STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Beaufort County
Jennifer B. McCoy, Circuit Court Judge

Unpublished Opinion No. 2025-UP-368
(S.C. Ct. App. Submitted October 23, 2025-Filed November 5, 2025)

THE STATE,

RESPONDENT,

V.

DESMOND LAMAR GREEN,

APPELLANT

APPELLATE CASE NO. 2024-000119

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND LAMAR GREEN,

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APPELLATE CASE NO. 2024-000119

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in refusing to bifurcate this short trial for the charge of first-degree domestic violence to prevent the unfairly prejudicial effect of the jury learning about appellant's prior convictions for domestic violence?

STATEMENT OF THE CASE

Appellant was indicted in Beaufort for first-degree domestic violence and on January 16, 2024, appellant was tried before the Honorable Jennifer B. McCoy and a jury. F. 1. Mary Jordan Lempesis and Sara Malone represented the State. R. 1. Juan Tolley represented appellant. F. 1. The jury convicted appellant. R. 171. Judge McCoy sentenced appellant to ten years' imprisonment suspended upon the service of five years' imprisonment and five years' probation. R. 179-180. This appeal follows.

STANDARD OF REVIEW

The standard of review in this case is abuse of discretion and an error of law constitutes an abuse of discretion. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019).

ARGUMENT

The trial court erred in refusing to bifurcate this short trial for the charge of first-degree domestic violence to prevent the unfairly prejudicial effect of the jury learning about appellant's prior convictions for domestic violence.

The trial court held a pre-trial hearing on whether this short domestic violence trial would be bifurcated. R. 3. Confusingly, the State initially moved for the trial to not be bifurcated. R. 4-5. After a lunch break, Judge McCoy correctly noted that the State "jumped the gun" and that such a motion was the defendant's to make. R. 12-13. Appellant then moved to bifurcate and the court considered the arguments made both before and after the break. R. 12.

Appellant argued the trial should be bifurcated based on State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). R. 7-9. Hearing that the defendant had been convicted of the same charge for which he was on trial would unfairly prejudice the jury. R. 7-9. Defense counsel argued that, unlike cases where courts had upheld decisions not to bifurcate trials where prior convictions were elements, domestic violence was a crime that carried stigmas of a person's propensity much like the sexual abuse of a child case which should have been bifurcated in Cross. R. 9, 12-15.

The State simply argued that bifurcation was not required and pointed to no specific prejudice to the State if it had to present the jury with evidence of appellant's prior convictions after it decided his guilt on the charge. R. 7-10. The trial judge declined to bifurcate the case. R. 21-23. Judge McCoy reasoned that Cross was limited to sexual offenses involving children. R. 21-23. The judge then commented that a "less prejudicial way" to introduce evidence of appellant's priors was through a stipulation. R. 23. While defense counsel initially indicated she would not accept a stipulation, a stipulation was ultimately agreed upon and read to the jury. R. 113-114; R. 124.

The State immediately made appellant's reasons for wanting to bifurcate the trial a reality in its opening statement. R. 55. The solicitor knew the alleged victim would be uncooperative and told the jury "she doesn't particularly want to be here." R. 55. "She doesn't want to be testifying against the father of her five children. **However, this has to stop.**" R. 55 (emphasis added). Defense counsel objected that the solicitor had implied appellant had beaten the complainant many times. R. 55-56. Judge McCoy told the solicitor she was "tiptoeing on that whole golden rule" and that she should continue. R. 56.

The complainant's sister testified that she really did not remember the incident, but acknowledged giving a statement that she saw her sister in the yard with gasoline on her and that appellant punched her in the head. R. 65-68. She also acknowledged that her statement said both complainant and appellant were throwing things. R 71. The complainant said she did not remember speaking with a police officer on the day of the incident. R. 80. When confronted with her statement, she denied remembering making it. R. 83-84. On cross-examination, the complainant agreed that she told the State she did not want appellant prosecuted and that she required no medical treatment that day. R. 86. The responding police officer acknowledged on cross-examination that appellant had not poured gasoline on the complainant but had thrown a bottle of lighter fluid at her. R. 101-102.

At the end of the State's case, the solicitor read the following stipulation to the jury:

> The defense and the State have stipulated for the admission of the defendant's prior convictions of domestic violence. The defendant, Desmond Green, was convicted on June 19, 2014, of criminal domestic violence in *State v. Desmond Green*, indictment number 2013-GS-07-01208, the defendant, Desmond Green, was convicted on March 25th of 2015 of criminal domestic violence in *State v. Desmond Green*, indictment number 2014-GS-07-02009.
>
> This stipulation means that both parties have agreed that these prior convictions will be items of evidence and will be made available to you, the jury, during deliberations.

R. 124. During her charge on the elements of domestic violence, Judge McCoy told the jury they could only use the evidence of prior crimes "on the sole issue of prior convictions" and could not consider "the commission of another offense as proof of the defendant's guilt of the current charge we are trying today." R. 158. During deliberations, the jury asked to re-hear the 911 call, to see witness statements (that were not entered into evidence), and also asked to be re-charged on the "definitions of first-degree domestic violence." R. 161-169.

The trial judge erred in refusing to bifurcate this trial because the danger of unfair prejudice that the jury would view appellant as a serial domestic abuser could not be cured by the court's limiting instruction. The State would have suffered no prejudice from bifurcation of this brief trial and articulated none during the pre-trial hearing. The only detriment to the State would have been elimination of its unfair ability to capitalize on the jury hearing that appellant had two prior convictions for domestic violence to bolster its weak case. The trial judge acknowledged that some prejudice would exist when she told the defense that a stipulation would be "the least prejudicial way to do it." R. 24. The solicitor immediately tried to use the priors as propensity evidence in her opening statement when she told the jury, "this has to stop." R. 55.

Defense counsel correctly relied upon Rule 403, SCRE, and the Cross Court's analysis of a trial judge's duty to balance Rule 403 and when evidence of prior crimes is admitted. R. 12-15. Cross at 479, 832 S.E.2d at 288-89 ("Necessarily, therefore, the question of when evidence of the prior conviction comes sharply into focus."). "In this case, the integrity of Rule 403 and the obligation of the State to introduce necessary evidence are both salvaged by the application of Rule 611(a), SCRE [giving trial courts control over the mode and order of admission of evidence." 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.

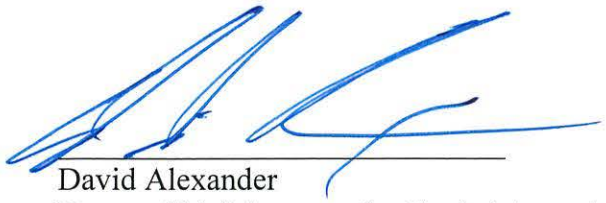
Vermont requires courts to consider bifurcating domestic violence trials with enhancements for prior convictions. State v. Brillon, 995 A.2d 557, 561-70 (Vt. 2010). Brillion dealt with a prosecution for aggravated domestic assault. Id. The aggravating factor was the defendant's breach of a condition-of-release 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.").

This Court recently rejected a claim that Cross bifurcation was required in a murder trial that also contained a charge for felony possession of a firearm. State v. Gleaton, ___ S.C. ___, ___ S.E.2d ___, Op. No. 6086 (S.C. Ct. App. Aug. 28, 2024). But unlike in Gleaton, domestic violence carries a much greater stigma than possession of a firearm. Especially in South Carolina, very little stigma (if any) attaches to the possession of a gun. But having a jury perceive a defendant as a serial wife-beater creates a great risk of unfair prejudice.

The trial court here erred in narrowly interpreting Cross. Bifurcation would have taken thirty minutes in a trial that barely spanned two days. The State would have suffered no prejudice. The State's case was weak as the alleged victim did not cooperate. The jury's deliberations show they struggled with the facts as well as the definition of first-degree domestic violence. This Court should reverse and grant appellant a new trial free from the taint of this propensity evidence.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 17th day of March, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final 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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This 17th day of March, 2025.

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STATE OF SOUTH CAROLINA

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Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

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APPELLANT

APPELLATE CASE NO. 2024-000119

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 17th day of March, 2025.

David Alexander
Deputy Chief Attorney for Capital Appeals

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STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY

Court of General Sessions
The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-000119

THE STATE,

Respondent,

v.

DESMOND LAMAR GREEN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court was required to bifurcate Green's domestic violence trial.

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Appellant Desmond Green for First-Degree Domestic Violence. Green proceeded to trial on January 16–17, 2024, before the Honorable Jennifer B. McCoy and a jury. Green was convicted as charged and sentenced to 10 years' imprisonment, suspended on service of five years' imprisonment followed by five years' probation. This direct appeal follows.

STATEMENT OF FACTS

The victim's sister testified Green chased the victim into her yard and started "punching her in the back of the head." (R.p.73). She called the police. She testified the victim was covered in liquid and smelled like gasoline. (R.p.69). A responding officer testified the victim was wet and smelled like lighter fluid, and he observed a bottle of lighter fluid by the house. (R.p.90–96). In his report, the officer wrote that he was told Green had thrown a bottle of lighter fluid at the victim. (R.p.104).

STANDARD OF REVIEW

The admission of evidence and conduct of a criminal trial are reviewed for an abuse of discretion. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019).

ARGUMENT

The trial court properly refused to bifurcate Green's domestic violence trial because bifurcation is an exceptional procedure reserved for child sex abuse cases.

The trial court properly refused to bifurcate Green's domestic violence trial because bifurcation is an exceptional procedure reserved for child sex abuse cases. This Court should affirm.

Green was tried for First-Degree Domestic Violence, S.C. Code §16-25-20(B). The pertinent aggravating factor was that Green had two prior convictions for domestic violence. Green moved to bifurcate his trial, first requiring the State to prove the "harm or injury" element of §20(A), then, after the jury returned a verdict on that issue, hold an additional proceeding where the State would prove the aggravating factor of §20(B)(3). The trial court properly refused to bifurcate the trial.

In the criminal context, bifurcation is an exceptional procedure originally reserved for death penalty cases. The legislature established the procedure by statute following a series of opinions by the United States Supreme Court addressing the constitutionality of the death penalty. See Gregg v. Georgia, 428 U.S. 153 (1976). Generally, "a bifurcated proceeding is not required in a non-capital case." Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991).

There is one exception to this rule, established in State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). There, the supreme court held that in child sex abuse cases where the State must prove a prior criminal sexual conduct with a minor (CSCM) conviction as an element for First-Degree CSCM, the trial court should

bifurcate the trial upon request. The court, while recognizing that "[t]wo-part jury trials are rare," held that CSCM cases are exceptional "because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carries." Cross at 478, 832 S.E.2d at 288.

In no other class of cases has this Court or the supreme court required bifurcation of a non-capital criminal trial. In State v. Benton, 338 S.C.151, 526 S.E.2d. 228 (2000), the supreme court held that bifurcation is not required in a First-Degree Burglary case where the element of aggravation is a record of two prior burglary convictions. Citing Spencer v. Texas, 385 U.S. 554 (1967), the court noted the legitimate deterrent purpose in statutes requiring proof of prior convictions as an element of the charged offense. The Cross court left this holding undisturbed, choosing instead to carve out an exception for CSCM cases.

Likewise, this Court recently rejected an argument that a trial court abused its discretion by refusing to bifurcate the trial of a defendant accused of possession of a firearm by a person convicted of a violent crime. State v. Gleaton, 444 S.C. 394, 408, 906 S.E.2d 630, 637 (Ct. App. 2024). This Court held that, even after Cross, bifurcation was not required because "Gleaton was neither on trial for a sex-related offense nor was his prior conviction related to a sex crime." Id. at 410, 906 S.E.2d at 638.

Thus child sex abuse cases are the exception to the rule that bifurcation is not required in a non-capital criminal trial, even when prior convictions are an element of the charged offense. This Court should not create an additional

exception for domestic violence cases. Domestic violence does not carry the same stigma as child sexual abuse, which is uniquely associated with recidivism. McKune v. Lile, 536 U.S. 24, 33 (2002) (observing that sex offenders are "much more likely than any other type of offender to be rearrested for a new rape or sexual assault"). Because of the notorious recidivism of sex offenders, and the general stigma associated with child sexual abuse, a defendant on trial for CSCM is much more likely to be prejudiced by the introduction of prior CSCM convictions than defendants charged with other offenses. Domestic violence is more like burglary in that while it is condemned by society, it does not invoke the universal outrage and moral condemnation associated with child sexual abuse. Further, while domestic violence offenders may reoffend, the propensity to commit domestic violence is not viewed as an immutable personality trait as is pedophilia. Bifurcation was not required.

Finally, any error would be harmless in this case. The jury was unlikely to base its verdict on Green's prior convictions because they occurred nearly ten years prior to this trial. (R.p.124). Green stipulated to the convictions. Further, the jury heard no details about the facts of those cases. See Benton, 338 S.C. at 156, 526 S.E.2d at 231 ("To ensure a defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should limit evidence to the prior burglary and/or housebreaking convictions . . . . Particular information regarding the prior crimes should not be admitted"). Most importantly, there was uncontroverted evidence that Green chased the victim into

her sister's yard and punched her several times in the head. Green did nothing to cast any doubt on this testimony. Bifurcation would not have changed the result of the trial. See State v. Workman, 443 S.C. 369, 377–78, 905 S.E.2d 119, 123 (2024) ("To say an error did not contribute to the verdict is to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record, and that the error had little, if any, likelihood of having changed the result of the trial.") (internal citations and quotation marks omitted). This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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BY: _____
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March 14, 2025

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STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY

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The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-000119

THE STATE, Respondent,

v.

DESMOND LAMAR GREEN, Appellant.

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Final Brief of Respondent on David Alexander, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 14th day of March, 2025.

Susan Spencer

Susan Spencer
Legal Assistant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Desmond Lamar Green, Appellant.

Appellate Case No. 2024-000119

Appeal From Beaufort County
Jennifer B. McCoy, Circuit Court Judge

Unpublished Opinion No. 2025-UP-368
Submitted October 23, 2025 – Filed November 5, 2025

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, all for Respondent.

PER CURIAM: Desmond Lamar Green appeals his conviction for first-degree domestic violence and sentence of ten years' imprisonment, suspended upon the service of five years' imprisonment and five years' probation. On appeal, Green

argues the trial court erred in denying his request to bifurcate his trial in order prevent the unfairly prejudicial effect of the jury learning of his prior convictions for domestic violence. We affirm pursuant to Rule 220(b), SCACR.

We hold the trial court did not err in refusing to bifurcate Green's trial because although there is stigma associated with prior convictions for domestic violence, the State was required to prove Green had "two or more prior convictions of domestic violence within ten years of the current offense" in order for the jury to convict him of first-degree domestic violence and the stigma associated with domestic violence does not equate to that associated with a prior conviction for a sexual offense. *See State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019) ("In criminal cases, appellate courts sit to review errors of law only."); *id.* ("The appellate court reviews a trial [court's] ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." (alteration in original) (quoting *State v. Torres*, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010))); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *Cross*, 427 S.C. at 473, 832 S.E.2d at 285 ("[T]he conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." (alteration in original) (quoting *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958))); *State v. Gleaton*, 444 S.C. 394, 406, 906 S.E.2d 630, 637 (Ct. App. 2024) ("Generally, 'a bifurcated proceeding is not required in a non-capital case.'" (quoting *Chubb v. State*, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991))); *State v. Bennett*, 256 S.C. 234, 242, 182 S.E.2d 291, 295 (1971) (indicating a bifurcated trial "is not required by either the common law, the statutory law, or the constitution of this [s]tate"); Rule 403, SCRE (stating relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"); Rule 611(a), SCRE (providing the "court shall exercise reasonable control over the mode and order of" presenting evidence in order to make the "presentation effective for the ascertainment of the truth"); S.C. Code Ann. § 16-25-20(B)(3) (Supp. 2025) ("[A] person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and . . . has two or more prior convictions of domestic violence within ten years of the current offense . . . ."); *Cross*, 427 S.C. at 477-78, 832 S.E.2d at 287-88 (finding evidence of Cross's prior conviction for first-degree criminal sexual conduct (CSC) with a minor "had insurmountable probative value in proving the prior conviction element of first-degree CSC with a minor" but concluding the prior conviction was not probative of whether he committed the underlying sexual battery and the "danger of unfair prejudice arising from the admission of the [prior]

conviction at th[at] stage of the trial was exceedingly high, as Cross was standing trial on charges of first-degree CSC with a minor and committing a lewd act on a minor"); *id.* at 478, 832 S.E.2d at 288 (distinguishing Cross's case "from the first-degree burglary cases because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carrie[d]"); *Gleaton*, 444 S.C. at 409-11, 906 S.E.2d at 637-39 (concluding the trial court did not err in denying Gleaton's motion to bifurcate his charge for possession of a firearm by a person convicted of a crime of violence from other charges in part because Gleaton's prior arson conviction did not carry "inherently prejudicial stigma"; therefore, the danger of unfair prejudice did not substantially outweigh the probative value of the prior unspecified conviction (quoting *Cross*, 427 S.C. at 478, 832 S.E.2d at 288)); *State v. Benton*, 338 S.C. 151, 155-56, 526 S.E.2d 228, 230 (2000) (concluding evidence of Benton's two prior burglary convictions were probative to prove an element of first-degree burglary and was not outweighed by the danger of unfair prejudice); *id.* at 156, 526 S.E.2d at 230-31 (providing that in a first-degree burglary case based on prior convictions, the trial court should not admit specific information regarding the prior crimes and *upon request, should "instruct the jury on the limited purpose for which the prior crime evidence [could] be considered"* (emphasis added)).

AFFIRMED.[1]

WILLIAMS, C.J., and VINSON and CURTIS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA,

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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.

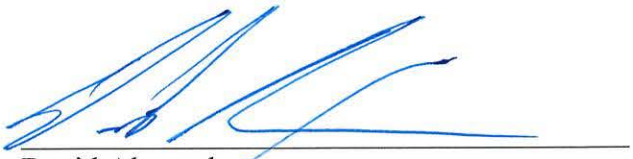
Cross involved a crime enhanced to first-degree criminal sexual conduct (CSC) by the fact of a prior conviction for CSC. The Court noted that it had upheld refusals to bifurcate in burglary trials with similar enhancements based on prior convictions. Id. at 478, 832 S.E.2d at 288. "Nevertheless we distinguish 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. Brillon, 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.



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ATTORNEY FOR DESMOND LAMAR GREEN

This 10th day of November, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

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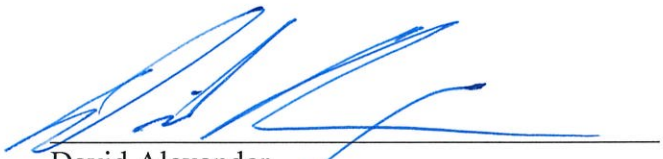
APPELLATE CASE NO. 2024-000119

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
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR DESMOND LAMAR GREEN

The South Carolina Court of Appeals

The State, Respondent,

v.

Desmond Lamar Green, Appellant.

Appellate Case No. 2024-000119

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

FILED
Dec 18 2025

cc:
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Joshua Abraham Edwards, Esquire
Isaac McDuffie Stone, III, Esquire
The Honorable Jennifer B. McCoy