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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KAWASI LAFRANCE DINGLE,

APPELLANT

APPELLATE CASE NO. 2025-000248

ANDERS BRIEF OF APPELLANT

GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting prior bad acts testimony over appellant's Rule 404(b), SCRE, objection under a *res gestae* exception?

STATEMENT OF THE CASE

Appellant Kawasi Dingle was indicted by a Horry County grand jury for one count of kidnapping and one count of domestic violence of a high and aggravated nature arising from an incident with his domestic partner on December 6, 2023. R. 281-284. Appellant was tried before the Honorable Michael Nettles and a jury on February 3 – 5, 2025. R. 1. Martin Spratlin appeared on behalf of appellant and Brandon Lanier and Joshua Holford represented the State. R. 1. The jury found appellant guilty of kidnapping and guilty of a lesser included offense of criminal domestic violence of the first degree. R. 262, ll. 7 – 24. Judge Nettles sentenced appellant to incarceration for eight (8) years for each offense, concurrent, with credit for time served. R. 274, l. 7 – 275, l. 2.

This appeal follows.

STANDARD OF REVIEW

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) (*quoting Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000)). This court will review a trial court’s “factual findings for any evidentiary support” but the “ultimate legal conclusion . . . is a question of law subject to *de novo* review.” State v. Frasier, 437 S.C. 625, 634, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial court err in admitting prior bad acts testimony over appellant's Rule 404(b), SCRE, objection under a *res gestae* exception.

A. How the matter was raised at trial.

During the trial, the state sought to introduce evidence of a prior complaint by appellant's domestic partner from the early morning hours of December 6, 2023. R. 102, l. 22 – 105, l. 14. The state sought to introduce the evidence of this prior event as part of the *res gestae* of the two crimes charged. R. 105, ll. 10 – 19. Appellant's counsel objected, arguing specifically that

Your Honor, I do not believe the State has proven by a clear and convincing evidence to the Court that an incident occurred of domestic violence second degree on the morning of December 6th, 2023 such that it should be admissible in trial for his charges.

R. 103, ll. 7 - 12.

This evidence concerned police responding the couple's apartment following a call by appellant's domestic partner. The solicitor introduced evidence from this earlier incident that put before the jury a threat appellant allegedly made against his domestic partner with a knife and that appellant allegedly chased her down the street. R. 130, l. 2 – 131, l. 14. Officers were able to tell the jury of their earlier visit to the couple's apartment and their response, including that an arrest warrant had been issued:

Due to the incident on December 6th. That morning a warrant was put out on the defendant. The BOLO was put out for his vehicle, and we conducted a search for that vehicle to locate the defendant.

R. 164, ll. 13 – 17.

B. How the trial court ruled.

After hearing a proffer of appellant's domestic partner's testimony, the trial court admitted the prior bad acts evidence surrounding the morning of December 6, 2023.

I do find there was a clear and convincing evidence that there was an altercation of sorts that took place, and I think that this sequence of events -- it's not like this is something that happened months prior. It's all a sequence of events, and I think it is necessary for the jury to hear that.

Of course, you can be given -- Mr. Spratlin will be given a wide range of cross examination as to what her allegations were and the inconsistencies. I think it's for the jury to resolve. I think there is clear and convincing evidence that there was an altercation that took place that day. Whether that amounts to a crime, based on what was said, is a different thing.

R. 106, l. 15 – 107, l. 4.

Having failed to exclude the evidence, trial counsel was able to get the trial court to limit the description of the earlier incident. R. 107, ll. 7 - 24.

C. How the trial court erred.

Recently, our Supreme Court has held that the “*res gestae* theory recognizes evidence of 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. Johnson, 439 S.C. 331, 341, 887 S.E.2d 127, 132 (2023). In the unique factual setting in Johnson, our Supreme Court noted:

We hold evidence of Johnson's acts in Dillon and Marlboro Counties most definitely “furnishes part of the context” of the Marion County domestic violence, “is necessary to a ‘full presentation’ of the case,” and “is so much a part of the setting of the case ... that its proof is appropriate in order ‘to complete the story’ ” of what occurred in the Marion County motel room.

Id., 439 S.C. at 342, 887 S.E.2d at 132 (*quoting* State v. Adams, 322 S.C. 114, 120, 470 S.E.2d 366, 370 (1996)). “Evidence of other crimes is admissible under the *res gestae* theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case.” Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003).

However, *res gestae* simply makes the alleged events relevant to the criminal charges, it does not automatically make such events admissible as evidence against the accused. Rather, the alleged “*res gestae*” evidence would still be subject to scrutiny under Rule 403 and 404, SCRE. Thus, if the evidence presented were not intimately connected with the crime charged but were instead used as character evidence, Rule 404(a) would preclude use of the evidence.¹

In the present case, appellant’s counsel argued the earlier arrest warrant for domestic violence fell under the provisions of Rule 404(b), SCRE, which prohibits the introduction of “other crimes, wrongs, or acts” to prove “the character of a person in order to show action in conformity therewith.”

“Evidence of other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged; however, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” State v. King, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018) (*quoting* Rule 404(b), SCRE.). In King, the Supreme Court reversed the trial court’s decision to not make a Rule 404 inquiry before allowing testimony about unrelated criminal acts into King’s trial. The admission of this type of evidence is particularly prejudicial, as it “fundamentally demonstrates why certain prior bad act testimony is

¹ “Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Rule 404(a), SCRE.

inadmissible, i.e., it is used by the jury to infer that the defendant did in fact commit the crime for which he is on trial.” State v. Fletcher, 379 S.C. 17, 26, 664 S.E.2d 480, 484 (2008). “Evidence of prior bad acts that are not the subject of a conviction must be established by clear and convincing evidence.” State v. Cook, 440 S.C. 308, 319, 891 S.E.2d 35, 41 (Ct. App. 2023) (citing State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009)). Moreover, if bad act evidence is admitted under Rule 404(b), “the trial court must then conduct the prejudice analysis required by Rule 403, SCRE.” State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013) (citing State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009)).

The trial court abused its discretion in admitting the prior bad acts from the morning of December 6, 2023. This type of prior bad act evidence is particularly damaging when it is of the same type of conduct for which a defendant is on trial. Our Supreme Court has held, in the impeachment context, that the “admission of identical convictions for impeachment purposes enhances its prejudicial nature. . .” State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Here, the guidance in Broadnax and King dictate that evidence from the incident during the morning hours of December 6, 2023, should have been excluded and the trial court abused its discretion in admitting such evidence.²

D. Prejudice.

A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. *See* State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) (holding the state's

² The trial court failed to articulate a balancing of the probative value of the evidence against its prejudicial impact. Under State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), the Rule 403 analysis must be conducted by the trial court. Had the trial court made a specific finding under Rule 403, SCRE, such a finding would be reviewed by this Court for abuse of discretion.

reliance on circumstantial evidence and credibility of witnesses negated a finding of harmless error). As in Gracely, credibility, particularly of appellant’s domestic partner, was central to the jury’s determination of guilt. In judging prejudice, for the evidence of guilt to be

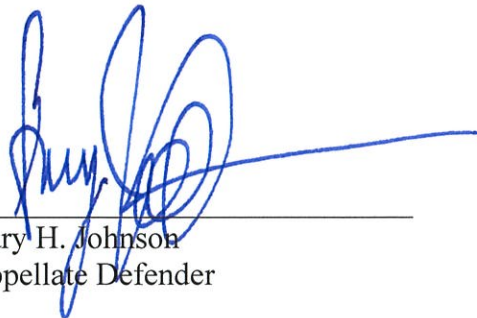
“overwhelming” such that it categorically precludes a finding of prejudice—as we found it did in Rosemond and Harris—the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the Strickland standard of “a reasonable probability ... the factfinder would have had a reasonable doubt” cannot possibly be met.

Smalls v. State, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018). Here, there is no conclusive physical evidence, and guilt depends on the jury’s judgment of the credibility of appellant’s domestic partner.

Appellant’s domestic partner’s credibility was challenged throughout trial. Despite claiming she had been held against her will, beaten, and strangled by appellant for several hours before police arrived, there was nothing broken or out of place in the small apartment she shared with appellant. R. 153, l. 7 – 154, l. 23. This was confirmed by responding officers, who also did not observe a crime location that supported a violent and prolonged physical encounter. R. 183, ll. 4 – 22. The claim that this encounter had lasted for several hours was also cast into doubt by the presence of the appellant’s automobile in the apartment parking lot, which was unoccupied by still with the engine running when officers arrived. R. 170, l. 20 – 171, l. 1; 227, l. 19 – 228, l. 3.

CONCLUSION

By reasons of the foregoing argument, appellant's conviction should be reversed, and the case remanded to the Horry County Court of General Sessions for a new trial.

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of September 2025.

STATE OF SOUTH CAROLINA
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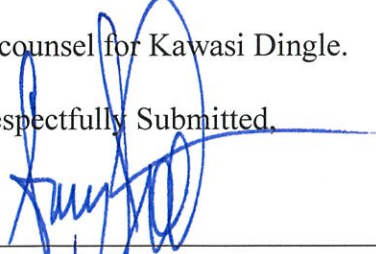
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kawasi Dingle states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on Feb. 3-5, 2025, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Kawasi Dingle.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of September 2025.

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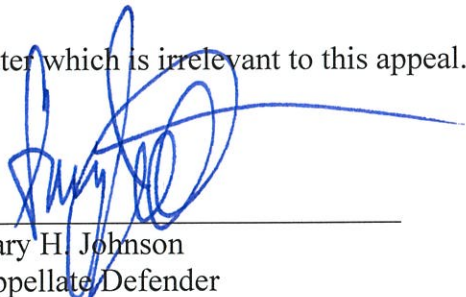
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Trial Transcript
- (2) Indictments and Sentence Sheets
- (3) State's Exhibits 3-8 (Pictures)
- (4) State's Exhibit 9 (Flash Drive)

I certify that this designation contains no matter which is irrelevant to this appeal.



Gary H. Johnson
Appellate Defender

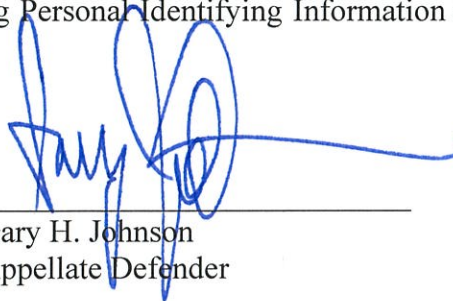
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

This 8th day of September 2025.

CERTIFICATE OF COUNSEL

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



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Appellate Defender

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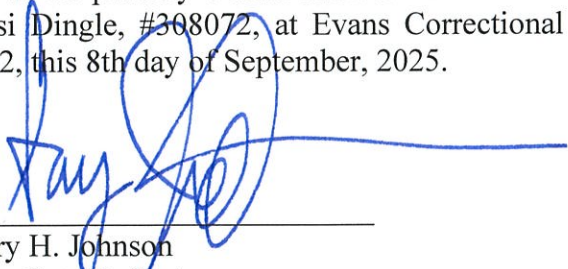
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APPELLATE CASE NO. 2025-000248

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Kawasi Dingle, #308072, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 8th day of September, 2025.



Gary H. Johnson
Appellate Defender

South Carolina Commission on Indigent Defense
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