RECEIVED
Jun 02 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2023-000994

THE STATE,

Respondent,

vs.

ALGERNARD DEVINCENT YOUNG,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. SCARLETT WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Ste 400
Charleston, South Carolina 29401-2214
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

QUESTION PRESENTED 1

STATEMENT OF THE CASE 2

RESPONDENT'S STATEMENT OF FACTS 3

ARGUMENT

I. **Judge Jefferson did not abuse her discretion in admitting evidence Young was physically abusive to Gladys during their relationship and Gladys obtained an order of protection because of domestic violence, since such evidence was relevant and admissible pursuant to: (1) Rule 404(b), SCRE, to establish motive, intent, absence of mistake accident, common scheme or plan, or identity of the killer in this case; (2) Rule 401 and 402, SCRE, to establish malice, intent, and state of mind on the night of the crime; (3) to prove prior difficulties between the parties to establish animus and who was the aggressor the night of the crime; and (4) was part of the *res gestae* of the crime evidence to fully explain the murder and give context; and, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE; regardless, the admission of this evidence was harmless given it was cumulative to other similar evidence and given the clear evidence of guilt** 11

STANDARD OF REVIEW 17

ANALYSIS 17

HARMLESS ERROR 41

CONCLUSION 44

PROOF OF SERVICE

TABLE OF AUTHORITIES

Page(s)

Cases

Blakely v. State,
360 S.C. 636, 602 S.E.2d 758 (2004) 29, 30
Eubank v. Eubank,
347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001) 20
Masters v. State,
186 Ga. App. 795, 368 S.E.2d 557 (Ga. App. 1988) 25
State v. Adams.,
354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003) 36
State v. Adams,
68 S.C. 421, 47 S.E. 676 (1904) 32
State v. Adams,
322 S.C. 114, 470 S.E.2d 366 (1996) 35, 36, 38, 40
State v. Aiken,
322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996) 21
State v. Atkins,
303 S.C. 214, 399 S.E.2d 760 (1990) 31
State v. Atkins,
309 S.C. 542, 424 S.E.2d 554 (Ct. App. 1992) 21
State v. Bailey,
298 S.C. 1, 377 S.E.2d 581 (1989) 41
State v. Beck,
343 S.C. 129, 536 S.E.2d 679 (2000) 27, 28, 29, 30
State v. Bell,
302 S.C. 18, 393 S.E.2d 364 (1990) 19
State v. Bell,
430 S.C. 449, 845 S.E.2d 514 (Ct. App. 2020) 17
State v. Blanton,
316 S.C. 31, 446 S.E.2d 438 (Ct. App. 1994) 25
State v. Bolden,
303 S.C. 41, 398 S.E.2d 494 (1990) 36, 41, 39
State v. Braxton,
343 S.C. 629, 541 S.E.2d 833 (2001) 31
State v. Brewer,
411 S.C. 401, 768 S.E.2d 656 (2015) 43
State v. Brooks,
79 S.C. 144, 60 S.E. 518 (1908) 31, 32
State v. Brooks,
428 S.C. 618, 837 S.E.2d 236 (Ct App. 2019) 26
State v. Brown,
424 S.C. 479, 818 S.E.2d 735 (2018) 44

State v. Byers,
392 S.C. 438, 710 S.E.2d 55 (2011) 44
State v. Cheeseboro,
346 S.C. 526, 552 S.E.2d 300 (2001) 20
State v. Clinkscales,
231 S.C. 650, 99 S.E.2d 663 (1957) 31, 32
State v. Collins,
409 S.C., 524, 534, 763 S.E.2d 22, 28 (2014) 26
State v. Cooley,
342 S.C. 63, 536 S.E.2d 666 (2000) ..... passim
State v. Cope,
405 S.C. 317, 748 S.E. 2d 194 (2003) 28
State v. Dennis,
402 S.C. 627, 742 S.E2d 21 (Ct. App. 2013) 17
State v. Douglas,
369 S.C. 424, 632 S.E.2d 845 (2006) 17
State v. Emerson,
78 S.C. 90, 58 S.E. 974 (1904) 32
State v. Ford,
334 S.C. 59, 512 S.E.2d 500 (1999) 21
State v. Gadson,
439 S.C. 278, 886 S.E.2d 719 (Ct. App. 2023) 26
State v. Gaines,
380 S.C. 23, 667 S.E.2d 728 (2008) 22
State v. Gilchrist,
329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998) 20
State v. Giles,
407 S.C. 14, 754 S.E.2d 261 (2014) 35
State v. Gillian,
360 S.C. 433, 601 S.E.2d (Ct. App. 2004) 35, 44
State v. Glenn,
328 S.C. 300, 492 S.E.2d 393 (Ct. App. 1997) 30, 33, 39
State v. Good,
308 S.C. 308, 417 S.E.2d 640 (Ct.App.1992) 24
State v. Hamilton,
344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001) 28
State v. Holland,
385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009) 28, 29
State v. Hough,
325 S.C. 88, 480 S.E.2d 77 (1997) 36, 37
State v. Huckabee,
419 S.C. 414, 798 S.E.2d 584 (2017) 26
State v. Johnson,
293 S.C. 321, 360 S.E.2d 317 (1987) 19
State v. Johnson,
439 S. C. 331, 887 S.E.2d 127(2023) 37

State v. Kelley,
319 S.C. 173, 460 S.E.2d 368 (1995) 41
State v. Kennedy,
339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000) 28
State v. Key,
277 S.C. 214, 284 S.E.2d 781 (1981) 21
State v. King,
334 S.C. 504, 514 S.E.2d 578 (1999) 33
State v. King,
349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002) 27
State v. Kirton,
381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008) 19, 43
State v. Liverman,
398 S.C. 130, 727 S.E.2d 422 (2012) 41
State v. Lyle,
125 S.C. 406, 118 S.E. 803 (1923) 18
State v. Lyles,
379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008) 28
State v. Lynch,
327 N.C. 210, 393 S.E.2d 811 (N.C. 1990) 24
State v. Martucci,
380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008) 22, 38, 40
State v. McClellan,
283 S.C. 389, 323 S.E.2d 772 (1984) 28
State v. Moultrie,
316 S.C. 547, 451 S.E.2d 34 (Ct. App. 1994) 27
State v. Myers,
359 S.C. 40, 596 S.E.2d 488 (2004) 24
State v. Owens,
346 S.C. 637, 552 S.E.2d 745 (2001) 35
State v. Pagan,
369 S.C. 201, 631 S.E.2d 262 (2006) 41
State v. Page,
378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008) 41
State v. Parker,
315 S.C. 230, 433 S.E.2d 831 (1993) 28
State v. Peltier,
116 A.3d 150 (R.I. 2015) 37
State v. Perry,
420 S.C. 643, 803 S.E.2d 899 (Ct. App. 2017) 20, 25
State v. Pierce,
326 S.C. 176, 485 S.E.2d 913 (1997) 19
State v. Plyler,
275 S.C. 291, 270 S.E.2d 126 (1980) 31
State v. Scott,
405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013) 19, 21, 25

State v. Simmons,
352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) 36
State v. Smith,
309 S.C. 442, 424 S.E.2d 496 (1996) 39
State v. Smith,
337 S.C. 27, 522 S.E.2d 598 (Ct. App. 1999) 22
State v. Smith,
391 S.C. 353, 705 S.E.2d 491 (Ct. App. 2011) 20
State v. Sweat,
362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004) ..... passim
State v. Talley,
77 S.C. 99, 57 S.E. 618 (1907) 22
State v. Taylor,
333 S.C. 159, 508 S.E.2d 870 (1998) 32
State v. Thomas,
248 S.C. 573, 151 S.E.2d 855 (1966) 24, 25
State v. Turbeville,
275 S.C. 534, 273 S.E.2d 764 (1981) 22
State v. Tutton,
354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003) 19, 25
State v. Wiles,
383 S.C. 151, 679 S.E.2d 172 (2009) 30, 39, 40
State v. Williams,
321 S.C. 327, 468 S.E.2d 626 (1996) 31
State v. Wilson,
345 S.C. 1, 545 S.E.2d 827 (2001) 17, 24
State v. Wood,
362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004) 37
United States v. Masters,
622 F.2d 83 (4th Cir.1980) 35
United States v. Wright,
392 F.3d 1269 (11th Cir.2004) 37
Wilder Corp. v. Wilkie,
330 S.C. 71, 497 S.E.2d 731 (1998) 20

Rules

Rule 401 SCRE 11
Rule 402 SCRE 11
Rule 403, SCRE ..... passim
Rule 404(b), SCRE ..... passim

QUESTION PRESENTED

Did the trial judge abuse her discretion by admitting evidence that Young was physically abusive toward his ex-wife during their relationship and that his ex-wife obtained an order of protection after the couple separated because of domestic violence, since such evidence was not relevant, was improper propensity evidence, was not admissible pursuant to Rule 404(b), SCRE, was not part of the res gestae, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE?

STATEMENT OF THE CASE

On November 16, 2019, appellant Algernard D. Young ("Young") murdered David F. Alston ("Alston") in Charleston County. Young was arrested for Alston's murder the same date. On April 3, 2023, the Charleston County Grand Jury indicted Young for Alston's murder and possession of a weapon during a violent crime. (Ind. #s 2019-GS-10-1947 & 1948). Young proceeded to trial on June 5, 2023, before the Honorable Deadre L. Jefferson, Circuit Court Judge, and a jury. (Tr. 1). Assistant Solicitors Jessica Baldwin and Timothy Finch represented the State. (Tr. 1). Shaun Kent and Nathan Williams represented Young. (Tr. 1). On June 9, 2023, the jury found Young guilty of murder and possession of a weapon during a violent crime. (Tr. 110, 16-24, June 9, 2023). Judge Jefferson sentenced Young to 40 years for murder and 5 years concurrent on the gun charge. (Tr. 126, ll. 8-18, June 9, 2023). Young directly appealed raising 1 issue. (BOA, p. 1). This is the Initial Brief of Respondent.

RESPONDENT'S STATEMENT OF THE FACTS

Brief Statement of the Crime

In the early morning hours of November 16, 2019, at approximately 1:30 a.m., appellant Algernard Young murdered David Alston in the parking lot of Ashley Oaks Apartments on Ashley Hall Plantation Road in Charleston, where Young's ex-wife Gladys Singleton lived. Young was stalking his ex-wife, Gladys Singleton, at the time of the crime, as he had been since their marriage, separation and divorce, and had just confirmed David Alston was romantically involved with his ex-wife. Young shot Alston 5 times, including 2 times in the head, with a semi-automatic pistol as Alston was getting out of his car and bringing Young's ex-wife Gladys some groceries. Young fled the crime scene immediately after murdering Alston. Young was arrested approximately 2 ½ hours later when he reappeared at the crime scene on foot. (June 5-6, 2023, Tr. 94-99, 105; 111-32; 147-50; 196-201; 215-18; 221-28; 232-42; 249-64; 265-70; 272-77; 278-306; 312-75; 388-91; June 7, 2023, Tr. 10-11; 18-44; 46-50; 60-104; 131-35; 136-46; 153-54; June 8, 2023, Tr. 5-13; 14-27; 57-61; 67-105; 108-27; June 9, 2023, Tr. 109-111; 115-19; 125-26; State's Ex. 51; 52; 63, 64(a); 64(b); 66).

What led to Alston's murder

There were 2 victims to this crime, Gladys Singleton ("Gladys") who was being stalked by her ex-husband Young, and David Alston [the deceased], Glady's new boyfriend, who was murdered by Young in a fit of jealousy, rage, and need for control while stalking Gladys. Gladys lived in an upstairs apartment in Ashley Oaks Apartments in the City of Charleston, S.C. Alston lived of Ranger Drive in Wayln, which is off Dorchester Road. Young lived on Sorentrue Avenue in North Charleston. (June 5-6, 2023, Tr. 94-99, 105; 111-32; 147-50; 174-75; 196-201; 215-18;

221-28; 232-42; 249-70; 272-306; 312-75; 388-91; June 7, 2023, Tr. 10-11; 18-44; 46-50; 60-104; 131-46; 153-54; June 8, 2023, Tr. 5-13; 14-27; 57-61; 67-105; 108-27; June 9, 2023, Tr. 109-111; 115-19; 125-26; State's Ex. 51; 63, 64(a); 64(b); 66).

Gladys and appellant Young had known each other for approximately 26 years. In 2017, Gladys and Young married. Almost immediately, a week after they were married, Young became controlling, possessive, verbally and physically abusive, and would follow Gladys around. As a result, shortly thereafter, Gladys decided to end the marriage and separated from Young. After they separated, Young's conduct described above continued and he would follow Gladys, and he would "pop up" wherever she was several [3 to 5] times a week. This occurred even after their divorce was final in *October of 2019*. Gladys testified her relationship with Young was complicated; she continued to communicate with Young, but she would also answer Young's repeated phone calls because if she did not, "he would pop up" or "be angry" and sometimes "put his hands on [her]." Young would show up outside Gladys' apartment, at her sister's house, or at the bus stops along the route she drove as a driver for the Charleston Public Transportation System (CARTA). Gladys testified Young had difficulty dealing with their separation and divorce. (June 5-6, 2023, Tr. 94-99; 103; 105; 111 – 114; 213-18).

Unknown to Young, sometime in early 2019, Gladys met the victim David Alston at a laundry service. Gladys and Alston began dating. Sometime later, Gladys learned that Alston was married but separated from his wife. Gladys testified that despite this, she and Alston had a "wonderful relationship." (June 5-6, 2023, Tr. 113, l. 9-114, l. 14).

On the evening of *November 15, 2019*, just a few weeks after her divorce from Young, Gladys was driving her bus route in Charleston. Young was calling her repeatedly that day, as he had done in the past, and this time she ignored him. Toward the end of her shift, she saw Young's

stepfather's car, a gold Camry which Young regularly drove, parked at the aquarium along her bus route. Gladys also saw Young's silhouette or body structure at the same time. Young was standing on the street corner dressed in all black clothing. At that time, Young called Gladys again on her cell phone, but Gladys did not answer the call. After her shift ended, and she parked her bus at the terminal, Gladys called the 911 non-emergency line and asked the operator to stay on the line with her until she arrived home because her ex-husband, Young, **was bothering her again.** He was following her on her bus route.[1] Gladys was afraid Young was going to be at her apartment and "pop out" like he always did. She had within the last year obtained a restraining order on Young for domestic violence. (June 5-6, 2023, Tr. 116, l. 12 – 118, l. 11; State's Ex. 50 for I.D., 1st 911 call; State's Ex. 51, 2nd 911 call).[2]

When Gladys got to her apartment about 11:00 p.m. on *November 15, 2019*, she went inside and locked her door. She hung up the phone with 911. She called her new boyfriend David Alston, the victim, and told him she needed him to come to her apartment and spend the night because she saw Young near the aquarium on her bus route. Alston became upset and told Gladys he was tired of her allowing Young to "control her." Young then began calling Gladys again on her cell phone. Gladys told Alston as they were speaking that Young was calling her again and she planned to answer this phone call to see what he wanted. Gladys answered Young's call. Young then asked Gladys if she had seen him calling her phone all day and asked what Gladys was doing. Gladys then spoke with Young on the phone. She called Alston back and admitted she talked to Young.

---

[1]This phone call to non-emergency 911 was recorded and marked as State's Ex. 50. It was not admitted into evidence, but Gladys testified to what she told the non-emergency 911 operator.

[2] Young had committed a criminal domestic violence high and aggravated (CDVHAN) on Gladys on January 19, 2019. The State did not attempt to introduce this incident or its' details before the jury only that Young's controlling, possessive, and abusive conduct had continued after the separation, after the divorce in October of 2019, and up to and on the night of the crime. (June 5-6, 2023, Tr. 108-09).

Alston became more upset, wanted to end their relationship, and decided to bring Gladys her stuff that she had left at Alston's home. (June 5-6, 2023, Tr. 118, l. 14 – 119, l. 4).

Alston brought Gladys' stuff to her apartment, which included clothes, medicine, and some groceries, and left it inside the doorway of her home. While there, Alston and Gladys argued briefly in the doorway of her apartment, and Alston left Gladys' apartment complex in his car. Gladys looked out the window of her apartment and saw Young and his stepfather's gold car parked in a parking lot across the street. Young then phoned Gladys again and told her that she should have told him about this other man that she was seeing and who was bringing "stuff to [her] house." Gladys hung up the phone and called Alston and warned him that Young was there near her apartment and she believed based on what Young said in the phone call that Young had heard them arguing. Alston told Gladys he was not scared of Young. Gladys then saw Young peel out of the parking lot driving his stepfather's gold car, and Gladys told Alston over the phone to be careful because she believed Young was following Alston. Young continued to call Gladys, and when she answered the phone this time Young was screaming at her asking whether she loved him and threatening to kill her boyfriend Alston and kill himself. Gladys attempted to calm Young down. (June 5-6, 2023, Tr. 119, l. 15-121, l. 19).

While Gladys was on the phone with Young, at one point she also could hear Young's voice outside the front door of her apartment. During this time, Young tried to get Gladys to come outside her apartment, but she refused. Young threatened to kill Gladys and himself. Young eventually demanded that Gladys tell him about the man bringing the stuff to her apartment. Young told Gladys he was going to shoot her new boyfriend in the head so his family could not have an open casket. Young then said out loud that he could not believe the man "had the audacity to come back to your house." (June 5-6, 2023, Tr. 122, l. 22-127, l. 9; State's Ex. No. 51, 911 call redacted).

Gladys went and got her roommate, Brandon Maybank, out of his bed. Maybank, a supervisor at CARTA, walked with Gladys into the kitchen of her apartment. There were then several back and forth phone calls between Gladys and Young and Gladys and Alston. Gladys and her roommate Maybank were standing in the kitchen when they heard 3 gunshots outside the apartment in the parking lot. They then heard a man scream in rage. Gladys stated out loud to Maybank that the scream in rage was her ex-husband Algernard Young. Gladys also testified at trial that the scream after the first 3 shots belonged to her ex-husband Young whose voice she recognized because she had known him for 26 years. Gladys and Maybank then heard several more gunshots outside the apartment in the parking lot. Gladys armed herself with her own pistol for protection. Gladys called 911 and told the dispatcher that someone was shooting outside her apartment, and she believed it was her ex-husband, who she had a restraining order on because of domestic violence, who was doing the shooting.[3] Gladys explained to the 911 operator that was the reason she got a divorce and Young was taking the divorce extremely bad. Eventually, Gladys and her roommate looked out the window and saw part of a body on the ground between 2 cars in the parking lot. It was Alston. (June 5, 2023, Tr. 122, l. 22 – 127, l. 9; 221-42; 292-93; State's Ex. No. 51, 911 call).

The investigation and arrest of Young

When the police arrived, they found Alston dead in between his car and another car parked next to his in the parking lot. (June 5-6, 2023, Tr. 251, ll. 5-24). Alston was shot 5 times in all, including in the back and 2 fatal gunshot wounds to the side of his head. (June 5, 2023, Tr. 342, l.

[3] This Court can take judicial notice of its own records. The restraining order referenced in the 911 call was taken out in the Family Court for Charleston County in January of 2019 as a result of an incident occurring January 21, of 2019. The order/petition referenced verbal abuse and previous physical abuse. The restraining order was issued and filed January 31, 2019. (Family Court Order-Protection from Domestic Abuse Act, Docket No. 2019-DR10-281, Judge Alice Anne Richter).

1 – 347, l. 5). Underneath Alston's body was a large bag of shredded cheese and a Pepsi Cola drink nearby. Alston's car keys were on the ground. (June 5, 2023, Tr. 280-81). There was no gun or weapon on or around Alston. There were 6 fired shell casings on the ground near Alston but no murder weapon. (June 5, 2023, Tr. 314-24). The fired shell casings at the scene were determined to have come from the same gun, and the intact fired bullets taken from Alston's body at autopsy were determined to all have come from the same weapon. Gladys' owned her 9mm, which she told police about, voluntarily turned over, and which was compared to the fired bullets and the fired shell casings found at the scene. It was determined Gladys' gun did not fire any of the bullets or shell casings. (June 5-6, 2023, Tr. 128; 249-57; 269; 274; 283-85; June 7, 2023, Tr. 10-11; June 8, 5-13).

Gladys was interviewed by police at the scene and her statement was video recorded and portions played for the jury. After Gladys was interviewed by police, Young began repeatedly calling Gladys on her cell phone, and at the direction of the police, Gladys answered 1 of the phone calls and put the phone on speaker. Young kept asking her what was going on at her apartment. This call was recorded by police and played for the jury. Gladys also gave police her cell phone and allowed them to download all its contents. (June 5-6, 2023, Tr. 266-70, 272-75, 283; State's Ex. 67 & 68).

Police obtained a search warrant for Young's apartment in North Charleston. Young's apartment was searched and black clothing consistent with what Gladys described Young was wearing was found, but the clothing was wet. It had been raining the night of Alston's murder, and it was determined the black clothing found at Young's apartment had either been washed or out in the rain. Police seized Young's three (3) cell phones. Two (2) of the phones were I-phones and the third (3rd) phone was a flip-phone. (June 5-6, 2023, Tr. 359-65; June 7, 2023, Tr. 18-44;

68; 70-72; 84-93; 101; 133-34; June 8, 2023, Tr. 64-105; 108-127; State's Ex. 63, 64(a), 64(b) & 66)).

Young was arrested approximately 2 ½ hours later when he walked up to the crime scene. When Young walked up to crime scene, he was asked by police to identify himself; he stated his name was "Anthony Young." Young's real name is Algernard Devincent Young. He is sometimes referred as "Al," but his name is not Anthony. By this time, Young had changed his clothes. He had parked his step-father's distinctive gold car nearby in an area behind Gladys' apartment complex and police located it. Gladys also identified the car as Young's car that he drove. Gunshot residue ("GSR") was found on Young's hands, the victim, as well as inside Young's vehicle. (June 5-6, 2023, Tr. 249-64; 282-83; Tr. June 7, 2023, Tr. 132-33; 136-46; 153-54; June 8, 2023, Tr. 14-61).

Police were able to obtain cell-site location information (CSLI) and/or GPS information from Young's three (3) cell phones. One (1) of the cell phones produced GPS data showing Young had been in the area where Gladys testified that she was stalked earlier in the evening before the murder and around her apartment complex before midnight on November 15, 2019. Another of one (1) of Young's cell phones produced GPS information showing Young traveled from his home to the location where he parked his stepfather's gold car early in the morning around 3:30 a.m. shortly before he walked to the crime scene and he was arrested by police. Finally, Young's flip phone, the 3rd phone, produced CSLI showing Young was in the area of the crime scene when the victim Alston was murdered. (June 5-6, 2023 255-56; 359-65; June 7, 2023, 68; 70-72; 84-93; 101; 133-34; June 8, 2023, Tr. 64-105; 108-127; State's Ex. 63, 64(a), 64(b) & 66).

Young was interviewed several times by police after the murder. He gave varying and changing false statements about his whereabouts at the time of the victim Alston's murder and

where he lived. Young first told police that he lived at a location in North Charleston on Bailey Street. Police went and executed a search warrant there, and it turned out to be an abandoned home. Police were eventually able to determine that Young lived at an apartment in North Charleston where they recovered the wet black clothes. Police were never able to recover the murder weapon because Young got rid of it during the roughly two (2) and a half (1/2) hours between the crime and when he was arrested. Young first told police he had not been in the Charleston the night of the murder or near Gladys' apartment. Young eventually admitted he had been in the area where Gladys saw him stalking her while she was driving her bus. (June 5-6, 2023, Tr. 353-60; 372-73; 390-91; June 7, 2023, Tr. 18-44;).

ARGUMENT

Judge Jefferson did not abuse her discretion in admitting evidence Young was physically abusive to Gladys during their relationship and Gladys obtained an order of protection because of domestic violence, since such evidence was relevant and admissible pursuant to: (1) Rule 404(b), SCRE, to establish motive, intent, absence of mistake accident, common scheme or plan, or identity of the killer in this case; (2) Rule 401 and 402, SCRE, to establish malice, intent, and state of mind on the night of the crime; (3) to prove prior difficulties between the parties to establish animus and who was the aggressor the night of the crime; and (4) was part of the *res gestae* of the crime evidence to fully explain the murder and give context; and, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE; regardless, the admission of this evidence was harmless given it was cumulative to other similar evidence and given the clear evidence of guilt.

Issue on Appeal

On appeal, Young argues Judge Jefferson erred in admitting evidence Young was physically abusive during the relationship with Gladys and to a statement Gladys made on the 2nd 911 call at 1:31 a.m. on November 16, 2019, that she took out a restraining order on Young because of domestic violence. (IBOA, pp. 1-16). Young argues the evidence was not relevant, improper propensity evidence, not admissible under Rule 404(b), SCRE, was not part of the *res gestae* of the crime, and any probative value was substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. (IBOA, pp. 1-16). Young is wrong. The evidence was relevant and probative, was not improper propensity evidence, but admissible pursuant to Rule 404(b), SCRE, to show Young's motive, intent, absence of mistake or accident, common scheme and plan, and identity, admissible pursuant to Rule 401 and 402, SCRE, to establish Young's malice, intent, and state of mind, admissible to prove prior difficulties between the parties in a homicide case, and the evidence was the *res gestae* of the crime to fully explain, give context to, and inextricably intertwined with the murder itself as shown by Gladys' testimony.

What occurred below relevant to this appeal

Prior to trial, Young moved *in limine* to keep out any reference to "physical abuse" of Gladys during their relationship or any reference to his being a convicted felon on either 911 call or to the mention of the restraining order on Young for domestic violence contained on the 2nd 911 call, as such evidence would be evidence of prior bad acts and inadmissible under Rule 404(b) and 403, SCRE. Young also argued the evidence should not be admitted because the conduct was directed at Gladys and not toward the murder victim David Alston; therefore, it did not tend to prove Young murdered Alston. Young also later argued the temporal proximity of the "physical abuse" was too remote. Young **does not object** to any testimony that during the marriage, separation, and divorce he was possessive, controlling, verbally abusive, followed Gladys, and would phone her all the time, and would "pop up" wherever she was. (IBOA, pp. 16).[4]

The State agreed that the reference to Young being a convicted felon had to be redacted from the 2nd 911 call, and intended to do that all along it was simply waiting on Judge Jefferson to determine, what else if anything needed to be redacted from that 911 call. The State argued the remaining evidence was admissible because to understand the murder of David Alston and why it occurred the jury had to understand the relationship between Gladys and Young and how it led directly to David Alston's murder. Further, the evidence showed motive, intent, malice, identity, and state of mind of the defendant under Rule 404(b)'s exceptions. And, the evidence was the *res*

---

[4] Initially Young objected to any statement on the 1st 911 call at 10:45 p.m. on November 15, 2019, of Young harassing or stalking Gladys Singleton. Young also stated this objection would run throughout. (June 5-6, 2023, Tr. 60 -61). Young argued this would be 404(b) evidence of prior bad acts, and the State was not going forward on the stalking charges. However, Young admitted this evidence could be part of the *res gestae* of the crime, the continuum, or admissible to prove absence of mistake, intent, motive, Gladys' present sense impression, or the excited utterance exception. (June 5-6, 2023, Tr. 60-61). In the argument on the admissibility of Gladys' testimony, Young conceded that evidence Young was controlling and possessive and followed Gladys would be admissible. Young does not raise his initial objection on appeal. (IBOA, pp. 1-16).

gestae of the crime evidence to fully explain and give context to the jury of why the murder occurred. (June 5-6, 2023, Tr. 33-39, 57-74).

Judge Jefferson listened to both 911 calls and found the 1st 911 call was not admissible. Judge Jefferson found the 2nd 911 call, made during the murder and immediately thereafter, was clearly admissible as an excited utterance and a present sense impression of Gladys. Young does not challenge this particular holding on appeal. (IBOA, pp. 1-16). Judge Jefferson ruled the reference to Young being a convicted felon would have to be redacted, which the State also agreed had to be removed. Judge Jefferson ruled the remainder of the 2nd 911 call was admissible including the fact that Gladys had a restraining order on Young for prior domestic violence as part of the continuum of events leading to the victim David Alston's murder.[5] It also was the *res gestae* of the crime and explained and corroborated why Gladys was afraid of Young on the night of the crime and on the 2nd 911 call. It also was admissible to show motive, intent, and identity of the perpetrator. Judge Jefferson required a proffer of Gladys Singleton's testimony before allowing admission of similar evidence from her. (June 5-6, 2023, Tr. 33-39, 57-74).

The trial began, including Gladys' testimony. Gladys testified generally that she had known Young about 26 years, and they married in 2017. A couple of months after they married, they separated. Then their divorce was final in October 2019, and at some point, the relationship ended. (June 5-6, 2023, 95-96). Before discussing her prior relationship with Young, the Solicitor

[5] Young had assaulted Gladys in January of 2019, roughly 10 ½ months prior to the murder of Alston, and as a result, was charged with CDVHAN. Out of an abundance of caution, the State did not seek to admit this charge, incident, or details only Gladys' statement on the 911 call at the time of the murder that she had a restraining order on Young for a prior domestic violence and Glady's testimony Young was *physically abusive* during their relationship starting 1 week after their marriage which continued up to the night of the crime. (June 5-6, 2023, Tr. 108).

let Judge Jefferson know they now needed to proffer testimony outside the jury. The jury was excused. (June 5-6, 2023, Tr. 96).

Gladys testified *in camera* that her relationship with Young was good until they were married. Approximately 1 week after they married, Young became possessive, controlling, verbally and physically abusive, and started following her. In describing the physical abuse, Gladys testified Young physically beat her. As a result, she separated from Young, but the same conduct continued. Gladys testified the physical abuse as well as the controlling behavior continued after the separation. (June 5-6, 2023, Tr. 97, ln. 22 – 98, ln. 2). During the separation, Young would follow her, call her repeatedly, and if she did not answer his phone calls he would "pop up" wherever she was. "He would pop up at my residence, at my job. He would be behind vans when I got out of my car. Behind trees. Things like that." (June 5-6, 2023, Tr. 98, ll. 10-14). Gladys testified the behavior started probably a week after they got married, and continued after she left him, during the separation, after the divorce and up until the night of the murder of David Alston. (June 5-6, 2023, Tr. 105, ll. 3-22). Gladys testified this controlling behavior and popping up occurred 4 to 5 times a week from the separation until the incident on trial. (June 5-6, 2023, Tr. 104-05). Gladys testified the night of November 15, 2019 [shortly before the murder at 1:30 a.m. on November 16, 2019] she saw Young on Concord Street by the aquarium and then again at her apartment complex. (June 5-6, 2023, Tr. 98, ln. 24 – 99, ln. 8).

During argument on the matter, the State explained to Judge Jefferson that in *January of 2019*, Young had assaulted Gladys and had been charged with criminal domestic violence of a high and aggravated nature (CDVHAN) but the State did not intend to get into that charge specifically before the jury just generally that the relationship became, possessive, controlling, and physically abusive during the marriage and that conduct continued during the separation and after the divorce

in October 2019 up to the murder on November 16, 2019. Young stated he had no objection to testimony Young became possessive, controlling, verbally abusive, and followed Gladys, or that he called her repeatedly and would "pop up" wherever she was. Young's objection was to testimony from Gladys that Young was "physically abusive" during the relationship, and that Glady's had obtained a restraining order because of domestic violence contained on the 2nd 911 call. (June 5-6, 2023, Tr. 99-100; 108, ln. 20 -110, ln. 17).

After Gladys' proffer and after hearing argument on the matter, Judge Jefferson ultimately ruled that Gladys could testify to what she testified to during the proffer with the clarifications regarding the temporal aspect of when Young would pop up, [3 to 4 times a weeks up to the date of the murder], and being clear and concise about when the abusive behavior began within the confines of their relationship. Judge Jefferson held Young's argument that Gladys was not the victim of this act of murder was misplaced. Without Gladys being involved in this continuum, the crime of the murder of David Alston would not make any sense. Judge Jefferson held Gladys' testimony was relevant and admissible under Rule 404(b), SCRE, to prove motive, intent, absence of mistake or accident, and possibly identity. Additionally, she found that it probably would not fit under the common scheme or plan exception. She further ruled because this was a continuum of events, which the State would also tie up with the 911 tape showing that Young had not been able to handle the divorce and had become increasingly controlling leading up to the victim's death, the evidence had more probative value, and that probative value was not substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. (June 5-6, 2023, Tr. 99-110).

Gladys then testified before the jury, and Young renewed his previous objection. Gladys' testimony was consistent and in keeping with Judge Jefferson's ruling, and was limited, general, and vague about the nature of the physical abuse and did not get into details including the January 2019 CDVHAN. The State did not seek to introduce the protective order or its details.

Gladys testified that her relationship with Young became bad after they were married. About a week after they were married, he became controlling, physically abusive, and followed her around. Some of the behavior continued after they were separated. Young would pop up several times [3 to 5 times] a week wherever she was. This conduct continued up until the night of the murder, November 15th/16th, 2019. She testified she was still in contact with Young because he would call her repeatedly and if she did not answer he would pop up wherever she was; he would be angry and sometimes put his hands on her. Young would pop up at her bus stops, at her apartment complex, and at her sister's house. The day before the murder, the 15th, Young called her repeatedly, but she did not answer the calls. The night before Alston's murder, she saw Young again near the aquarium following her while she was driving her bus for the City of Charleston. He was dressed in all black. She also saw his father's gold car, which Young drove, parked nearby. Young then called her while she was on the bus. She did not answer the call. When she reached the bus station, she called non-emergency 911 and reported that Young was bothering her again and asked them to stay on the line until she got home safely. This 911 call was recorded but Judge Jefferson would not admit it. When she reached home, Young started calling her again. She then saw Young parked across the street and saw him pull out of the parking lot when David Alston left the apartment parking lot the first time. She then heard Young outside her apartment complex door, and on the phone several times, and Young threatened to kill her and her new boyfriend Alston. Young was extremely angry and basically in a jealous rage. Young eventually murdered

Alston in the parking lot, and Gladys heard Young scream in rage after the first 3 shots. She then heard 3 more shots. The 2nd 911 call was published to the jury with the fact that Young was a convicted felon redacted from the call. (June 5-6, 2023, Tr. 111-32; 147-50; 207-18 State's Ex. 50, for I.D.; State's 51, 2nd 911 call redacted).[6]

Standard of Review

The admission of exclusion of evidence is within the sound discretion of a trial judge, and an appellate court may disturb a ruling admitting or excluding evidence only upon a showing of an abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006); State v. Dennis, 402 S.C. 627, 742 S.E2d 21 (Ct. App. 2013). "If there is any evidence to support the admission of [ ] bad act evidence, the [circuit court]'s ruling will not be disturbed on appeal." State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001); State v. Bell, 430 S.C. 449, 464, 845 S.E.2d 514, 522 (Ct. App. 2020).

Analysis

The evidence was admissible under Rule 404(b), SCRE

Judge Jefferson did not abuse her discretion in admitting the challenged evidence. Contrary to Young's argument, as Judge Jefferson correctly found, in this case, the evidence was admissible under Rule 404(b), SCRE, to show motive, intent, absence of mistake or accident, and identity, since Young was raising identity as a defense. As an additional sustaining ground, the evidence was also admissible as common scheme or plan evidence as Young's actions on the night of the crime were the same as previous occasions when Young called Gladys and she would not answer.

[6] Gladys also testified on re-direct examination without objection that the difference between her relationship with David Alston and Young was Alston did not disrespect her, call her out, or beat her. He listened, was easy to talk to, and made her feel comfortable. (June 5-6, 2023, p. 217, ll. 9-15).

As Judge Jefferson properly found, Young's contention, that Gladys was not a victim in this case; therefore, the prior bad acts should not be admissible to prove motive, intent, absence of mistake or accident, and identity in David Alston's murder, was contrary to the evidence and the law. State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004). (See also June 5-6, 2023, Tr. 174, ln. 17 – 175, ln. 25). Defense counsel admitted below, upon questioning by Judge Jefferson, that Gladys was a victim by statutory law. (Id.). In Sweat, this Court held the fact that the defendant had assaulted the female victim, his former girlfriend, several months earlier and was arrested for CDV, sat in jail, and was later released and attacked the female victim and her new boyfriend, was admissible under Rule 404(b), to prove motive, intent, and identity. Here, Judge Jefferson correctly found that Gladys was clearly a victim in this case given the continuum of events from the dissolution of her marriage to Young, up until what occurred the night before and of the murder of David Alston, November 15th/16th, 2019. Gladys was being stalked, and that stalking led directly to Alston's murder. Judge Jefferson correctly found the possessive, controlling, abusive, and jealous relationship of Young toward Gladys, as shown by the continuum of events, provided the only reasonable explanation why Young would have murdered a complete stranger, David Alston, on the night of the crime in an apartment parking lot. Id.

Rule 404(b), of the SCRE, provides for the admission of such evidence, not to prove action in conformity therewith, but to prove motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE. The substance of Rule 404(b) is the same as the rule of evidence stated in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), followed prior to the adoption of the SCRE. Lyle, 125 S.C. at 416 S.C. at 416-17, 118 S.E.at 807. As noted, evidence of other bad acts or crimes is inadmissible, unless it can be shown by the prosecution the evidence is necessary to establish a material element of the crime charged. State

v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990), the court defined the term "necessary" as being synonymous with the term relevant:

> Bell requests that this Court limit the Lyle rule by finding that other acts evidence is admissible only if necessary. Relying mainly on State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), Bell argues that the trial judge erred in admitting the other acts evidence because it was not needed. Bell notes that the testimony of an eyewitness who identified Bell as the abductor as well as other evidence linking him to the crime. In Johnson, we stated that evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged, 293 S.C. at 324, 360 S.E.2d at 319. Consistent with our rulings since Lyle, we define necessary as synonymous with relevant to establish a material fact or element of the crime charged.

Bell, 302 S.C. at 27-28, 393 S.E.2d at 369.

Proof of Bad Act by Clear and Convincing Evidence

Evidence of bad acts need only be proven by clear and convincing evidence. State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997); Bell, 302 S.C. 18, 393 S.E.2d 364. Where a witness's testimony is the sole evidence of a bad act, the determination of the witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate the witness's veracity. State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008); State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003). Should the trial judge determine the witness's testimony clearly and convincingly establishes the bad act occurred, an appellate court is bound by the trial judge's factual findings unless clearly erroneous. State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013); Kirton, 381 S.C. 7, 671 S.E.2d 107; Tutton, 354 S.C. 319, 580 S.E.2d 186. An appellate court will not conduct a *de novo* review of a trial judge's ruling on the admissibility of bad act evidence on the issue of whether the evidence rises to the level of clear and convincing evidence. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001); State v. Perry,

420 S.C. 643, 803 S.E.2d 899 (Ct. App. 2017). A trial judge's ruling admitting bad act evidence will be upheld on appeal if it is supported by any evidence. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300; State v. Smith, 391 S.C. 353, 705 S.E.2d 491 (Ct. App. 2011), *reversed on other grounds*, 406 S.C. 215, 750 S.E.2d 612 (2013); Sweat. Here, Young did not argue below, and does not argue on appeal, that the prior bad act evidence was not proven by clear and convincing evidence. (IBOA, pp. 1-16).[7] Therefore, this issue is not preserved for appeal. Wilder Corp. v. Wilkie, 330 S.C. 71, 497 S.E.2d 731 (1998); Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001).

Regardless, even if Young attempted to raise this issue here, Gladys Singleton's testimony and the two 911 calls established the prior bad acts of physical abuse during the marriage, separation, and after the divorce by clear and convincing evidence. (June 5-6, 2023, Tr. 97-99; 105, 111-32; State's Ex. 50 & 51; 147-50; 213-18). Her testimony and the two 911 calls also established she had obtained a restraining order on Young because of prior domestic violence. (Id.). Young does not dispute this on appeal. (IBOA, pp. 1-16). Both the State and the defense admitted below that there was a prior CDVHAN charge against Young for assaulting Gladys in January of 2019, about 10 months before the murder, which the State out of an abundance of caution kept from the jury. Further, this Court can take judicial notice of its own records. Gladys took out the restraining order on January 31, 2019, for conduct occurring on January 21, 2019. State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998)(testimony of co-defendant with defendant when prior bad acts were committed was sufficient to meet the clear and convincing standard); State v. Aiken, 322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996)(testimony of co-defendant that defendant had been

[7] Young mentions 1 time in his brief in a general statement of the law, that prior bad acts must be proved by clear and convincing evidence. (IBOA, p. ll. 18-21). However, he did not argue this issue below and does not argue in his statement of issue on appeal or in his brief that the State failed to prove the prior bad acts by clear and convincing evidence. (June 5-6, 2023, Tr. 57-72; 97-111; IBOA, pp. 1-16).

involved in prior robberies constituted clear and convincing evidence); Kirton, *supra* (testimony of 1 witness was clear and convincing evidence of prior bad act).[8]

The evidence was admissible to show motive, intent, absence of mistake, and identity

Young argues that the fact that Young was abusive during the relationship and that Gladys had taken out a restraining order on him for domestic violence was not relevant to any issue in the case and did not fit under any exception to Rule 404(b). Young is wrong. Young's actions during the marriage and thereafter of becoming controlling, possessive, physically abusive, and stalking Gladys and the fact that Gladys had to obtain a restraining order on Young for protection were admissible to show motive, intent, and identity. Rule 404(b), SCRE. Here, Young's defense at trial was he did not commit the crime, i.e. identity. As a result, his prior actions were admissible and their probative value increased to show motive, malice, intent, absence of mistake or accident in killing Alston, and identity. State v. Key, 277 S.C. 214, 284 S.E.2d 781 (1981)(fact that defendant had threatened victim with a pistol on 2 or 3 different occasions was admissible in prosecution for ABHAN to show absence of mistake or accident in shooting the victim); State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (Ct. App. 1999)(in murder and ABWIK prosecution, fact that defendant had

---

[8]See Sweat (in prosecution for burglary, ABWIK and AHAN, evidence of prior CDV for which defendant was arrested, but never convicted, after victim signed a statement the event did not actually happen, was nevertheless admissible at trial, where victim testified incident in fact occurred, and she only copied the statement at the request of defendant's sister and acquiesced in signing it because all she wanted was out of the situation; and, there was also testimony by a witness he saw bruises on victim's arms after the incident); State v. Ford, 334 S.C. 59, 512 S.E.2d 500 (1999)(testimony by victim he was previously robbed by the defendant, which was partially corroborated by a detective, was clear and convincing evidence of prior bad act); Scott, 405 S.C. 489, 748 S.E.2d 236 (in prosecution for CSC on a minor and lewd act, court did not err in allowing prior bad act testimony under 404(b) from 2 witnesses, where prior bad acts occurred 20 years before the defendant's arrest----the proffered 404(b) testimony was very specific and appeared credible; deference afforded to a trial judge's findings in this regard, and the court did not err in finding the bad act evidence was clear and convincing); State v. Atkins, 309 S.C. 542, 424 S.E.2d 554 (Ct. App. 1992)(prosecution failed to prove a subsequent bad act by clear and convincing evidence, where there was no identification of the defendant as the perpetrator).

previously been convicted for CDV against victim and made prior threats to kill the victim with a pistol, was admissible to refute defendant's claim the shooting was an accident); State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008)(admission of prior incidents of abuse or neglect were not error where evidence was admissible as proof of intent and absence of accident, this was especially true because defendant disputed motive and intent to commit homicide by child abuse).[9] The record shows Young murdered Alston because of Young's relationship with Gladys that was controlling, possessive, jealous, and physically abusive which actually led to the divorce which Young was unable to handle. (State's Ex. 51, 2nd 911 call redacted). Gladys testified if she did not answer Young's repeated phone calls, Young would "pop up," get angry, and put his hands on her. That is exactly what happened the night before and of the murder. November 15th/16th, 2019. Young actually told Gladys on the night of the crime that he was going to kill Alston because Alston was her new boyfriend. Young could not stand another man in Gladys' life, only Young. The prior abusive relationship with Gladys links up with Youngs' statements to Gladys on the

[9] *See also* Smith, 391 S.C. 353, 705 S.E.2d 491 (court did not err in admitting evidence defendant had broken child's leg about 3 months before child's death, the femur injury was highly relevant to show defendant's motive for attempting to "chemically restrain" the child with medicine, and was critical to show the overdose leading to death was not a mistake or accident); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008)(where defendant was convicted of criminal solicitation of a minor, involving solicitation over the internet of a person defendant thought was a minor, but in fact a police officer, evidence of the defendant's previous chats with a Pennsylvania police officer were properly admitted under Rule 404(b), to prove among other things the absence of mistake, where defendant subsequently engaged in similar chats with a S.C. officer); State v. Talley, 77 S.C. 99, 57 S.E. 618 (1907)(where defendant was on trial for obtaining goods by false pretenses, having allegedly submitted a false claim for payment to a county, it was proper for the State to cross-examine him as to other duplicate claims which he had made against the county in the past; the State's case depended on whether the defendant had obtained double pay for services rendered by fraud or by honest mistake; the burden being on the State to prove fraudulent intent, it was competent to prove past similar offenses); State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981)(evidence of night-hunting was introduced in homicide trial to prove the absence of mistake or accident by the defendant).

phone and through her front door on the night of the crime and to his actions earlier that night in stalking Gladys after she would not answer his phone calls all day just as he had done in the past, and to Young's actions immediately after Alston returned to the apartment complex. Young murdered Alston by shooting him several times including 2 times in the head.

And, as an additional sustaining ground, Young's actions during the marriage, separation, and after the divorce, leading up to and on the night of the murder, constitute a common scheme or plan. Rule 404(b), SCRE. Young's actions on the night before and night of the murder, November 15th/16th, 2024, were exactly like his actions previously. If Gladys would not answer Young's phone calls, he would pop up, stalk her, become angry and put his hands on Gladys. The only difference the night before and of the murder was Gladys stayed on her bus; Gladys called 911 from the bus station; 911 stayed on the phone with her until she got home; she locked the door and would not allow Young into her apartment, and Young was confronted with her new boyfriend. Except for Gladys being able to prevent Young from getting to her, *Young's actions* were the same as previous to that night. Id.

The prior bad acts were not too remote

Young argues the testimony regarding he became "physically abusive" during the relationship and that Gladys took out a restraining order on him because of domestic violence was too remote to be admissible. He is wrong. This was a toxic relationship that began 1 week after Young and Gladys were married in 2017, continued during the separation, and continued after the divorce in October 2019, and only ended with Alston's murder on November 16, 2019, which was directly related to Young's jealous, controlling, and abusive relationship toward Gladys. State v. Thomas, 248 S.C. 573, 151 S.E.2d 855 (1966) *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abrogating the doctrine of in favorem vitae).

In Thomas, the defendant was convicted of rape. Our Supreme Court found evidence that the defendant had previously stolen the victim's watch **4 years earlier** was properly admissible under the motive and intent exception to Lyle. The victim had testified against the defendant for stealing the watch. The defendant said to the victim on the night of the rape, "'It's me and I have come to kill you. I have planned it every single day since you put me on the chain gang for stealing your watch.'" Thomas, 248 S.C. at 576, 151 S.E.2d at 857. In affirming the admission of the prior bad act, the Court concluded:

> We think that all of the evidence here, which only incidentally tended to prove the commission of other crimes, by appellant is governed by exceptions to the general rule, and that such was, therefore, admissible.... The evidence with respect to the prior crime, the theft of [the victim's] watch, was restricted to the minimum requirements of the case and tended directly and fairly to prove not only the identity of the appellant, but his motive as well.

Id. at 583, 151 S.E.2d at 861. As this Court said in Sweat:

> Third, our courts have not established a bright-line rule for determining when evidence loses its probative value due to passage of time. Indubitably, we have established no such rule due to the fact-intensive nature inherent in a Rule 403 analysis. The determination of prejudice depends upon the unique circumstances of each case. *See* Wilson, 345 S.C. at 7, 545 S.E.2d at 830. Accordingly, the trial judge is given broad discretion in making the Rule 403 determination. *See* Myers, 359 S.C. at 48, 596 S.E.2d at 492.

State v. Sweat, 362 S.C. 117, 132, 606 S.E.2d 508, 516 (Ct. App. 2004)

In State v. Good, 308 S.C. 308, 417 S.E.2d 640 (Ct.App.1992), *affirmed*, 315 S.C. 135, 432 S.E.2d 463 (1993), this Court upheld the admission of evidence relating to the defendant's burglary conviction of his grandmother's home, occurring within 4 months of his grandmother's murder, for which the defendant was on trial. *See also* State v. Lynch, 327 N.C. 210, 393 S.E.2d 811 (N.C. 1990)(evidence of the defendant's surreptitious entry into the victim's home 1 month prior to her murder was admissible to show the defendant's intent toward the victim, and hence,

his identity as the assailant); Masters v. State, 186 Ga. App. 795, 368 S.E.2d 557 (Ga. App. 1988)(evidence of a prior burglary **over 5 years earlier** was admissible to prove intent and bent of mind in an accused's subsequent trial for burglary and criminal damage to property). As Thomas shows, whether a prior bad act is too remote depends on the facts of a particular case. Here, in the present case, the victim David Alston's murder was directly related to Young's conduct toward Gladys beginning 1 week after their marriage which continued up to and including the night of Alston's murder.

In view of case law and Rule 404(b), SCRE, courts have considered temporal remoteness in determining whether admission is proper, but there is no set time limit beyond which a prior bad act is simply, per se, too remote. Scott, 405 S.C. at 504, 748 S.E.2d at 244-45 (wherein the prior bad acts occurred 20 years earlier). In the present case, the controlling, possessive, and abusive behavior began during the marriage and led to Gladys separating from Young, who continued to harass, abuse, and stalk Gladys for another 2 years including during the separation and up to and after the divorce including up to the very night of the crime. Id.[10] The jury had to understand that relationship, because Alston was murdered because of that relationship. As Judge Jefferson found, the conduct of Young during the continuum of the entire relationship leading up to the stalking of the night of the crime, and Young's statements the night of the crime, show the relationship between Young and Gladys was the motive for the murder of Alston; it proved Young's intent in killing Alston; and, it proved Young's identity as the killer of Gladys' new boyfriend. Rule 404(b), SCRE.

---

[10] *See also* Tutton, 354 S.C. at 332, n. 5, 580 S.E.2d at 193; State v. Blanton, 316 S.C. 31, 33, 446 S.E.2d 438, 440 (Ct. App. 1994); State v. Perry, 420 S.C. 643, 803 S.E.2d 899 (Ct. App. 2017).

Further, as will be discussed herein, the fact that Gladys took out a restraining order on Young due to domestic violence mentioned on the 2nd 911 tape stemmed from conduct which occurred in *January of 2019*, just *10 months before the murder*, and the protective order established Young was not even supposed to be around Gladys the night of the murder, but he ignored the law and did so anyway because of his jealousy, possessiveness, and controlling behavior, that led directly to David Alston's murder, when he confirmed that night that Gladys was seeing Alston, and killed him for it.

The evidence was admissible under Rule 403, SCRE

Finally, Young also claims the probative value of this evidence was substantially outweighed by the danger of unfair prejudice to him under Rule 403, SCRE. Again, Young is wrong.

A trial judge's weighing of probative value verses prejudicial effect under Rule 403, SCRE, is reviewed under an abuse of discretion standard and should be reversed only in exceptional circumstances. State v. Gadson, 439 S.C. 278, 886, S.E.2d 719 (Ct. App. 2023) (referencing State v. Brooks, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct App. 2019)(quoting State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014); Sweat, *supra*. Only exceptional circumstances justify reversing the Circuit Court Judge's decision on 403 grounds. State v. Huckabee, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (2017).

There are no exceptional circumstances here. The prior "physical abuse" during the marriage was one of the reasons Gladys left the marriage to Young, and Young thereafter began stalking Gladys. The same conduct continued during the separation, after the divorce, and up to the very night of the murder. Young would make repeated harassing phone calls and if Gladys would not answer those calls, Young would show up in the area of wherever Gladys was [i.e. stalk

her] and "put his hands on her." Gladys explained that many times she simply answered the harassing phone calls as she did the night of the victim's murder when she reached home so Young would not "pop up" and put his hands on her. She answered his phone calls the night of the murder when she got home for the same reason, and Young told her he was going to kill her and himself and then told her seconds before the victim's murder that he was going to kill her new boyfriend and himself. In an excited utterance to the 911 operator, she stated she heard gunshots outside and believed it was her ex-husband whom she had a restraining order on for domestic violence. This showed Young was continuing to stalk the victim Gladys even after a restraining order was issued. Rule 403, SCRE. His controlling behavior, including abusive behavior, of Gladys new no bounds. It only escalated. The challenged evidence showed without question motive, intent, malice, and identity of the killer of David Alston. The fact that Young would violate a restraining order showed the law would not even stop him from controlling and possessing Gladys, nor would a new boyfriend. Young was the aggressor. And this evidence showed why Gladys was afraid of Young on the night of the crime, called 911 the first time, would not answer the door when Young came to her door, and why she called 911 the second time. As a result, there was no unfair prejudice to Young. Judge Jefferson's determination must be affirmed.

In determining whether relevant evidence should be admitted, the trial judge must consider whether the probative value of the evidence is substantially outweighed by any undue prejudice caused to the defendant. Rule 403, SCRE; Smith, 337 S.C. 27, 522 S.E.2d 598; State v. Moultrie, 316 S.C. 547, 451 S.E.2d 34 (Ct. App. 1994). Accordingly, after a trial judge conducts a Rule 404(b) analysis and finds the evidence both relevant and admissible as a bad act, the trial court must still conduct a Rule 403, SCRE analysis to determine whether or not the evidence is unduly prejudicial. State v. Beck, 343 S.C. 129, 536 S.E. 2d 679 (2000); State v. King, 349 S.C. 142, 561

S.E.2d 640 (Ct. App. 2002). This weighing test has been referred to by our Supreme Court as the enhancement of probative value test. State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993); State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984).[11] Judge Jefferson did so, and correctly determined the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE.

This Court reviews a trial court's decision on the admission of evidence under Rule 403 under an abuse of discretion standard. State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009). "A trial [court's] balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise due to a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." Id., *quoting* State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-94 (Ct. App. 2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The trial court's determination should be reversed only in exceptional circumstances. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593.

The probative value of bad act evidence may be shown by the similarity of the crime charged, or whether a real connection can be drawn between the 2 incidents, and whether the evidence is relevant to a material issue. Lyle, 125 S.C. 406, 118 S.E. 803; State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). Young's actions toward Gladys the night of Alston's

---

[11] Where the evidence is shown to be relevant, if its probative value is substantially outweighed by the danger of unfair prejudice, the evidence must be excluded. *See* Rule 403, SCRE; State v. Cope, 405 S.C. 317, 337-38, 748 S.E.2 194, 204-05 (2013). Unfair prejudice means and undue tendency to suggest decision on an improper basis. Stokes, *supra*; Beck; Gilchrist, 329 S.C. at 627, 496 S.E.2d at 427 ("Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis."); State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)(the determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case).

murder, were the same as they had been since the marriage, separation, and divorce, the only difference being on this occasion, Young was confronted with confirmation that Gladys had a new man David Alston. And, Young killed Alston for it.

Here, after hearing argument on the admissibility of the evidence under 404(b) and Rule 403, Judge Jefferson appropriately determined the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice to Young. Holland, 385 S.C. 159, 682 S.E.2d 898. Young has failed to show Judge Jefferson abused her discretion in admitting this evidence in this case. Id. Judge Jefferson's determination is fully supported by the record. Judge Jefferson did not abuse her discretion in admitting any of this testimony as its probative value in the case was not substantially outweighed by the danger of unfair prejudice to Young because the prior abuse during the marriage triggered the victim Gladys Singleton to leave the marriage and the same or similar conduct continued thereafter during the separation and after the divorce including **up to and on the night before and of the crime.**

The evidence was admissible to show malice, state of mind, and prior difficulties

Additionally, the evidence was also admissible under other case authority as evidence of malice, including prior difficulties between the parties, and of Young's state of mind. Blakely v. State, 360 S.C. 636, 602 S.E.2d 758 (2004); State v. Cooley, 342 S.C. 63, 536, S.E.2d 666 (2000); State v. Beck, 343 S.C. 129, 536 S.E.2d 679 (2000). The evidence was admissible independent of Rule 404(b), SCRE. As previously stated, Gladys was a victim in this case as was David Alston. (June 5-6, 2023, Tr. 174, ln. 17 – 175, ln. 75. Gladys being stalked by Young led directly to Alston's murder. Young's controlling, possessive, abusive, and jealous behavior only increased his malice until he murdered Alston. Rule 401 & 402, SCRE.

First, testimony that a defendant continued to contact a victim after the relationship had ended, stalked the victim, and threatened the victim is admissible to show malice toward the victim. Blakely, 360 S.C. 636, 602 S.E.2d 758. Here, in the present case, Young's stalking and physical abuse of Gladys was threatening behavior – i.e. if Gladys did not answer Young's phone calls, Young would get angry with her and "pop up" and lay hands on her. A defendant's threats to injure or harm the victim are not necessarily prior bad acts that fall under Rule 404(b) but are independent evidence that is admissible to show malice, the defendant's criminal intent, and the defendant's state of mind. Beck, 342 S.C. 129, 536 S.E.2d 679. Such prior threats or assaults are admissible because they are relevant under Rule 401 & 402, SCRE. Evidence is relevant and admissible if it tends to establish or make more or less probable a fact in issue or a matter in controversy. State v. Wiles, 383 S.C. 151, 158-59, 679 S.E.2d 172, 176 (2009); Beck, *supra* (testimony that defendant had made a statement of his intent to perpetrate certain crimes against victim - albeit 4 months prior to the crime - was highly probative as to a manifestation of an intent to commit a fatal attack upon the victim; the evidence bore directly on the defendant's identity as the killer as well as the establishment of motive, and was therefore admissible under Rule 401, SCRE; the temporal attenuation between the defendant making the statement and the crime being committed, was of no moment in assessing its admissibility, and at most, the 4 month lapse was a matter bearing on the weight of the evidence, which was for the jury to determine); State v. Glenn, 328 S.C. 300, 492 S.E.2d 393 (Ct. App. 1997)(statements made by defendant 1 year before the incident, were relevant where the defendant was accused of injuring his victim in the same manner). As a result, Young's threats to harm and prior assaults on the victim Gladys were admissible under Rule 401 & 402 SCRE, because they established Young's malice, his criminal intent, and his state of mind. Blakelv, *supra*; Beck: Glenn. 328 S.C. 300, 492 S.E.2d 393. Further, the probative value of this evidence

was enhanced where Young asserted he did not commit the crimes and the trial judge charged the jury on voluntary manslaughter upon Young's request, an unlawful killing without malice. (See June 8, 2023, Tr. 142-53; June 9, 2023, Tr. 3; 61-63). As a result, the probative value of this evidence substantially outweighed any unfair prejudice to Young. Rule 403, SCRE.

All of the evidence proffered by victim Gladys was **also admissible** to show prior difficulties between the parties, a separate basis to admit this evidence under South Carolina law.

> In homicide cases, evidence of previous quarrels and ill feelings or hostile acts between parties is admissible to show that animus probably existed between the parties at the time of the homicide. State v. Williams, 321 S.C. 327, 468 S.E.2d 626 (1996) (evidence of controversial telephone calls and loud altercations between victim and defendant were admissible to establish strained nature of parties' relationship); State v. Clinkscales, 231 S.C. 650, 99 S.E.2d 663 (1957) (evidence defendant shot victim six or seven weeks prior to murder was admissible); State v. Brooks, 79 S.C. 144, 60 S.E. 518 (1908) (evidence of previous quarrels and ill feeling between the victim and defendant arising out of child custody controversy was admissible); 22A C.J.S. *Criminal Law* § 721 (1989) (evidence of relations existing between accused and victim prior to crime are admissible). Prior disputes between the victim and defendant may be relevant to establish the accused's motive for committing the crime and motive may have bearing on the identity of the accused as the perpetrator of the crime. State v. Atkins, 303 S.C. 214, 399 S.E.2d 760 (1990) (testimony regarding prior disputes between white defendant and family of black victim, one of which involved defendant's flying the Confederate flag on Independence Day, was relevant to motive and admissible); State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) (testimony concerning a verbal altercation between victim and defendant prior to the murder was admissible as evidence of accused's motive and related to defendant's identity as perpetrator).

State v. Braxton, 343 S.C. 629, 636–37, 541 S.E.2d 833, 836–37 (2001)

As previously stated, and as Judge Jefferson properly found, Gladys was a victim in this case too. She was being stalked by Young and Young threatened to kill her. In fact, Young's murder of victim Alston was directly related to his feelings, jealousy, and possessiveness for

Gladys. Sweat, 362 S.C. 117, 606 S.E.2d 508 (prior difficulty between defendant and his former girlfriend was admissible to prove the motive for the assault of former girlfriend **and her new boyfriend**). "The evidence was properly admitted under the well-settled rule admitting evidence of previous quarrels, ill feeling, **or hostile acts** between the parties to show animus probably existed between them at the time of the homicide." Brooks, 79 S.C. at 144, 60 S.E. at 518 (emphasis added); State v. Adams, 68 S.C. 421, 47 S.E. 676 (1904); State v. Emerson, 78 S.C. 90, 58 S.E. 974 (1904).

The victim Gladys testified to the entire course of the relationship between Young and her, including Young's threats to harm her and the victim because she was in love with another man, Young's controlling statements and texts to her, and how Young's acts toward her he inflicted during the course of the relationship ended in the murder of her new boyfriend Alston. At the victim's autopsy, in addition to the gunshots to the victim's back and body, the victim had two (2) gunshot wounds to the head, exactly what Young stated he was going to do while on the phone with victim Gladys shortly before the murder. Cooley, 342 S.C. 63, 536 S.E.2d 666 (evidence that accused and decedent had previous difficulties are admissible). As part of Young's possessive, controlling, abusive behavior, and stalking of Gladys, that rose to the level of physical abuse if she did not respond to his harassing phone calls, Gladys' new boyfriend David Alston was murdered as a direct result. The evidence of the prior relationship between Young and Gladys and its difficulties was admissible to show the animus between the parties, including whether there was an abusive marital relationship between Young and the victim Gladys, and to aid the jury in deciding **who was the probable aggressor** that night when Young threatened Gladys and then threatened and killed the victim Glady's new boyfriend the victim David Alston. State v. Taylor,

333 S.C. 159, 168, 508 S.E.2d 870, 874 (1998); Clinkscales, 231 S.C. 650, 99 S.E.2d 663; Cooley. *supra.*

The generic testimony of physical abuse as the law requires, not the details, attributed to Young, were during the toxic relationship that was the motive for the murder. These acts were not so remote as to be unfairly prejudicial and require exclusion under Rule 403, SCRE because Gladys, the witness, and a victim, experienced them herself and they continued up until the date and time of the murder. *See* Sweat. 362 S.C. 117, 606 S.E.2d 508 (prior CDV 2 months before murder was not too remote and was admissible); Beck, *supra* (4 months between statement or threat and the crime went only to the weight of the evidence not its admissibility); Glenn, *supra* (statements made by defendant 1 year before the incident, were relevant where the defendant was accused of injuring his victim in the same manner); Cooley (where oldest son's testimony about father's domestic abuse of mother and threats to kill her with a knife was over 2 years prior to the date of the killing and this son had not lived with his parents since then, son's testimony should have been excluded under Rule 403); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999)(excluding evidence of Defendant's bad acts that occurred more than 1 year before the crime on trial). This is true especially, where Young's continuous possessive, controlling, abusive, and jealous relationship with Gladys led directly to the murder of the victim Alston and was the reason for the murder of Alston, as Young stated to Gladys the night of the crime.

Further, even if this Court were to interpret King and Cooley as imposing a 1 year outside limit on the admissibility of *prior difficulties between the parties* [not 404(b) evidence], this would not affect the admission of the evidence of the restraining order for domestic violence mentioned on the 2nd 911 call or the physical abuse of Gladys from November of 2018 to November of 2019. The restraining order arose out of a January 2019 incident, well within 1 year of the murder of

Alston. Further, Young was charged with CDVHAN for a January 19, 2019, incident. While the State stayed away from admitting the actual charge of CDVHAN and its' details before the jury, the prior assault occurred approximately 10 months before the murder in this case. It was less than 1 year before the crime for which appellant was on trial. The mention of the restraining order because of prior domestic violence on the 2nd 911 tape was admissible as prior difficulties between the parties even under King and Cooley. Additionally, the physical abuse that continued from November of 2018 to November of 2019 would be admissible as well even under King and Cooley.

Furthermore, Cooley is distinguishable from this case. In Cooley, the appellant was tried for the murder of his wife with a firearm while sitting at a dinner table. The appellant claimed the gun discharged accidentally. In Cooley, the younger son was allowed to testify to the continuum of abusive behavior of his father toward his mother before the murder on trial. The older brother's testimony dealt with domestic violence he had witnessed several years before, i.e. the defendant grabbing his wife by the neck and putting a knife to her throat and threatening to kill her. It was held the older brother's testimony to the specific abusive behavior he witnessed was inadmissible under Rule 403, S.C.R.E. because it occurred several years earlier and he had moved out of the home and had not witnessed any further domestic violence since that time. This present case is completely different. Gladys was a victim of Young's controlling, possessive, and abusive behavior from 1 week into their marriage up to and on the night of the actual murder, which murder was directly related to Young's obsession, jealousy, and need to control and possess Gladys. This is clear from the statements made by Young to Gladys over the phone, that he was going to kill her and then he stated he was going to kill her new boyfriend, and his actions that night. As Judge Jefferson found, there was a continuum of this conduct from the marriage, during the separation, and after the divorce up to the night of the crime. Therefore, the evidence he was physically

abusive to Gladys was not too remote in this particular case nor was its' probative value substantially outweighed by its prejudicial effect when Young's behavior led directly to the victim's death. Rule 403, SCRE.

The evidence was also admissible as res gestae of the crime evidence

The evidence of the possessive, controlling, physically abusive, and jealous relationship during the marriage, separation, and after the divorce, triggering the order of protection referenced to the 911 operator the night of the crime, which continued up to and on the night of the crime, November 15th/16th, 2019, was admissible as "*res gestae* of the crime evidence." Evidence of other acts of the defendant or even crimes may be admitted under the *res gestae* of the crime theory:

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae' " or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...' [and is thus] part of the res gestae of the crime charged." And where evidence is admissible to provide this "full presentation" of the offense, "[t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370–71 (1996)(quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980)), *overruled on other grounds,* State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014). "Under the res gestae theory, evidence other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding **the context in which the crime occurred**." State v. Gillian, 360 S.C. 433, 601 S.E.2d 61 (Ct. App. 2004)(emphasis added)(citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Adams. 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)). Even if the evidence is

relevant under this theory, prior to admission the trial judge should determine whether its probative value clearly outweighs any unfair prejudice. Rule 403, SCRE; State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990).

Young's controlling behavior, possessiveness, verbal abuse, stalking, and physical abuse during the marriage to Gladys triggered Gladys to separate from Young which began his stalking of her and at times laying his hands on Gladys if she did not return his phone calls and ultimately led to an order of protection which Young ignored and continued to stalk Gladys including the night of the murder which ultimately led to the victim David Alston's death, and therefore, the contested evidence was properly admitted under the facts of this case under the *res gestae* of the crime rule because it provided the whole context of and explained the crimes in this case. *See* Adams, 322 S.C. at 122, 470 S.E.2d at 370–71. Admission of the testimony was necessary and relevant to a full presentation of the evidence in this case. The testimony regarding what occurred previously in the marriage and after was relevant to show the complete, whole, unfragmented story regarding the crimes and why they occurred. *See* State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002).

Under the *res gestae* theory, it is important that the temporal proximity of the other act or acts be closely related to the charged crime. State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997). In this case, the acts were temporally related. Sweat, 362 S.C. 117, 606 S.E.2d 508 (prior CDV 2 months before murder was not too remote and was admissible in attack on ex-wife and her knew boyfriend). The prior acts in this case are so related to the actual crime as to be inextricably intertwined because the same conduct occurred the night of the crime. *See* Adams, 322 S.C. at 122, 470 S.E.2d at 371 ("The use of the cocaine here was inextricably intertwined with the robbery and murder. Under these circumstances, such evidence was properly admitted as part of the *res gestae*

of the crime."). Young's prior actions during the marriage, including his controlling behavior, possessiveness, verbal abuse, physical abuse, and following Gladys led to the separation and Gladys testified the same conduct continued after the separation and even after the divorce and was part of the entire scenario leading up to the stalking of Gladys' on the night before the victim Alston was murdered and on the night of the victim Alston's murder. The prior restraining order mentioned in the 911 call also showed the same or similar conduct, that Young was the aggressor and Gladys was merely trying to protect herself from Young, when Young murdered the victim Alston this case. *See* State v. Johnson, 439 S. C. 331, 887 S.E.2d 127(2023) (defendant's acts in Dillon and Marlboro Counties most definitely provides context to the Marion County domestic violence case); State v. Wood, 362 S.C. 520, 528, 608 S.E.2d 435, 439 (Ct. App. 2004)(defendant's murder of trooper 2 hours earlier was *res gestae* of failure to stop for a blue light and AWIK trial in another county); State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997)(defendant's act after the crime of purchasing crack cocaine with money from the armed robbery for which he was on trial was part of the *res gestae* of the crime). Moreover, the probative value of the evidence was not substantially outweighed the danger of its prejudicial effect. *See* Owens, 346 S.C. at 653, 552 S.E.2d at 753; Wood, 362 S.C. at 527–29, 608 S.E.2d at 439–40.

In fact, Young's actions on previous occasions during the marriage, separation, and after the divorce toward Gladys are all part of the *res gestae* of these crimes in this case because they continued up the night of the crime, November 15th/16th, 2019. United States v. Wright, 392 F.3d 1269, 1276 (11th Cir.2004); ("[E]vidence of [defendant's resistance to arrest] prior to the discovery of the firearm gives the jury the body of the story, not just the ending. Such evidence was 'inextricably intertwined' with the charged offense."); State v. Peltier, 116 A.3d 150, 155-56 (R.I. 2015)(Simply because the challenged testimony occurred moments after Peltier assaulted Thurber

does not change the fact that the acts were related "closely in both time and place" and were "intricately interwoven" with the crime on trial).

Here, Young was on trial for the murder of his ex-wife's new boyfriend that was the result of years of stalking and abuse of Gladys. The murder of the victim was as a direct result of the abusive relationship between Young and his ex-wife Gladys. It was necessary for a full presentation of the case and for context, for the jury to understand the full nature of the relationship between Gladys and Young. In fact, the defense only objects the generic statement that Young became "physically abusive" during the marriage and thereafter and that Gladys obtained a restraining order on Young before the date of the murder because of domestic violence.[12] As a result, the entirety of the prior behavior was admissible as *res gestae* of the crime, especially where the incident the night of the murders was directly related to the prior behavior of Young during the marriage and thereafter and up to the night of the crime. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (evidence of other crimes is admissible when it furnishes the context of the crime or is necessary for a full presentation of the case and is necessary to complete the story of the crime on trial by proving its context); Sweat (prior act of domestic abuse gave victim opportunity to escape her relationship with defendant; as a result she moved out, and he spent time in jail; he was upset, and 11 days after his release the crimes for which he was on trial occurred; the October abuse and events that followed provided the fact finder with an appropriate context in which to place the later attack).[13]

---

[12] Young does not object to the testimony of Gladys that Young's behavior became different 1 week after they were married and he became controlling, possessive, verbally abusive and followed Gladys around. Nor does Young object to the fact that Gladys testified he began engaging in conduct that constituted stalking after they separated up to and including the night of the crime. (IBOA, pp. 1-16).

[13] *See also* King, 334 S.C. at 512, 514 S.E.2d at 582 (*res gestae* recognizes evidence of other bad acts may be an integral part of the crime or may be needed to aid the fact finder in understanding

Young's murder of his ex-wife's new boyfriend was directly related to why Young and Gladys separated and then divorced and why Young was stalking Gladys. It was necessary for a full presentation of the case and for context, for the jury to understand the full nature of the relationship between Young and Gladys, including the prior abuse leading up to their breakup, which eventually led to Young stalking the victim Gladys and eventually directly led to Young murdering David Alston. As a result, the evidence of why Gladys left Young and why Young continued to stalk Gladys and how she had a restraining order on him was admissible as *res gestae* of the crime, especially where it all led to Young murdering Alston.

In this case, the acts were not so remote as to be unfairly prejudicial and require exclusion under Rule 403, SCRE. Sweat, 362 S.C. 117, 606 S.E.2d 508 (prior CDV 2 months before murder was not too remote and was admissible); Beck, *supra* (4 months between statement or threat and the crime went only to the weight of the evidence not its admissibility); Glenn, *supra* (statements made by defendant 1 year before the incident, were relevant where the defendant was accused of injuring his victim in the same manner); Cooley (where son's testimony about father's domestic abuse of mother was over 2 years prior to the date of the killing **and** son had not lived with his parents since then, son's testimony should have been excluded under Rule 403); King. 334 S.C.

---

the context in which the crime occurred.); Wiles, 383 S.C. at 158-59, 679 S.E.2d at 176 (evidence of other crimes which supplies the context of the crime, or is intimately connected with and explanatory of the crime, is admissible as *res gestae*); State v. Martucci, 380 S.C 232, 669 S.E.2d 598 (Ct. App. 2008)(admission of prior incidents of abuse or neglect was needed to present overall view of the facts and to provide context in which the crime occurred, and demonstrated the culminating impact upon the child; evidence regarding the prior bad acts was relevant to show the complete, whole story relating to the charge of homicide by child abuse; *See* State v. Bolden 303 S.C. 41, 43, n. 1, 398 S.E.2d 494 (1990) (noting *res gestae* does not fit squarely within any of the 5 categories in Lyle); State v. Smith, 309 S.C. 442, 451, 424 S.E.2d 496, 501 (1996) (Toal, J. dissenting)(although there is some overlap between *Lyle* and the *res gestae*, *res gestae* is a separate method where other evidence of criminal acts can be admitted).

504, 514 S.E.2d 578 (excluding evidence of Defendant's bad acts that occurred more than 1 year before the crime on trial).

Here, it was necessary for a full presentation of the case and for context, for the jury to understand Young's conduct, which stemmed from his inability to deal with the separation and divorce from Gladys, led directly to the murder of the victim David Austin. As a result, the evidence was admissible as *res gestae* of the crime, especially where at autopsy the victim was found to be shot multiple times including 2 times in the head which Young promised Gladys right before he committed the murder that he would do and Alston's murder was a direct result of Young's jealous, controlling, and abusive relationship with Gladys. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71; Sweat (prior act of domestic abuse gave victim opportunity to escape her relationship with defendant; as a result she moved out, and he spent time in jail; he was upset, and 11 days after his release the crimes for which he was on trial occurred; the October abuse and events that followed provided the fact finder with an appropriate context in which to place the later attack upon the victim and her new boyfriend). *See also* King. 334 S.C. at 512, 514 S.E.2d at 582 (*res gestae* recognizes evidence of other bad acts may be an integral part of the crime or may be needed to aid the fact finder in understanding the context in which the crime occurred.); Wiles, 383 S.C. at 158-59, 679 S.E.2d at 176 (evidence of other crimes which supplies the context of the crime, or is intimately connected with and explanatory of the crime, is admissible as *res gestae*); Martucci, 380 S.C 232, 669 S.E.2d 598 (Ct. App. 2008)(prior incidents of abuse or neglect was needed to present overall view of the facts and to provide context in which the crime occurred, and demonstrated the culminating impact upon the child; evidence regarding the prior bad acts was relevant to show the complete, whole story relating to the charge of homicide by child abuse); *See* State v. Bolden, 303 S.C. 41, 43, n. 1, 398 S.E.2d 494 (1990) (noting *res gestae* does not fit squarely

within any of the 5 categories in Lyle): Smith, 309 S.C. at 451, 424 S.E.2d at 501 (1996)(Toal, J. dissenting)(although there is some overlap between Lyle and *res gestae*, *res gestae* is a separate method where other evidence of criminal acts can be admitted).

Harmless error

Even assuming *arguendo* error in admitting any of the challenged evidence, it was harmless and could not have affected the verdict. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006); *See* State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012)(admission of evidence can be harmless where testimony was similar to testimony of another witness admitted at trial); State v. Page, 378 S.C. 476, 483-84, 663 S.E.2d 357, 360 (Ct. App. 2008)(error is harmless where it could not reasonably have affected the trial's outcome, and considering as 1 factor whether the evidence was cumulative to other testimony). This Court will not set aside a conviction for an insubstantial error not affecting the result when guilt is conclusively proven by competent evidence and no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

The admission of the generic testimony of "physical abuse" during the marriage in 2017 and thereafter and the statement on the 911 tape that Gladys had a restraining order on Young for domestic violence was harmless. (June 5-6, 2023, Tr. 111, ln. 18 -112, ln.8; State's Ex. 51, redacted 911 call). There was other un-objected to testimony of Gladys that after the separation and the divorce Young would call Gladys' repeatedly and if she did not answer he would appear wherever she was and lay hands on her. (June 5-6, 2023, Tr. 113, ll. 1-3). Gladys testified she would answer the repeated phone calls to keep Young from appearing out of nowhere and putting his hands on her. (June 5-6, Tr. 112, ln. 22 – 113, ln. 3). Further, in the 1st 911 call, to the non-emergency

number, Gladys told the 911 operator that her husband was "bothering her" again. (June 5, 2023, Tr. 117, ln. 23 – ln. 8). Furthermore, Young had no objection to, and evidence was admitted, that after the first week of their marriage, Young became controlling, possessive, verbally abusive, and bothered Gladys. (June 5, 2023, Tr. 67, ll. 1-4; 99, ln. 18-100, ln. 6; 111-112). Gladys testified without objection that this conduct continued after the separation and even after the divorce. (June 5-6, 2023, Tr. 111-12). Gladys also testified without objection, Young would call her phone repeatedly during the day or night, i.e. telephone harassment, a crime. Gladys testified if she did not answer Young's repeated phone calls, he would "pop up" wherever she was, at her apartment, on her job, and even at her sister's residence, basically stalking her, also a crime. (June 5-6, 2023, 112-13). Gladys testified without objection she had talked to police officers about Young's bothering or stalking her and they told her she needed to put surveillance cameras in to catch Young so they could arrest him, and the victim David Alston had bought her some indoor surveillance cameras. (June 5-6, 2023, Tr. 123, ll. 2-10). Gladys testified that after the divorce, the day before the victim's death, Young had been calling her all day, but she had refused to answer his calls. (June 5-6, 2023, Tr. 116-117). Young elicited testimony from the detective that the detective obtained an arrest warrant against Young for "stalking" for Young's behavior toward Gladys on November 14, 15, 16, 2019. (Tr. 294; 305). Gladys testified without objection that the major difference between the victim David Alston and Young was David was kind to her, listened to her, and did not beat her. (June 5-6, 2023, Tr. 217, ll. 9-15). And, Gladys testified that on the night before the victim's murder, Young was stalking her again on her bus route, and she called non-emergency 911 and asked them to stay on the line until she could get home safely. (June 5-6, 2023, Tr. 118-19). It is clear from this call that Young had been harassing or bothering Gladys before this night. (June 5-6, 2023, Tr. 118-19). Further, Gladys testified to Young stalking her when she

got home, he immediately started calling her while she was inside her apartment, and he called her immediately after the murder. (June 5-6, 2023, Tr. 118-26). The objected to testimony was similar to other evidence admitted without objection. *See* Liverman, *supra* (evidence can be harmless where testimony was similar to testimony of another witness); Page, 378 S.C. at 483-84, 663 S.E.2d 357 (error is harmless where it could not reasonably have affected the outcome, and considering as 1 factor the evidence was cumulative); State v. Brewer, 411 S.C. 401, 409-410, 768 S.E.2d 656, 660 (2015); State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008)(the admission of improper evidence is harmless where the evidence is merely cumulative to other evidence).

Furthermore, there was other evidence of Young's guilt establishing his guilt beyond a reasonable doubt such that no other rational conclusion could have been reached. This included Gladys' testimony of the entire relationship with Young that was not objected to including Young's controlling, possessive, and verbally abusive nature, and how Young harassed her by phone and stalked her for months and years leading up to the murder of Alston. This also included Gladys' entire testimony of Young stalking her on the night before the crime on her bus route and to her apartment complex including the threats he made to kill her and her new boyfriend. This also included the 2nd 911 call itself which was an excited utterance and present sense impression, the testimony of her roommate Brandon Maybank, Gladys' identification of Young's voice at the time of the murder, the CSLI placing Young stalking Gladys that night, placing Young at the crime scene at the time of the murder, and returning to the scene when he was arrested, the fact that Young changed cell phones 3 different times during the night, his wet black clothes found in his real home, the GSR found on Young's hand, the victim, and in Young's car, the fact that Young gave a false name when walking up to the crime scene 2 ½ hours later, and his false statements to the police

about where he lived and his whereabouts on the night of the crime that did not match up with his cell site information or Gladys' testimony. State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), *affirmed*, 373 S.C. 601, 646 S.E.2d 872 (2007)(Although trial judge erred in not limiting the amount of the evidence presented as to bad acts, such error was harmless, where other evidence established defendant's guilt beyond a reasonable doubt). As a result of the other evidence of guilt, any error in the admission of the challenged evidence was harmless beyond a reasonable doubt on this record. State v. Brown, 424 S.C. 479, 493, 818 S.E.2d 735, 743 (2018)("Where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless.'") (quoting State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011)).

CONCLUSION

For the above stated reasons, Young's conviction and sentence for the murder of David Alston must be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General
Fed. ID No. 2091

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

June 2, 2025.

By: *s/ J. Anthony Mabry*
ATTORNEYS FOR RESPONDENT