

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Nov 10 2025
SC Court of Appeals

Appeal from Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

Opinion No. 2025-UP-368
Filed November 5, 2025

DESMOND LAMAR GREEN,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000119

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant Desmond Lamar Green requests that this Court grant rehearing. This Court erred in interpreting State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019) as only allowing bifurcation for sex offenses. Cross is not so narrow. And while this Court is correct that the stigma related to domestic violence is not as great as the stigma attached to sexual offenses, the stigma is still large enough to require bifurcation.

Rule 403 requires a trial court to decide when evidence of prior convictions should be introduced. Cross at 479, 832 S.E.2d at 288-89. In Cross, the Court held that bifurcation of the

proceedings balanced the integrity of Rule 403 and the State's obligation to prove the prior convictions. Cross at 479, 832 S.E.2d 288-89.

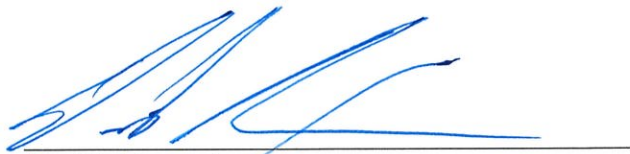
Cross involved a crime enhanced to first-degree criminal sexual conduct (CSC) by the fact of a prior conviction for CSC. The Court noted that it had upheld refusals to bifurcate in burglary trials with similar enhancements based on prior convictions. Id. at 478, 832 S.E.2d at 288. "Nevertheless we distinguish this case from the first-degree burglary cases because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carries." Id. Bifurcation was required in Cross to guard against a Rule 403 violation because of that stigma.

Domestic violence also carries a great stigma. While the stigma may not be as great as molesting children, it is certainly greater than burglary. The Cross Court recognized that even too many burglary convictions introduced as evidence can overwhelm Rule 403. Id. at 477, 832 S.E.2d at 287 (citing State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003)). Any hearing of a prior domestic violence conviction invokes unfair prejudice and here the jury heard about two prior domestic violence convictions.

This Court overlooked appellant's citation to State v. Brillion, 995 A.2d 557, 561-70 (Vt. 2010). Vermont requires courts to consider bifurcating domestic violence trials with enhancements for prior convictions. Brillion dealt with a prosecution for aggravated domestic assault. Id. The aggravating factor was the defendant's breach of a condition-of-release order. Id. The court found that bifurcation was necessary because of the unfair prejudice of the jury hearing propensity evidence. Id. The court also found that the issue of an enhancement or element and the nature of the prior bad act used in Brillion did not matter. Id. The court noted that if the State instead used a prior conviction for domestic violence, bifurcation would have been mandatory. Id. at 460-61 ("The State agrees that if defendant had a prior conviction for domestic assault and had been

consequently charged with domestic assault under 13 V.S.A. § 1044(a)(2), then he would have been entitled to a bifurcated trial.”). The rule in Brillon should be adopted.

Cross should be extended to domestic violence cases. The State suffers zero prejudice from bifurcation. It only loses the ability to prove appellant’s guilt by the admission of propensity evidence which, even despite an instruction from the trial court, the jurors cannot un-hear. This Court should grant rehearing and reverse appellant’s conviction.



David Alexander
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ATTORNEY FOR DESMOND LAMAR GREEN

This 10th day of November, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Joshua Abraham Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Desmond Lamar Green, #337654, at 200 Prison Road, Upper Yard, Enoree, SC 29335, this 10th day of November, 2025.



David Alexander
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ATTORNEY FOR DESMOND LAMAR GREEN

 Outlook


2024-000119 - The State v. Desmond Green - Petition for Rehearing

From Timberlake, Gage <gtimberlake@sccid.sc.gov>

Date Mon 11/10/2025 3:24 PM

To jedwards@scag.gov <jedwards@scag.gov>; susanspencer@scag.gov <susanspencer@scag.gov>

Cc Alexander, David <dalexander@sccid.sc.gov>

 1 attachment (443 KB)

2024-000119 - The State v. Desmond Green - Petition for Rehearing.pdf;

Mr. Edwards,

Find attached for service the Petition for Rehearing in the above-entitled case which will be filed with the Court of Appeals today.

If you have any questions, please let me know

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Very Respectfully,

Gage Timberlake

Administrative Assistant

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