THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Spartanburg County Court of General Sessions
The Honorable R. Keith Kelly, Circuit Court Judge

App. Case No. 2024-001359

State of South Carolina,.....Respondent,

v.

Herbert Bruce Gaddy,.....Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

COURT RULES:

STATEMENT OF ISSUE ON APPEAL

I. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING PHOTOS AND RELATED TESTIMONY ABOUT A STOLEN ROLLBACK VEHICLE IN VIOLATION OF RULES 403 AND 404(b), SCRE.

STATEMENT OF THE CASE

The Appellant Herbert Bruce Gaddy was indicted by the Spartanburg County grand jury for first-degree burglary and breaking into motor vehicles, in addition to other offenses not at issue at trial or for the purposes of this appeal. (R. pp. 327-330). Assistant Solicitor James Edward Hunter prosecuted the case. Appellant was represented by the undersigned counsel.

Appellant was tried by jury before the Honorable R. Keith Kelly on August 12 – 14, 2024. The jury ultimately found him guilty on both charges. (R. pp. 293 – 294). Judge Kelly imposed a twenty (20) year sentence for first-degree burglary and a concurrent five (5) year sentence for breaking into motor vehicles, with twenty-eight (28) months credit for time served. (R. pp. 321-326; p. 299).

A timely Notice of Appeal was filed with this Court on August 19, 2024. This appeal follows.

STATEMENT OF THE FACTS

The offenses charged were alleged to have occurred on or about May 6, 2022 at 351 Goldmine Road in Spartanburg County. (R. p. 9; pp. 327-330). The property spans over 4 acres and is located in a rural area of the county. (R. pp. 48 – 49). A married couple, Gail Trent and Lloyd Trent, live on the property with their biological granddaughter who they adopted. (R. p. 48; p. 49, lines 14-18).

Gail testified that at around midnight on May 6, 2022, she heard an unidentifiable noise while watching television in the living room by herself. (R. p. 49, lines 4-5). She then saw the front door of their home slowly start to open, which she at first thought was the wind. (R. p. 49, lines 7-8). Gail claimed that a man appeared in the doorway and entered her home while saying: "I saw your light on. Are you okay?" (R. p. 49, lines 8-10; p. 79, lines 15-20). Gail asked the man: "'[W]ho are you — who are you?'" to no reply before she screamed for her sleeping husband to get a gun and that a stranger was in the house. (R. p. 49, lines 10-13; p. 63). Gail denied that the man had merely stayed outside on the porch and had indeed taken two or three steps past their glass storm door into their home. (R. pp. 64-66; p. 50, lines 4-7; pp. 53-54). Gail also denied that the man had knocked on their door or that she had given him any indication of consent or signal to enter. (R. p. 63; p. 73).

The man was gone by the time her husband woke up and came into the room. (R. p. 70; p.138). Gail assumed the man left when she began screaming and did not see which way he went. (R. p. 62, lines 7-9; p. 63; p. 67; p. 69). Gail and her husband called police to the property after the man left. (R. p. 80). The couple did not report anything stolen or amiss on the property to the police that night nor was there any damage to the home's doors or windows. (R. p. 72; p. 78; p. 138; p. 165).

The police were called back out to the property the next day to report that the couple's rollback[1] was missing from one of their garages or sheds. (R. p. 55; p. 139). At that time, they also discovered that their son's inoperable 4-wheeler or "ATV" had been moved one-tenth of a mile from its usual place in a garage or shed to the top of their driveway.[2] (R. p. 55, lines 9-11; p. 56, lines 4-25; pp. 145-146; p. 163; pp. 307-308). The rollback was later found under strange circumstances[3] in a wooded area not far the property after Lloyd received an anonymous, late-night call informing him of the rollback's location. (R. p. 81; pp.145-146; p. 148).[4]

Police were called out to the property for a third time that following Monday morning, May 9, 2022, when Llyod Trent drove his granddaughter to school and discovered that items inside the couple's Suburban had been moved around. (R. p. 57; pp. 309-313). Although the Suburban had not moved and was in its normal parking spot, the front seats had been rolled down, the sunroof was open, and the compartments had been rummaged through. (R. p. 57, lines 17-22; p. 58, lines 20-23; p. 59, lines 12-14; p. 61, lines 7-15; p. 74). Lloyd remarked that the seats were reclined in a way as if someone had been sleeping there. (R. p. 144; p. 164). Also found inside the Suburban was their grandson's baseball bat, which was usually kept in a garage along with other vehicles, golf carts, and sports equipment. (R. pp. 59-62). There was also a baseball hat belonging to Lloyd found inside the Suburban that was usually kept in the then-missing rollback. (R. p. 60, line 21—

[1] Gail defined a roll back as a vehicle used to haul a broken-down car. (R. p. 55, lines 6-9).

[2] Appellant was not tried for any offense relating to the roll back or four-wheeler.

[3] The rollback was found near the residence of the couple's nephew, Todd. (R. pp. 161-162). Lloyd referred to Todd as a "bad boy" and "druggie" and wanted nothing to do with him. (R. p. 168). Gail balked at any suggestion that any member of their extended family or their drug problems had anything to do with the incident at the home. (R. p. 75).

[4] Appellant was said to have been in jail on the charged offenses at this time. (R. p. 148).

p. 61, line 6).[5] There were no signs of forced entry or damage to the Suburban, garage, etc. and nothing was reported missing. (R. p. 72; p. 78; p. 98).

Interestingly, the moving of the ATV, rollback, and the rummaging through the Suburban all went unnoticed by the couple and police during their own prior inspections of the property. (R. pp. 162-163). Gail and Lloyd maintained throughout their testimony that nether they, nor any family member could have moved the rollback or the ATV/4-wheeler and that they did not put these particular items in the Suburban on an earlier date. (R. p. 57, line 23—p. 58, line 2; p. 74). However, the Suburban was admittedly cluttered, and Gail had previously told investigators that her 18 grandchildren and children were in and out of that car. (R. p. 67; p. 74). Although the baseball bat being in the Suburban was presented as proof that someone had taken them from their usual spot and then put it in the Suburban, it was not an unusual place to find the baseball bat. Lloyd acknowledged they drove their grandchildren to school and baseball practice and baseball mitts and other gear were also found inside the car. (R. pp. 165-166).

Fingerprints taken from the home's front doors, handles, and from the interior did not match Appellant. (R. p. 131; p. 134; p. 129). The fingerprints lifted from the storm door came back to Michael Brad Bowers, the couple's daughter's ex-husband. (R. pp. 135-137). Of the prints lifted from the Suburban, one partial print of the hypothenar part[6] of a palm found on the exterior door matched prints taken from the Appellant in an unrelated 2018 investigation. (R. p. 47; pp.122-123;

[5] Gail did not report seeing the man who broke into their house the night before with a baseball bat or a baseball hat. (R. p. 82, lines 11-16).

[6] The hypothenar part of the palm is the fleshy muscular region of the palm. Marilyn Roman, a fingerprint examiner for the Spartanburg County Sheriff, concurred that the part of the palm and its location on the side of the Suburban was consistent with a person stumbling into the door of the Suburban. (R. p. 131).

pp. 301-305; pp. 314-315). Appellant's fingerprints did not match any prints from the baseball bat, hat, or from other parts of the Suburban or any items inside. (R. pp. 127-128; p. 97; pp. 100-101; pp. 130-131).

Appellant was interviewed on May 19, 2022 by Investigator Crow. (R. p. 177). Appellant waived his *Miranda* rights and spoke with investigators but refused to write out his own statement. At trial Investigator Crow summarized what Appellant had told him:

> Mr. Gaddy advised me that he was on drugs that night. He wandered onto the property not knowing exactly where was....[H]e walked up to the residence and opened the door....[H]e saw a lady who was not coming to the door for him. So, he stepped inside. And that's when the lady started freaking out — in his terms—and yelling. And he advised that spooked him and he left.

(R. p. 186, lines 12-22). In regard to the Suburban, Appellant was said to have told Investigator Crow that "he was high on drugs and didn't remember a whole lot, but he said that he believed that he went into the car and fell asleep." (R. p. 186, line 23—p. 187, line 4). The interview was not recorded.

Appellant was arrested for first-degree burglary and breaking and entering a motor vehicle a result of the fingerprint on the Suburban's door as well as his interview with Crow. He was not charged with any offense relating to the ATV/4wheeler or the rollback.[7]

[7] Appellant objected to pictures of the rollback and related testimony on the basis that it was confusing to the jury and as a separate, uncharged criminal act, and its probative value was substantially outweighed by unfair prejudice under Rule 403, SCRE. (R. pp. 147-157; pp. 181-185; pp. 316-319). The Court admitted the pictures and related testimony but excluded any testimony about the short distance between Appellant's house and where the rollback was found, as well as explicit testimony suggesting that Appellant must have stolen the rollback. (R. pp. 155-156). Appellant subsequently renewed his objections to this evidence as well as moved for a mistrial, all of which were denied. (R. pp. 181-185). The jury was instructed that Gaddy was not charged with the theft of the rollback, but the jury was not instructed to not consider this evidence. (R. p. 186, lines 2-5).

Whether the man Gail saw actually entered her home became a significant issue at trial and there was great contention regarding Gail's memory and the specific layout of the house. For example, Gail's trial testimony was inconsistent with her original statements to police as to where she saw the man — on the welcome mat outside on the porch verses inside on the entryway rug. (R. p. 62, line 19–p. 63, line 1; p. 64, lines 17-20; pp. 82-83). Additionally, Gail had been struggling with insomnia since 1997 and had been prescribed sleeping medication but denied telling police that she had taken her medication on the night of May 6, 2022. (R. pp. 65 – 66; p. 69; p. 164). Gail also denied falling sleep on the couch at the time of burglary. (R. pp. 65 – 66). When confronted with these inconsistences, Gail acknowledged that all of these details were in the police report but maintained that the police report could not be correct. (R. p. 66). In regard to the reliability of Gail's recollection, it also noteworthy that in neither her prior police statement nor at trial, did Gail describe the race, physical features, etc. of the man she saw that night. (R. p. 164). Gail also did not pick Appellant out of a lineup, nor did she make an official formal identification of Appellant as the man she saw on the record before the jury at trial.

STANDARD OF REVIEW

The decision to admit or exclude evidence or testimony is within the trial court's sound discretion and will not be reversed on appeal absent an abuse of discretion. *E.g., Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (2002); *State v. Myers*, 359 S.C. 40, 596 S.E.2d 488 (2004). An abuse of discretion is a ruling based on an error of law or a factual conclusion that is without evidentiary support. *E.g., State v. Johnson*, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014). On review, our appellate courts generally will decline to set aside a conviction due to insubstantial errors not affecting the result. *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Spears*, 403 S.C. 247, 258-59, 742 S.E.2d 878, 884 (Ct. App. 2013). This determination considers the entire record. *See e.g., State v. Brooks*, 341 S.C. 57, 62, 533 S.C. 325, 328 (2000).

ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING PHOTOS AND RELATED TESTIMONY ABOUT A STOLEN ROLLBACK VEHICLE, IN VIOLATION OF RULES 403 AND 404(b), SCRE.

At trial, the State argued the rollback evidence was admissible because the missing rollback tied Appellant to the breaking and entering of the Suburban charge through the baseball hat found inside. Because the baseball hat found inside the Suburban was typically kept inside the rollback, the resulting inescapable implication is that Appellant must have stolen the missing rollback. The State used the link between the rollback and Suburban to prove the intent element of first-degree burglary as well as the breaking and entering motor vehicle charge, in that Appellant went searching for other things to steal, *i.e.,* the rollback and items inside the car, after Gail discovered him and therefore, he indeed intended to commit a crime when he entered the home, as opposed to an intoxicated mistake. (R. pp. 152-154).

The State was ultimately using the rollback evidence as improper character evidence as uncharged other bad acts under Rule 404(b), SCRE. Evidence of prior/other bad acts has been limited to established and codified exceptions and is strictly scrutinized before it is admitted due "to the inevitable tendency" "to raise a legally spurious presumption of guilt" in the jurors' minds. *State v. Lyle*, 125 S.C. 406, 412, 118 S.E. 803, 807 (1923). Before considering whether one of the exceptions is applicable, a prior bad act must first be established by clear and convincing evidence. *See State v. Weaverling*, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999). Prior/other bad acts that are proven by clear and convincing evidence may be used to prove: (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme or plan; (5) the identity of the person charged with the commission of the crime tried; and res gestae. *Lyle*, 125 S.C. at 416, 118 S.E. at 807; Rule 404(b),SCRE. For any of these exceptions, the bad act must be relevant to prove the

crime on trial; there must be some legal connection between the crime charged and bad act more than just a general similarity; there must be a close degree of similarity or a connection between them. *State v. Carter*, 323 S.C. 465, 467, 476 S.E.2d 916, 917-18 (1993). Even if the bad act evidence meets all of the aforementioned, it will be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *State v. King*, 424 S.C. 188, 200, 818 S.E.2d 204, 210, fn. 6 (2018). Unfair prejudice is the undue tendency to suggest a decision on an improper basis, such as an emotional one. *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). This Court has acknowledged that determining the admissibility of a prior bad act is difficult. *Carter*, 323 S.C. at 469, 476 S.E.2d at 918-919. It is for this reason "*Lyle* is intended only to provide an exception to the general rule of inadmissibility", and thus, "'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.'" *Id*. at 919 (quoting *Lyle, supra*).

The trial court's admission of this evidence was improper in several different respects. First, there was not clear and convincing evidence to prove that Appellant was the person who took the rollback and stashed it away in the woods. *See Lyle*, 125 S.C. at 416, 118 S.E. at 807; Rule 404(b). *See State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441, fn. 14 (2009) ("'Clear and convincing' evidence is an intermediate degree of proof 'which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.'"). Proving that a separate, uncharged act occurred under Rule 404(b) requires clear and convincing evidence, a showing far more than indication or speculation that was presented here. *See State v. Dubose*, 288 S.C. 226, 341 S.E.2d 785 (1986). *See also Smalls v. State*, 422 S.C. 174, 186, 810 S.E.2d 836, 842 (2018) (trial counsel was ineffective for failing to object to testimony that the defendant stole the handgun used in the

crime charged during a prior burglary because there was no proof the defendant committed the burglary); *State v. Conyers*, 286 S.C. 276, 233 S.E.2d 95 (1997) (holding the defendant's poisoning of her first husband was inadmissible at trial for her second husband's murder with the only evidence being arsenic as her first husband's cause of death and the defendant was the life insurance beneficiary even though there was evidence of the defendant's other victims by the same means); *State v. Smith*, 300 S.C. 216, 387 S.E.2d 245 (1989) (holding evidence of a homicide was not clear and convincing where only circumstantial evidence raised the suspicion the defendant committed it and no evidence established he was at the scene or wrote the note found near the body).

Here, the circumstances in this case to link Appellant to the rollback are insufficient given the lack of any forensic or direct evidence that he took the rollback. There was also a wealth of testimony regarding the number of other people that had access to the property, the rollback, their garages/sheds etc. and the possibility that they were somehow involved with this incident, including the 18 grandchildren and nearby extended family. In addition to the evidence linking the couple's ex son-in-law and cousin to this incident, there were strange circumstances lending itself to the possibility that someone other than Appellant moved the rollback and other vehicles/items. For instance, it is peculiar that neither the Trents nor the police noticed the rollback missing when the property was inspected after Gail called them on the night of burglary. Also notable was that Gail supposedly heard the sound of a vehicle (*i.e.,* the rollback) go up the driveway 45 minutes after the last police officer left that night, yet they did not call the police to come back out. (R. p. 62, lines 10-18). Even more peculiar was the anonymous phone call Lloyd supposedly received regarding where the missing rollback was located at a time when Appellant was detained.

Further, the admission of the rollback evidence was reversible error also because the little probative value of this evidence was substantially outweighed by unfair prejudice and confusion of the issues as this was uncharged criminal conduct. *See* Rule 403, SCRE. First, although the State's theory was that the rollback linked Appellant to the Suburban which supplied the intent element of the burglary charge, the probative value of the rollback evidence is nonetheless minimal given the speculative and tenuous evidence linking the Appellant to the missing rollback let alone the other aspects of the case. The probative value of the rollback evidence is nonetheless substantially outweighed by undue prejudice because there is no other way for the jury to interpret this evidence as anything other than propensity evidence. The implication that Appellant stole the rollback inevitably invites the jury to conclude that because he committed that crime, he must have intended to steal something when he crossed the threshold into the couple's home and Suburban. The prejudice of the rollback evidence is compounded when considering that there is otherwise a lack of sufficient evidence to prove that Appellant the requisite intent for first-degree burglary and breaking and entering motor vehicles. The circumstances of this case, without the improper implication of the stolen rollback, equally lend themselves to a situation where there is no requisite intent for the crimes charged. Indeed, according to Appellant's supposed statement to police as well as other evidence in this case, an alternative scenario was as equally plausible: an intoxicated, confused man stumbled onto the property where he may or may not have mistakenly interpreted Gail's behavior as permission to enter her house and he then stumbled into the garage, bumped into the Suburban, and needed a place to sleep.

Moreover, this error was not rectified by the limiting instruction informing the jury that Appellant was not charged with the stolen rollback. The jury still improperly permitted to consider

the rollback evidence and without any limitation for what purpose. Therefore, the trial court committed reversible error by admitting the rollback evidence.

CONCLUSION

In light of the foregoing, the Appellant respectfully urges this Court to vacate Appellant's convictions and sentence and remand for a new trial.

Respectfully Submitted,

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