THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

J. Derham Cole Jr., Circuit Court Judge

Appellate Case No. 2025-000694

The State of South Carolina, Respondent,

v.

Roger Derek Peterson, Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On March 14, 2023, the York County Grand Jury indicted Appellant, Roger Peterson, for harassment, second degree. (R.* 2023-GS-46-01604). The State amended the indictment on March 13, 2025, alleging "[t]hat [Appellant] did in *York County*, on or about on or between *December 14, 2022 and February 8, 2023*, commit the offense of harassment by engaging in a pattern of intentional, substantial, and/or unreasonable intrusion into the private life of Joy M. Peterson[1] by means including but not limited to verbal, written or electronic contact that was initiated maintained or repeated, to wit: repeated phone calls, emails, text messages. And such contact would cause a reasonable person in her situation to suffer mental distress." (Tr. Vol. 1, p. 8, lines 9-21; R. * Indictment) (emphasis added).

On April 2, 2025, Appellant proceeded to trial before the Honorable J. Derham Cole and a jury. (Tr. Vol. 1, p. 1–174).[2] James Boyd represented Appellant, and Assistant Solicitors Alexander Harper and Emily Ford prosecuted the case on behalf of the State. The jury returned a guilty verdict for harassment, second degree, the following day. (Tr. Vol. 2, p. 243). The Trial Court sentenced Appellant to thirty days, time served and issued a permanent restraining order. (Tr. Vol. 2, p. 261, lines 11-18).

On April 10, 2025, Appellant timely filed a Notice of Appeal. (R.*). This appeal follows.

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[1] Joy Peterson is referenced as Joy Murdock in the transcript.

[2] The transcript consists of two volumes. (Tr. Vol. 1 p. 1–174; Tr. Vol. 2, p. 175–262).

STATEMENT OF FACTS

Background

In 2020, Appellant and Joy Murdock (formerly Peterson) separated after 40 years of marriage. (Tr. Vol. 1, p. 28, lines 9-15). They had three children together: Sarah, Christian, and Alexander (Alex) Ruprecht. (Tr. Vol. 1, p. 88, lines 8-17). Alex had been put up for adoption before their marriage and reconnected with the family after he did a DNA test in 2020. (Tr. Vol. 1, p. 88; p. 156). After the separation, Joy moved out of the marital home and went to live their son, Christian, who resided only a few blocks away in Greensboro, North Carolina. (Tr. Vol. 1, p. 28, lines 16-22). Joy alleged that, despite her requests for Appellant not to contact her, Appellant regularly attempted to contact her in various ways. Notably, Joy filed for divorce in "April or May" of 2021 or 2022. (Tr. Vol. 1, p. 106, lines 3-13).

In June 2022, Joy moved in with her son, Alex, who lived in Rock Hill, South Carolina. (Tr. Vol. 1, p. 37–38). Joy again alleged that, despite her requests, Appellant tried to communicate with her. In response to Appellant's alleged conduct, Joy maintained, "I still couldn't have any peace and that it just always upset me every time . . . ." (Tr. Vol. 1, p. 40, lines 1-7).

Motion to Suppress

Pre-trial, Appellant moved to suppress testimony and evidence related to the alleged conduct that occurred outside the time period listed in the indictment pursuant to Rules 403 and 404(b) of the South Carolina Rules of Evidence. (Tr. Vol. 1, p. 7, line 13 – p. 8, line 7; p. 20, lines 20-25). Appellant argued that the alleged conduct occurring outside of the indictment is not admissible because Rule 404(b) requires that evidence of prior bad acts must be proven by clear and convincing evidence when the acts were not the result of a conviction. (Tr. Vol. 1, p. 25, lines 13-25).

In response, the Prosecutor maintained there was a continuous pattern of contact by Appellant and "*without the context of those eighteen months prior to her moving to Rock Hill, I don't know that the State can prove harassment with just those pieces of contact.*" (Tr Vol. 1, p. 9 – 12; p. 11, lines 7-10) (emphasis added). The Prosecutor also explained,

> *Again, they're non-threatening.* We've only had once incident that -- that occurred during that time period, where the victim said she did not want contact and so *I think that if we get rid of all that contact for eighteen months, it substantially impairs the ability of the State to try the case*, but also on 403 grounds, I believe that all of that is relevant and the probative value of that is enormous. *As I said, I don't believe that we can necessarily prove our case without it.* I certainly don't think the prejudicial effect greatly outweighs it.

(Tr. Vol. 1, p. 11, lines 10-19) (emphasis added). The Prosecutor further argued that the alleged conduct "is all one string of harassment and just because we have a jurisdictional problem, where it goes from one state to the other one, doesn't change the fact that the State has to prove that a reasonable person in the victim's position would feel emotional distress." (Tr. Vol. 1, p. 14, line 24 – p. 15, line 3). Notably, the Prosecutor conceded, "I believe, Your Honor, that if you look at just the four pieces of contact that are in the indictment time frame, that a reasonable person could not conclude that [the charged offense] and that . . . the context is necessary." (Tr. Vol. 1, p. 15, lines 4-7).

The Prosecutor also maintained that the alleged prior conduct in North Carolina "is simply res gestae" and not propensity evidence. (Tr. Vol. 1, p. 23, lines 9-11; p. 24, line 25). Specifically, the Prosecutor maintained,

> I didn't get jurisdiction until the harassment happened in South Carolina, but the harassment started in another state. I can't prosecute him as a criminal act for things that he did in North Carolina, but it is still relevant and it is still what I am trying to prove to prove that harassment for the crime that I had jurisdiction for[.]

(Tr. Vol. 1, p. 23, lines 17-23). The Prosecutor argued that the alleged prior conduct does not apply

under Rule 404(b), SCRE, but claimed that Joy Murdock's testimony could satisfy the clear and convincing evidence standard. (Tr. Vol. 1, p. 24, lines 15 – p. 25, line 8).

Proffered Testimony

The State then proffered Joy Murdock's testimony. (Tr. Vol. 1, p. 28 – 50). Joy testified that she sent the following text message to Appellant in December of 2020: "I don't want to block text from the home phone so please keep this as a business only number. No personal messages." (Tr. Vol. 1, p. 30, lines 5-7; R* State's Exhibit No. 1). Joy also maintained that Appellant continued to contact her, and she told him verbally to leave her alone. (Tr. Vol. 1, p. 30, lines 17-24; p. 31, lines 1-3). Joy further testified that she told Appellant to stop contacting her in January of 2021, and he continued attempting to contact her ("Still the same thing; texts, phone calls, still walking by. He left notes"). (Tr. Vol. 1, p. 31, lines 6-19; p. 32, lines 2-6; R* State's Exhibit No. 2).

Joy testified that she "tried to get a temporary restraining order [(TRO)]. . . Greensboro." (Tr. Vol. 1, p. 32, lines 18-29; R* State's Exhibit No. 3). Joy claimed that Appellant continued to contact her after seeking the TRO. (Tr. Vol. 1, p. 33, lines 8-9). Joy also testified that Appellant subsequently sent her the following text message, "you want me to lose my job? Don't go down the wrong path." (Tr. Vol. 1, p. 35, line 16 – 35, line 1; R* State's Exhibit No. 4). Joy claimed that she did not respond to the message, and Appellant continued to walk by her house and leave letters for her. (Tr. Vol. 1, p. 35, lines 2-25). Joy further testified that she sent the following text message to Appellant in February of 2021, "Leave me alone. Do not text or call me. Do not come to Christian's house or even walk by." (Tr. Vol. 1, p. 36, line 19-20; R* State's Exhibit No. 5).

Joy testified that, in June of 2022, she moved in with her son, Alex, who lived in Rock Hill, South Carolina. (Tr. Vol. 1, p. 37 – 38). Joy testified that she started receiving letters from Appellant in September of 2022, asking to reconcile and get back together. (Tr. Vol. 1, p. 39 – 40; R* State's

Exhibit No. 6–14). Joy claimed that the letters made her "upset" and "[k]ind of freaked me out." (Tr. Vol. 1, p. 40, lines 1-7; p. 41, line 24). Joy also testified that she sent a text message to Appellant on December 14, 2022, requesting no further contact. (Tr. Vol. 1, p. 42, lines 25 – 43, line 5; R* State's Exhibit No. 15–19). Joy further testified that she received a letter from Appellant on December 29, 2022, wanting to get back together, accusing her of being paranoid, and stating that she had a mental breakdown. (Tr. Vol. 1, p. 43, lines 3-25). Joy denied having a mental breakdown. (Tr. Vol. 1, p. 44, lines 3-7).

On cross-examination, Joy acknowledged that she only lived "a couple of blocks" away from their martial residence when she initially moved in with their son, Christian. (Tr. Vol. 1, p. 45, lines 10-15). Joy admitted that her request for a restraining order was dismissed and that there were no restraining orders issued against Appellant in Greensboro, North Carolina. (Tr. Vol. 1, p. 46, line 11 – p. 47, line 23). Joy maintained that she had previously been diagnosed with anxiety and post-traumatic stress disorder (PTSD). She also acknowledged that she had the traumatic experience of finding her mother deceased in September of 2020. (Tr. Vol. 1, p. 48–49).

Ruling

After hearing arguments from counsel and the proffered testimony, the Trial Court denied Appellant's motion to suppress:

> I'm prepared to rule on what was the defense's - its motion in limine to exclude the evidence of the conduct or exclude testimony regarding conduct in North Carolina, the Court respectfully denies that motion. *Under Rule 404(b), it's evidence -- it's admissible to show, in this case, motive or existence of a common scheme or plan.* It is relevant under 401 and under 403, the probative value of the evidence and the testimony is not substantially outweighed by the danger of unfair prejudice. So it will be -- it will be admitted, having considered the proffered testimony.

(Tr. Vol. 1, p. 51, lines 12-22) (emphasis added).

STANDARD OF REVIEW

"Decisions regarding the admissibility of evidence . . . are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *State v. Sweet*, 374 S.C. 1, 4-5, 647 S.E.2d 202, 204 (2007). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*, 374 S.C. at 5, 647 S.E.2d at 204-05.

ARGUMENT

I. THE TRIAL COURT ERRED BY REFUSING TO SUPPRESS THE PRIOR BAD ACT CHARACTER EVIDENCE BECAUSE THE STRIKINGLY SIMILAR PROPENSITY EVIDENCE IS NOT A RESULT OF A CRIMINAL CONVICTION, IS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE, AND THE PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

Law

Typically, evidence of a person's character is not admissible to prove the person acted "in conformity therewith on a particular occasion." Rule 404(a), SCRE. Evidence of a person's "other crimes, wrongs, or acts" are generally inadmissible to prove a person's general character "in order to show action in conformity therewith." Rule 404(b), SCRE (commonly referred to as prior bad act or *Lyle* evidence). The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, "i.e., the evidence does something more than prove a person has propensity to commit crimes". *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021). Under Rule 404(b), SCRE, there are only five legitimate purposes for the admission of prior bad act evidence: to prove "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."

Our Supreme Court addressed the proper approach to determining the admissibility of prior bad act evidence in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: "If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime." *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923).

If, after applying the logical relevancy test with "rigid scrutiny," the trial court concludes the prior bad act evidence serves some purpose other than to show the defendant's proclivity for

criminal conduct (and that purpose is one of the five listed in Rule 404(b)), then the evidence is admissible unless its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; *see Perry*, 430 S.C. at 44, 842 S.E.2d at 665. Notably, the danger of unfair prejudice is enhanced when the prior bad act is "strikingly similar" to the one for which the appellant is being tried. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

Importantly, if the prior bad act did not result in a criminal conviction, the State also bears the burden of proving the prior bad act by clear and convincing evidence. *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. Our Supreme Cour held in *State v. Fletcher*, "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008) (citation omitted).

Discussion

In this case, the Trial Court erred by refusing to suppress the prior bad act character evidence. (Tr. Vol. 1, p. 51, lines 12-22). *See generally Johnson*, 433 S.C. at 556, 860 S.E.2d at 699; Rules 403 and 404(b), SCRE. Specifically, the alleged prior bad acts are not the result of a conviction and occurred years before the dates listed in the indictment while Appellant and Joy were still married in North Carolina. (Tr. Vol. 1, p. 106, lines 3-13). The State failed to satisfy the burden of proving the propensity evidence by clear and convincing evidence based on the proffered testimony and evidence. *Id.* Notably, the probative value of this strikingly similar propensity evidence is substantially outweighed by the danger of unfair prejudice. *See generally*

Gore, 283 S.C. at 121, 322 S.E.2d at 13 (finding the danger of unfair prejudice is enhanced when the prior bad act is "strikingly similar" to the one for which the appellant is being tried).

The unfair prejudice to Appellant by admitting the prior bad acts is evident in the Prosecutor's response to the Trial Court: "*[W]ithout the context of those eighteen months prior to her moving to Rock Hill, I don't know that the State can prove harassment with just those pieces of contact.*" (Tr Vol. 1, p. 9 – 12; p. 11, lines 7-10) (emphasis added). The Prosecutor further explained,

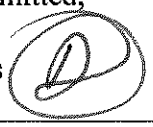
> *Again, they're non-threatening.* We've only had once incident that -- that occurred during that time period, where the victim said she did not want contact and so *I think that if we get rid of all that contact for eighteen months, it substantially impairs the ability of the State to try the case*, but also on 403 grounds, I believe that all of that is relevant and the probative value of that is enormous. *As I said, I don't believe that we can necessarily prove our case without it.* I certainly don't think the prejudicial effect greatly outweighs it.

(Tr. Vol. 1, p. 11, lines 10-19) (emphasis added). Therefore, the Trial Court erred by refusing to suppress the prior bad act character evidence because the strikingly similar propensity evidence is not a result of a criminal conviction, is not proven by clear and convincing evidence, and the probative value is substantially outweighed by the danger of unfair prejudice. *See generally Johnson*, 433 S.C. at 556, 860 S.E.2d at 699.

CONCLUSION

Based on the foregoing reasons, Appellant Roger Peterson respectfully requests that this Court reverse his convictions and sentences and remand this case to the York County Court of General Sessions for a new trial.

Respectfully submitted,

s/ Dayne Phillips 

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