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**May 19 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CRAIG LAMAR EDWARDS,

APPELLANT.

APPELLATE CASE NO. 2024-000821

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INITIAL BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE .....2

STATEMENT OF THE FACTS .....3

STANDARD OF REVIEW .....11

ARGUMENT

**I. The trial court erred under Rule 404, SCRE, by allowing testimony Edwards previously sold crack cocaine years before the shooting .....12**

**II. Branham's testimony the gun was stolen was hearsay not admissible under any exception .....16**

**III. The trial court made an impermissible comment on the facts by instructing that increasing speed "may be considered by you as evidence of failure to stop for a blue light." .....18**

CONCLUSION.....21

**TABLE OF AUTHORITIES**

**South Carolina Cases**

*City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53 (2011)..... 11, 19

*Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133 (1946) ..... 19

*Pantovich v. State*, 427 S.C. 555, 832 S.E.2d 596 (2019) ..... 20

*Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009) ..... 20

*State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) ..... 19, 20

*State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017)..... 17

*State v. Brockmeyer*, 406 S.C. 324, 751 S.E.2d 645 (2013) ..... 17

*State v. Brooks*, 341 S.C. 57, 533 S.E.2d 325 (2000) ..... 13, 15

*State v. Brown*, 443 S.C. 196, 904 S.E.2d 448 (2024)..... 18, 20

*State v. Bryant*, 369 S.C. 511, 633 S.E.2d 152 (2006)..... 15

*State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019)..... 19, 20

*State v. Cheeks*, 401 S.C. 322, 737 S.E.2d 480 (2013)..... 19, 20

*State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984) ..... 18

*State v. Grant*, 275 S.C. 404, 272 S.E.2d 169 (1980)..... 20

*State v. Huckabee*, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010)..... 20

*State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000)..... 20

*State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999)..... 15

*State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)..... 12, 13, 14, 16

*State v. Orr*, 128 S.C. 279, 122 S.E. 771 (1924) ..... 20

*State v. Owens*, 427 S.C. 325, 831 S.E.2d 126 (Ct. App. 2019), *aff'd*, 433 S.C. 482 S.E.2d 357  
(2021)..... 20

*State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993) ..... 15

*State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020) ..... 12, 13, 14, 16

*State v. Rivers*, 273 S.C. 75, 254 S.E.2d 299 (1979) ..... 14

*State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001)..... 11

*State v. Simmons*, 423 S.C. 552, 816 S.E.2d 566 (2018) ..... 18

*State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020) ..... 20

*State v. Spears*, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013) ..... 15

*State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016) ..... 20

*State v. Swafford*, 375 S.C. 637, 654 S.E.2d 297 (Ct. App. 2007) ..... 11

*State v. Thompson*, 420 S.C. 386, 803 S.E.2d 44 (Ct. App. 2017) ..... 14

*State v. Witherspoon*, 418 S.C. 641, 795 S.E.2d 685 (2016)..... 20

**Other Jurisdictions**

*Andrews v. Commonwealth*, 699 S.E.2d 237 (Va. 2010)..... 17

*Ingmire v. State*, 215 So. 3d 592 (Ala. Crim. App. 2016) ..... 18

*State v. McGee*, 131 N.J. Super. 292, 329 A.2d 581 (App. Div. 1974) ..... 17

*State v. Sneed*, 709 S.E.2d 455 (N.C. App. 2011) ..... 17

*State v. Stewart*, 327 P.3d 595 (Utah 2014)..... 17, 19, 20

*State v. Underwood*, 286 N.J. Super. 129, 668 A.2d 447 (App. Div. 1995)..... 17

*United States v. Johnson*, 413 F.2d 1396 (5th Cir. 1969)..... 17

*Vlietstra v. State*, 800 N.E.2d 972 (Ind. Ct. App. 2003)..... 17

*Wiley v. Com.*, 348 S.W.3d 570 (Ky. 2010)..... 17

**Other Authorities**

16 Corpus Juris, *Criminal Law* § 1132, at 586 (1918)..... 13

**Rules**

Rule 403, SCRE ..... 15

Rule 404, SCRE ..... 8, 12, 14

Rule 801, SCRE ..... 17

**Constitutional Provisions**

S.C. Const. art. V, § 21 ..... 18, 19

## STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by allowing the solicitor to elicit testimony Appellant previously sold crack cocaine years previously where there was no connection between the prior drug dealing and alleged crimes?
2. Was a law enforcement officer's testimony that a gun was reported stolen based on the NCIC database inadmissible hearsay?
3. Did the trial court impermissibly comment on the facts by instructing the jury that "[a]n attempt to increase the speed of a vehicle . . . when signaled by a siren or flashing light may be considered by you as evidence of failure to stop for a blue light"?

## STATEMENT OF THE CASE

Appellant Craig Edwards was indicted by the Richland County grand jury in September 2020 on the following charges: the murder of Michael Booker, possession of a weapon during the commission of a violent crime, second offense failure to stop for a blue light, possession of a stolen pistol, and kidnapping Carlo Yarborough. Tr. 18:18-25; R. p. \*. He went to trial before Judge Robert Hood and a jury from April 8–12, 2024. Tr. 1. He was represented by Alicia Goode, Nathaniel Brady, and McKenzie Thomas. Tr. 1. Christopher Dale Scott and Nichols Fowler prosecuted the case for the state. Tr. 1.

At the close of the state's case, the trial court entered a directed verdict on behalf of Edwards on the stolen pistol charge. Tr. 416:1-8. The jury found Edwards guilty of voluntary manslaughter, possession of a weapon during the commission of a crime of violence, and failing to stop for a blue light. Tr. 772:15-773:3. It acquitted him of murder and kidnapping Yarborough. Tr. 772:12-20. The trial court sentenced him to thirty years in prison for manslaughter and five years each for the weapon and failure to stop charges, all to run consecutively. Tr. 792:8-15.

Following sentencing, Edwards filed a Motion for a New Trial and Motion to Vacate Conviction and Sentence. R. p. \*. The trial court denied the motion by written order dated May 8, 2024. R. p. \*.

This appeal follows.

## STATEMENT OF THE FACTS

On Monday, February 3, 2020, Appellant Craig Edwards went with his girlfriend, Carlo Yarborough, to the Pull-A-Part off Monticello Road in Columbia. Tr. 145:1-14. Edwards is a car mechanic, and they were meeting Michael Booker and Chris Martin at the Pull-A-Part. Tr. 144:1-145:17. Martin bought and sold used cars, and he would pay Edwards and Booker to help fix them up. Tr. 234:18-235:7. They met to buy a car part for a repair they were going to work on that day. Tr. 226:11:21. Booker and Edwards were friends. Tr. 473:6-13.

Yarborough testified she drove to the Pull-A-Part and Edwards was inside with Martin and Booker between thirty and forty-five minutes. Tr. 144:20-25, 145:18-146:3. When Edwards returned to the car, Yarborough saw "he was upset" because "him and [Booker] exchanged some words while they were on the inside." Tr. 146:19-24. She then drove him to Martin's house on Rose Drive. Tr. 147:5-13. When they arrived, she did not see anyone. Tr. 147:17-23. Martin had driven Booker to Rose Drive but then left to buy beer at the store. Tr. 227:14-25.

Edwards exited the car and went to the trunk as he "yelled for" Booker to help with the tools. Tr. 150:8-21, 176:20-23. Booker then came around the house from the backyard, and Yarborough heard him say, "[Edwards], go ahead. I got something. You know, I ain't got time for this." Tr. 151:1-10. She also heard him saying, "[Edwards], don't start that shit today." 179:2-4. She continued: "I just saw Mike [Booker] walking out [of the backyard]. When I looked up, Mike's hand was up in the air, and then I just hear the shots ring out, and I saw him fall to the ground." Tr. 153:1-3, 178:21-23. Booker was "within about three feet" of Edwards and yelling at him, holding a table leg in his hand.<sup>1</sup> Tr. 188:1-16. Yarborough did not see

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<sup>1</sup> Apparently, the men used the table leg to prop up car hoods if the vehicle did not have the original attached support bars. Tr. 224:9-23, 233:1-22.

Edwards point the gun at Booker; she only heard the shots. Tr. 154:5-10. She testified she saw a gun in Edwards's waistband as he exited the car, which was unusual for him. Tr. 154:11-155:4.

Edwards testified in his defense. As Yarborough explained, on the morning of February 3, Edwards met Booker and Martin at the Pull-A-Part on Monticello Road. Tr. 489:5-491:9. He had been working with Martin for the past six months. Tr. 482:3-13. While there he saw Booker speaking with a man named "Byron"—no last name was given—whom he knew sold Booker various drugs in the past. Tr. 491:21-492:12, 546:20-547:3. Edwards had previously seen Booker smoke crack on several occasions, and he wanted his friend to quit using drugs. Tr. 477:4-478:5. At the Pull-A-Part, Edwards "voiced [his] opinion" that Booker should not be using crack or buying drugs. Tr. 492:14-16. Booker responded aggressively and told him to "mind your business." Tr. 546:13-547:25.

After they bought the part they needed, Booker and Martin left together for Rose Drive, and Edwards left with Yarborough. Tr. 493:5-16, 495:4-24. Yarborough drove, and when they arrived, Edwards called out for Booker to find out what tools they would need for their work that day. Tr. 496:16-497:10. Booker did not respond at first, but then Edwards heard, "what the hell, don't bring that shit down here." Tr. 499:13-22. Edwards was standing at the rear of the car looking in the trunk for tools when he saw Booker coming around the house from the backyard. Tr. 500:1-20. The night before, Booker had left his tool bags in Yarborough's car. Tr. 487:1-15. While looking through the tool bags, Edwards saw a gun in the trunk he had never seen before. Tr. 500:19-501:4. Based on the fact Booker's DNA was found on the gun—and specifically the trigger—it was apparently Booker's gun. Tr. 343:4-21.

As Edwards stood at the back of the car, Booker continued approaching:

I looked over my shoulder and I seen him coming down, and he said I told you don't bring that fucking shit down here. And I was,

like, what are you talking about? And I turned back and I was still looking at this gun, and I'm, like, what the fuck? And excuse my language. And he's still coming and he's coming, so I'm looking --

Q: The -- well, let me ask is -- is he walking fast?

A: He's walking fast. He's walking. Well, he's not running, but he's walking kind of fast. He was walking fast towards me. I can't see really him [sic] because of the car is in the middle of me and him.

So I don't really see what's going on, but when he came from behind the green Honda, he raised his hand up. He said I told you not to bring this shit. And when I looked, I didn't know what it was. He raised his hand up like this, and I seen something in his hand.

Q: And you --

A: I panicked.

Tr. 501:6-23. Edwards did not say anything else to Booker, he was just scared and panicked because Booker was being very aggressive. Tr. 501:24-502:8. In all the time he had known Booker, they had not been violent with each other, so this surprised him. Tr. 502:4-15. Booker had, however, recently been aggressive with other people over money. Tr. 502:16-25. Edwards testified, "I'm confused because I never did nothing to him. Me and him didn't -- hadn't even had an argument or -- or a debate about really too much of anything for [Booker] to come this way I never seen towards me before." Tr. 503:9-12. So, when Booker raised his arm up with something in his hand, Edwards grabbed the gun out of the trunk. Tr. 503:13-15. Edwards could not tell what Booker was holding, but he thought it "was an old shotgun or something."<sup>2</sup> Tr. 503:16-20, 578:1-9. Then Edwards shot Booker. Tr. 504:10-505:2. He did not know how many times he fired or where on booker's body he shot first—"It happened too fast." Tr. 505:3-7. He fired until the magazine ran out. Tr. 505:9-21. Edwards testified he still does not understand

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<sup>2</sup> Edwards needs glasses but did not have them at the time. Tr. 523:16-25.

what happened or why Booker was so aggressive. Tr. 508:14-509:7. However, he was clear he felt like Booker was going to kill him. Tr. 509:8-12. Edwards also described an event a couple weeks before where he was called to a customer's house where Booker was violently arguing and "swinging" at another person while carrying a gun. Tr. 478:17-479:18.

Edwards recognized that after he shot he "wasn't even thinking straight." Tr. 505:22-25. He attempted to start Yarborough's car but it did not work, and then he pulled Yarborough across the street to an SUV they were working on because he thought the keys were left in it. Tr. 507:6-18. He put Yarborough in the back seat (the alleged kidnapping), but then the driver's door was locked. Tr. 507:12-19. He was panicked, confused, and trying to leave. Tr. 508:11-22. This behavior was the result of sheer panic because he wanted to leave and he wanted her to come with him. Tr. 509:13-510:3. When Edwards noticed a green Honda in the front yard was running, he took the car and left to go home. Tr. 511:3-512:6.

When the shooting occurred Martin's neighbor, John Wannamaker, called 911. Tr. 217:21-218:19. Columbia police officer Kevin Davis testified he was on patrol when he received an alert to look out for a green Honda. Tr. 271:8-272:7. He saw such a car and began following it. Tr. 272:22-273:10. When other officers began to follow as well, he turned on his blue lights and Edwards accelerated. Tr. 276:2-13. Edwards admitted he did not stop for the blue lights because he knew he had the gun next to him and he did not know how it would look. Tr. 514:15-22. Davis followed Edwards on a high-speed chase for less than five minutes, all of which was captured on his dashcam, which was and introduced at trial as State's Exhibit 48 and is on file with this Court.<sup>3</sup> Tr. 279:2-15. It was published for the jury. Tr. 279:16-282:14.

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<sup>3</sup> Davis also had a bodycam active at the time, and that recording was introduced as State's Exhibit 49, which is also on file with this Court. Tr. 282:21-283:24. Court's Exhibit 8 is Officer Niscia's bodycam, and it is on file with this Court. Tr. 89:11-15.

During the chase, Davis saw Edwards make a "throwing-like motion" out the window. Tr. 277:13-19. Edwards then slowed down and came to a stop on Northwood Street. Tr. 277:16-19. Edwards exited the car and followed the officers' orders to lay on the ground. Tr. 296:14-297:13, 516:1-8; State's Ex. 48, 49. He was immediately arrested. Tr. 281:1-2.

The throwing motion was when Edwards threw the gun out of the vehicle because he thought it would be better to surrender without a weapon. Tr. 515:10-24. Davis and other officers later searched the area and recovered it from a bush. Tr. 288:12-289:11, 302:13-303:12. Both Edwards's and Booker's DNA were found on the trigger of the gun. Tr. 343:4-21. Firearms expert SLED Agent Paul Greer testified the casings found at Rose Drive were all fired by the gun found in the bush. Tr. 354:9-12, 355:22-25, 360:17-25. He testified cartridges eject from firearms in no particular direction. Tr. 364:17-365:17.

After putting him in handcuffs, the officers tried to pull Edwards up off the ground. State's Ex. 49; Court's Ex. 8. This appears to hurt Edwards, and so he starts yelling, asking for the officers to wait a moment. Court's Ex. 8, at 1:00. In his attempt to convince them to wait, he says, "I was in the hospital last night. I was on a drug called PCP." Court's Ex. 8, at 1:15. Davis testified Edwards said this, although the jury did not itself hear the recording. Tr. 284:9-16. At trial Edwards admitted to yelling out he had been in the hospital all night and was on PCP the night before. Tr. 516:9-13. Edwards testified he had not actually used PCP but just started yelling out of panic because he "still wasn't thinking straight" at the time. Tr. 516:14-517:5, 548:7-19.

Forensic pathologist Darren Monroe performed an autopsy on Booker. Tr. 373:23-25. He testified Booker was five foot, ten inches tall and weighed 155 pounds. Tr. 375:2-5. Monroe was generally unable to determine the paths the bullets took through the body. Tr. 381:11-18.

He recovered seven projectiles from the body. Tr. 387:18-18-22. In Monroe's opinion, all of the gunshots occurred while Booker was alive. Tr. 3976:17-21. Monroe agreed an entry wound to Booker's inside arm could indicate he had his arm raised toward the gun. Tr. 401:18-402:8. Based on a toxicology report, Booker had cocaine and a "cocaine metabolite" in his blood at the time of his death. Tr. 393:22-394:4. According to Monroe the presence of actual cocaine, as opposed to solely metabolites, indicated Booker was still under the effects of the drug when he was alive. Tr. 402:15-403:1.

Jonathan Haynes testified on Edwards's behalf. Tr. 438:10. Edwards is "like a son" to him, and he also knew Booker prior to the events. Tr. 438:14-439:6. He testified Booker lived in a house in his backyard for several months in 2019. Tr. 439:2-9. Edwards lived with Haynes at the time in the "front house." Tr. 450:6-451:11. Haynes testified that on one occasion three months prior to the events, Booker started "approaching me like he was coming to fight," after Haynes tried to enforce his expectations for Booker living there. Tr. 440:14-441:6. Booker was "walking up with . . . his fists balled up." Tr. 446:8-10. Haynes told Edwards about the events, and then they forced Booker to leave. Tr. 441:17-25. Edwards had the conversation to force Booker to leave. Tr. 442:1-12. Haynes also testified Booker "smoked crack, and he drank a lot." Tr. 442:13-17. The drinking "would make him angrier . . . like he was going to jump me." Tr. 4421:21-25.

At the start of the state's cross-examination of Edwards, the solicitor accused him of smoking crack cocaine with Booker. Tr. 524:14-25. Edwards denied ever smoking crack, to which the solicitor asked about his "involvement" with the drug. Tr. 525:1-10. Edwards admitted to previously selling crack and again denied ever smoking it. Tr. 525:11-12. The solicitor again started to ask about selling crack, and Edwards objected under Rule 404, SCRE.

Tr. 525:13-20. The trial court overruled the objection without explanation. Tr. 525:21. The solicitor then extensively questioned Edwards about his history of selling crack and his efforts to help Booker quit smoking. Tr. 525:23-527:12. He repeatedly accused Edwards of smoking crack and forced him to admit to selling crack multiple times. Tr. 526:2-527:7. Edwards testified clearly that he only previously sold crack—he was not selling drugs at the time of the shooting.<sup>4</sup> Tr. 526:2-4. At the start of its closing, the state emphasized, "He said he himself was a crack dealer. . . . He's a crack dealer." Tr. 667:15-24. It also baselessly speculated about a motive that Edwards "takes issue with Michael Booker talking to another crack dealer," and that's why this fight started. Tr. 667:21-25.

After the trial court entered a directed verdict on behalf of Edwards on the stolen weapon charge, the solicitor agreed he would "not mention that [the gun] was stolen." Tr. 657:4-658:17. Nonetheless, the solicitor repeated in closing that Edwards used "a weapon that turns out was stolen out of Richland County," Tr. 679:7-13, and used a PowerPoint repeating this purported fact to directly argue "to the jury that Mr. Edwards failed in his self-defense claim" in part because he "shot the decedent with a stolen pistol," Motion for New Trial and Motion to Vacate Conviction and Sentence, at 2, R. p. \*.

The trial court charged the jury on murder, the lesser included offense of voluntary manslaughter, and self-defense. Tr. 747:23-753:19. On the failure to stop charge, the trial court instructed the jury:

The last charge is failure to stop for a blue light. So in order to prove this crime, the State must prove beyond a reasonable doubt that the defendant was driving a motor vehicle on a road,

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<sup>4</sup> Although not clearly articulated before the jury, based on the solicitor's statements at sentencing it seems Edwards's history of selling drugs was *years* prior to these events. Tr. 782:9-11.

street, or highway of the state, that he was signaled to stop by law enforcement by means of a siren or a flashing light, and that he did not stop.

...

An attempt to increase the speed of a vehicle or in some other manner avoid pursuing law enforcement when signaled by a siren or flashing light may be considered by you as evidence of failure to stop for a blue light. However, it is merely an evidentiary fact to be taken into consideration by you, along with all the other evidence in the case, and to be given the weight you decide it should receive.

Tr. 755:23-756:19.

The jury began deliberating at 12:59 p.m. Tr. 762:2. During its deliberations, the jury asked several questions, including for a written copy of the jury instructions. Tr. 762:16-25; Court's Ex. 14-15 R. p. \*. It also asked to re-hear the testimony of both Edwards and Yarborough. Tr. 763:12-15; Court's Exhibit 15A, R. p. \*. The jury retired for the night at 7:10 p.m. and resumed deliberating at 9:30 a.m. the following morning. Tr. 769:16-770:14. The next morning the jury requested to re-hear the testimony of John Wannamaker, the neighbor. Tr. 770:17-20; Court's Ex. 18. It finished deliberating at 12:16 p.m. that afternoon. Tr. 771:21-24.

The jury found Edwards guilty of voluntary manslaughter, possession of a weapon during the commission of a crime of violence, and failing to stop for a blue light. Tr. 772:15-773:3. The trial court sentenced him to thirty years in prison for manslaughter and five years each for the weapon and failure to stop charges, all to run consecutively. Tr. 792:8-15.

Following sentencing, Edwards filed a Motion for a New Trial and Motion to Vacate Conviction and Sentence. R. p. \*. The trial court denied the motion by written order dated May 8, 2024. R. p. \*.

## STANDARD OF REVIEW

In general, "[t]he admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Swafford*, 375 S.C. 637, 640, 654 S.E.2d 297, 299 (Ct. App. 2007) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). Interpretation and application of constitutional provisions are questions of law reviewed de novo on appeal. *City of Rock Hill v. Harris*, 391 S.C. 149, 153, 705 S.E.2d 53, 54 (2011).

## ARGUMENT

### I. **The trial court erred under Rule 404, SCRE, by allowing testimony Edwards previously sold crack cocaine years before the shooting.**

The trial court allowed the state to extensively cross-examine Edwards about the fact he previously sold crack cocaine. Its clear purpose was to make Edwards look like a violent drug dealer and a bad person whose self-defense claim should be rejected because of his criminal disposition. The trial court erred by overruling Edwards's objection because "Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial." *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020).

Evidence Edwards previously sold crack cocaine is evidence "of other crimes, wrongs or acts" within the scope of Rule 404(b). 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.

Rule 404(b), SCRE; *see generally State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). There is no evidence this was a "common scheme or plan," no question of Edwards's identity as the shooter, and no suggestion he fired on accident or unintentionally.<sup>5</sup> Edwards was on trial for murder and other alleged crimes following the death of Booker, and he testified he acted in self-defense out of fear for his life. The only possible acceptable use for the evidence under Rule 404(b) was to

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<sup>5</sup> In his opening statement Edwards made clear what this case is about. The very first statement he made to the jury admitted to the shooting: "Craig Edwards shot and killed Michael Booker, but he's not guilty of murder. This was self-defense. Craig was afraid for his life. He thought Mike was about to kill him." Tr. 135:23-136:1.

demonstrate motive in order to defeat that defense. But not only did the state not actually use the evidence in this way, it could not have done so because Edwards's prior drug dealing is not "clearly . . . connect[ed]" to the shooting—there is no logical connection between the two. *State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000) (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807).

First, the state did not actually use the evidence to demonstrate motive; instead, it used the evidence to paint Edwards as a criminal and hypocrite. Edwards had testified he knew of Booker's ongoing problem with crack and that he was trying to help Booker stop using the drug. The state attacked this testimony: "do you find the irony in telling Mike you've got a problem with crack, but then you're selling it all around?" Tr. 527:8-10. Calling Edwards a hypocrite—without basis given that he had stopped selling years before—does not demonstrate his motive for the shooting or contradict his self-defense testimony. It served only to make him look like a criminal and a bad man, and to therefore "raise a legally spurious presumption of guilt in the minds of the jurors." *Perry*, 430 S.C. at 30, 842 S.E.2d at 657 (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807). There was no legitimate purpose in attacking him as a drug dealer—such evidence does not prove he did not act in self-defense, except through propensity. Once the jury learned he was previously a drug dealer, it was likely to automatically distrust him and infer that because he previously engaged in illicit activity, he was probably doing the same here and not acting in self-defense. This is impermissible.

Second, the state could not have used the evidence of previously selling crack to demonstrate Edwards did not act in self-defense. The fact he sold drugs years before and wanted Booker to stop smoking crack does not in any way, except by propensity, tend to show he did not act in self-defense. *See* 16 Corpus Juris, *Criminal Law* § 1132, at 586 (1918) ("[O]n a

prosecution for a particular crime, evidence which in any manner shows or tends to show that accused has committed another crime wholly independent of that for which he is on trial . . . is irrelevant and inadmissible." ). In particular, there is no "logical connection" between the two because the prior drug sales were *years* before. *Perry*, 430 S.C. at 34, 842 S.E.2d at 659 (reaffirming "logical connection" standard for admissibility of prior crimes). The two activities are plainly and obviously unrelated, unless one makes the illegitimate and impermissible assumption that, "once a drug dealer, always a drug dealer." This was the way in which the state used the evidence in closing: to fabricate a revenge motive because Edwards "takes issue with Michael Booker talking to another crack dealer." Tr. 667:21-25. To the extent this theory might be considered the state's purpose for admitting the evidence—which, based on the questioning during cross-examination, is not the case—that is not a proper use of the prior crimes because the only connection is by assuming propensity. The only way in which that evidence could prove such a preposterous theory is on the basis that because Edwards previously sold drugs, he was probably also selling drugs at the time—despite his direct testimony to the contrary. Rule 404 is intended to prevent precisely such misuse. Moreover, this was not obviously the state's purpose while questioning Edwards, and so it is not possible the trial court could "clearly perceive the connection between the extraneous criminal transaction and the crime charged . . . ." *State v. Rivers*, 273 S.C. 75, 77, 254 S.E.2d 299, 300 (1979) (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807).

In addition, the extended length of time between the prior dealing and the shooting means any legitimate probative value potentially offered by the evidence is clearly outweighed by the danger of unfair prejudice. *See State v. Thompson*, 420 S.C. 386, 398, 803 S.E.2d 44, 50 (Ct. App. 2017) ("Once bad act evidence is found admissible under Rule 404(b), the trial court *must*

then conduct the prejudice analysis required by Rule 403, SCRE." (quoting *State v. Spears*, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013))). The fact Edwards sold crack years before these events has absolutely no bearing whatsoever on his motive on February 3, 2020, and as such it should have been excluded. See *State v. King*, 334 S.C. 504, 513, 514 S.E.2d 578, 583 (1999) (reversing murder conviction because evidence of prior thefts from a year before the murder lacked sufficient "temporal connection" and were "too attenuated for admissibility"). Even if there was a modicum of legitimate evidentiary value, "the prejudicial effect of this evidence far outweighed this slight probative value." *King*, 334 S.C. at 513 n.5, 514 S.E.2d at 583 n.5

Edwards's convictions must be reversed because this inadmissible character evidence likely contributed to the jury's decision to reject his claim of self-defense. Edwards testified describing Booker's aggression in the past and earlier that day. He saw—corroborated by Yarborough—Booker come out from the backyard yelling aggressively and holding something large over his head. Booker was *high on cocaine at the time*. Yarborough heard Booker yell, "don't start that shit today." The jury heard all of that testimony and then re-heard the testimony from both Edwards and Yarborough during its deliberations over the course of an entire day. In this context it is clear this bad evidence reasonably could have contributed to the verdict. Certainly, Edwards's guilt was not "conclusively proven by competent evidence, such that no other rational conclusion could be reached." *Brooks*, 341 S.C. at 62-63, 533 S.E.2d at 328 (quoting *State v. Parker*, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993)); see also *See State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (erroneous admission of prior convictions was not harmless beyond a reasonable doubt where defendant's self-defense claim "hinged entirely on his own testimony").

In addition to the lack of evidence of his guilt, the evidence of prior crimes was likely to specifically negate his self-defense claim. The state repeatedly relied on Edwards's statement when he was arrested that he had been on PCP the night before. Although Edwards disclaimed that statement, forcing him to admit to selling drugs years before is too likely to raise the "spurious presumption of guilt" that because he previously sold crack, he was more likely to have been high on drugs at the time of the killing. *Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807). That inference is based solely on propensity, and it was all but certain to negate his self-defense claim because the jury would conclude his actions were unreasonable or that he was not without fault.

**II. Branham's testimony the gun was stolen was hearsay not admissible under any exception.**

Investigator Anthony Branham testified he ran the serial number of the firearm through the National Crime Information Center (NCIC) database, which reported it as stolen based on a "hit" from the Richland County Sheriff's Department. Tr. 305:7-17. Edwards objected to the testimony as hearsay but was summarily overruled. Tr. 305:7-12. The court then granted Edwards a directed verdict on the stolen handgun charge. Therefore, after Edwards's objection, the solicitor agreed he would "not mention that [the gun] was stolen." Tr. 657:4-658:17. Nonetheless, the solicitor repeated that Edwards used "a weapon that turns out was stolen out of Richland County, a weapon that matches the casings that were thrown into the neighbor's yard, casings that contained the projectiles that ended the life of Michael Booker." Tr. 679:7-13. The state also used a PowerPoint repeating this purported fact to directly argue "to the jury that Mr. Edwards failed in his self-defense claim" in part because he "shot the decedent with a stolen pistol." Motion for New Trial and Motion to Vacate Conviction and Sentence, at 2, R. p. \*.

While there is no South Carolina authority directly on point, many other jurisdictions have addressed information from the NCIC database, and all conclude such testimony is hearsay. *E.g.*, *State v. Stewart*, 327 P.3d 595, 598 & n.3 (Utah 2014) (collecting cases) ("A number of other jurisdictions have concluded that NCIC information is hearsay."); *Andrews v. Commonwealth*, 699 S.E.2d 237, 255 (Va. 2010); *Wiley v. Com.*, 348 S.W.3d 570, 580 (Ky. 2010); *Vlietstra v. State*, 800 N.E.2d 972, 975 (Ind. Ct. App. 2003); *United States v. Johnson*, 413 F.2d 1396, 1398 (5th Cir. 1969) (NCIC database is "double hearsay"). "Hearsay is a statement, which may be written, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted." *State v. Blackwell*, 420 S.C. 127, 158, 801 S.E.2d 713, 729 (2017) (first quoting *State v. Brockmeyer*, 406 S.C. 324, 351, 751 S.E.2d 645, 659 (2013), then citing Rule 801(c), SCRE)). Edwards was on trial for murder and possession of a stolen pistol. Branham's testimony was plainly introduced to "prove the truth of the matter asserted." Because Branham was not the original declarant nor a party-opponent, it is not "not hearsay" as defined in Rule 801(d), SCRE. The trial court erred by overruling Edwards's hearsay objection because the testimony the pistol was stolen was hearsay.

Some jurisdictions have concluded that although hearsay, information from NCIC may be admissible through the "regularly conducted activity" exception in Rule 803 if its requirements are satisfied. *See, e.g.*, *State v. Sneed*, 709 S.E.2d 455 (N.C. App. 2011); *State v. Underwood*, 286 N.J. Super. 129, 139, 668 A.2d 447, 452 (App. Div. 1995) (citing *State v. McGee*, 131 N.J. Super. 292, 298, 329 A.2d 581, 584 (App. Div. 1974)). To the extent that exception could apply here, there was no testimony or other foundation sufficient to prove Branham was an NCIC records custodian or satisfied any of the other requirements of the exception. *See State v. Brockmeyer*, 406 S.C. 324, 351-52, 751 S.E.2d 645, 659-60 (2013) (holding witness testimony

demonstrated evidence was kept as business records and therefore admissible); *accord Ingmire v. State*, 215 So. 3d 592, 597 (Ala. Crim. App. 2016) ("Although the information in an NCIC report could very well be admissible in future cases, there was no evidence in this case to show that the information within the report fell within the business-records exception—or any other exception—to the hearsay rule.").

This impermissible hearsay about a stolen gun was just another mark against Edwards's credibility and his defense. It created the opportunity for the jury to conclude self-defense does not apply because he was not without fault. *See State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (providing jury instruction on self-defense that "the defendant must be without fault in bringing on the difficulty"). The state invited the jury to make that inference even though the legality of the gun is entirely irrelevant. A jury could reasonably—and incorrectly—conclude that someone who stole a weapon used in self-defense is to blame for the shooting and therefore self-defense does not apply.

Given the length of the jury's deliberations and its several requests to re-hear testimony and the jury instructions, it cannot be said this testimony did not influence the jury's decision beyond a reasonable doubt. *See State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018) (reversal required unless "the error was harmless beyond a reasonable doubt").

**III. The trial court made an impermissible comment on the facts by instructing that increasing speed "may be considered by you as evidence of failure to stop for a blue light."**

Trial courts are not permitted to comment on the facts to the jury. S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *see, e.g., State v. Brown*, 443 S.C. 196, 199-200, 904 S.E.2d 448, 449-50 (2024) (collecting cases).<sup>6</sup>

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<sup>6</sup> Whether a given jury charge is an unconstitutional comment on the facts should be reviewed de novo on appeal. The question is whether the charge given violates Article V, section 21 of the

This is because by simply stating that some evidence might lead to certain inferences, "the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury." *State v. Stewart*, 433 S.C. 382, 392, 858 S.E.2d 808, 813 (2021) (quoting *State v. Burdette*, 427 S.C. 490, 502-03, 832 S.E.2d 575, 582 (2019)). "Even telling the jury that it is to give evidence . . . only the weight the jury determines it should be given does not remove the taint of the trial court's injection of its commentary upon that evidence." *Burdette*, 427 S.C. at 502-03, 832 S.E.2d at 582.

Here, the jury needed no instruction that an "attempt to increase the speed of a vehicle . . . may be considered . . . as evidence of failure to stop for a blue light." Tr. 756:13-16. Of course it can—that is what those words mean. There was no need to suggest this possible inference: "It is axiomatic that some matters appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.'" *Burdette*, 427 S.C. at 503, 832 S.E.2d at 583 (quoting *State v. Belcher*, 385 S.C. 597, 612 n.9, 685 S.E.2d 802, 810 n.9 (2009)); *see also State v. Cheeks*, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt."). The jury was charged with the essential elements of the crime: "the State must prove beyond a reasonable doubt that the defendant was driving a motor vehicle on a road, street, or highway of the state, that he was signaled to stop by law enforcement

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South Carolina Constitution. That section is a limitation on the judicial authority of this state, and as such its application raises a question of law just the same as similar provisions limiting the authority of the General Assembly and Executive. *See, e.g., City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) ("[T]he authority given to the General Assembly by our Constitution is a limitation of legislative power, not a grant." (citing *Moseley v. Welch*, 209 S.C. 19, 27, 39 S.E.2d 133, 137 (1946))). The fact that such a provision applies in a context normally reviewed for the trial court's exercise of discretion (jury charges) does not change the analysis.

by means of a siren or a flashing light, and that he did not stop." Tr. 755:23-756:3. Instructing the jury that increasing speed is evidence "to be taken into consideration" served no purpose but to emphasize that fact to the jury. Tr. 756:16-17; *see Stewart*, 433 S.C. at 392, 858 S.E.2d at 813. It was therefore an improper comment on the facts and should not have been charged. *See Cheeks*, 401 S.C. at 328, 737 S.E.2d at 484 ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

Edwards recognizes there was no objection to the charge below. Tr. 652:8-9, 761:15-18. However, a complaint about the "constitutional prohibition as to a charge on the facts" need not be argued below to be raised on appeal. *State v. Orr*, 128 S.C. 279, 122 S.E. 771, 771 (1924).<sup>7</sup>

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<sup>7</sup> The Court in *Orr* considered an appeal challenging the trial court's instruction without objection. It reversed, holding:

It is said, however, that, if his honor misstated the issues, it was the duty of the defendant to call the attention of the court to it, and, not having done so, he cannot now complain. That is a rule of court and must give way to the constitutional prohibition as to a charge on the facts. This assignment of error must be sustained.

128 S.C. 279, 122 S.E. at 771. Therefore, objections to a charge on the facts need not be raised below to be argued on appeal.

Admittedly, this rule has not been utilized since *Orr*. However, in virtually all recent comment-on-the-facts cases, the issue has been preserved so the *Orr* rule was unnecessary. *See State v. Brown*, 443 S.C. 196, 198, 904 S.E.2d 448, 449 (2024); *State v. Stewart*, 433 S.C. 382, 386, 858 S.E.2d 808, 810 (2021); *State v. Smith*, 430 S.C. 226, 229, 845 S.E.2d 495, 496 (2020); *State v. Burdette*, 427 S.C. 490, 493, 832 S.E.2d 575, 577 (2019); *Pantovich v. State*, 427 S.C. 555, 832 S.E.2d 596 (2019); *State v. Stukes*, 416 S.C. 493, 497, 787 S.E.2d 480, 482 (2016); *State v. Witherspoon*, 418 S.C. 641, 642, 795 S.E.2d 685, 686 (2016); *State v. Cheeks*, 401 S.C. 322, 327, 737 S.E.2d 480, 483 (2013); *State v. Belcher*, 385 S.C. 597, 601, 685 S.E.2d 802, 804 (2009); *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), *overruled in unrelated part by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009); *State v. Grant*, 275 S.C. 404, 406, 272 S.E.2d 169, 170 (1980); *State v. Owens*, 427 S.C. 325, 329, 831 S.E.2d 126, 128 (Ct. App. 2019), *aff'd*, 433 S.C. 482, 860 S.E.2d 357 (2021); *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010).

**CONCLUSION**

For the foregoing reasons, Edwards requests this court reverse his convictions and remand for a new trial.



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ATTORNEY FOR APPELLANT

This 19<sup>th</sup> day of May, 2025.