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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

The State of South Carolina,

Respondent,

v.

Rita M. Pangalangan,

Appellant.

PETITION FOR REHEARING

Counsel for Appellant respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in affirming her convictions and sentences. Specifically, Appellant is requesting that this Court rehear the appeal based on the following reasons:

(1) The testimony claiming that Appellant previously admitted to leaving her daughter unattended in a vehicle for an extended period of time was not admissible because of the following reasons:

- a) Appellant did not present evidence regarding the defense of mistake or accident because Appellant did not testify and argument is not evidence.

- b) The common scheme or plan exception does not apply because there is no independent evidence to corroborate the witness testimony that Appellant previously used her vehicle as a “babysitter” for her daughter in violation of the South Carolina Code of Laws. *See generally State v. Lyle*, 125 S.C. 406, 427, 118 S.E. 803, 811 (1923) (explaining the common plan or scheme exception requires “such a visible connection between the extraneous crimes and the crime charged as will make evidence of one logically tend to prove the other”).
- c) That prior bad act testimony is not admissible under the res gestae theory because it was not necessary for a full presentation of the case without fragmentation. *See generally State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002).
- d) The State failed to present any sufficient evidence to satisfy its burden of proving the prior bad act (that is not the result of a conviction) by clear and convincing evidence.
- e) The danger of unfair prejudice created by this testimony is enhanced because the prior bad act is “strikingly similar” to the crime charged against Appellant. *See State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984); *see also Michelson v. United States*, 335 U.S. 469, 475–76 (1948) (finding prior bad act evidence “is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.”) (footnote omitted).

f) The error in admitting that prior bad act testimony was not harmless because there is a reasonable probability that it improperly influenced the jury's verdict based on the evidence presented at trial.

(2) The additional photographs of her daughter's corpse with the white sheet and coroner's tag served no legitimate purpose other than to enhance the unfair prejudice to Appellant. *Cf. State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986) (finding photographs are relevant if they "depict the bodies of the murder victims in substantially the same condition in which the defendant left them."); *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (finding even if relevant, photographs are unfairly prejudicial if they "create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'")).

(3) Furthermore, the additional photographs were not necessary because the average juror could understand the extent of her daughter's injuries based on the responding officers' testimony and pathologist's testimony proving the child died as a result of being inside a hot car for several hours.

(4) There is absolutely no relevance in admitting the photograph a loaded gun found in the car, and that issue is preserved for appellate review. (R. 299, lines 21-25; R. 301, lines 15-23; R. 302, lines 3-7; State's Exhibits 10 and 11). *See* Rules 401 and 403, SCRE.

(5) Appellant preserved the issue related to the State's improper comments during closing argument that were deliberate to inflame the passion and prejudice of the jury. (R. 690, lines 2-7).

(6) The current procedure for voir dire denies Appellant's right to a fair trial and

attorney-led voir dire would have cured the prejudice to Appellant. S.C. Code Section 14-7-1020; *see generally Estelle v. Williams*, 425 U.S. 501 (1976); *see also Cage v. Louisiana*, 498 U.S. 39 (1990).

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests that this Court grant the Petition for Rehearing.

Respectfully submitted,

s/ Dayne Phillips

Dayne Phillips
S.C. Bar No. 77712

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CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon **Tommy Evans Jr., Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **February 5, 2026**.

s/ Dayne C. Phillips

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Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 5th day of February, 2026.

Courtney Powell (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

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February 5, 2026

The Honorable Jenny Kitchings
Clerk of Court, SC Court of Appeal
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Rita M. Pangalangan
PETITION FOR REHEARING
Appellate Case No.: 2023-001446

Dear Ms. Kitchings:

I have emailed the Petition for Rehearing for filing today in the above-referenced case. Thank you for your assistance with filing these documents.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

cc: **Rita M. Pangalangan**
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s/ Dayne C. Phillips
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