G. Nettles, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

ANDRE JUNIOR COVINGTON,

PETITIONER

APPELLATE CASE NO. 2022-000831

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Andre Junior Covington, #185408, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 13th day of February, 2025.



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ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

The State, Respondent,

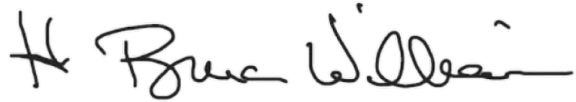
v.

Andre Junior Covington, Appellant.

Appellate Case No. 2022-000831

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

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Melody Jane Brown, Esquire

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Jordan Millen Wayburn, Esquire

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William Benjamin Rogers, Jr., Esquire
The Honorable Michael G. Nettles

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