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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MUSTAFA A. SALAAM,

APPELLANT

APPELLATE CASE NO. 2024-001620

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by overruling Appellant's objection under Rule 404, SCRE, to testimony that he previously obtained a weapon improperly where that evidence could not prove he intentionally shot the injured people and he testified the gun fired accidentally?

STATEMENT OF THE CASE

On December 8, 2022, the grand jury of Sumter County indicted Appellant Mustafa Salaam for murder, attempted murder, and the possession of a weapon during the commission of a violent crime. R. 424. On July 25, 2024, he filed a motion requesting a bench trial. R. 1. After a hearing on July 29, 2024, Judge Ferell Cothran granted the motion by written order dated August 1, 2024. R. 3.

Appellant proceeded to trial from September 11, to 13, 2024 before Judge Cothran. R. 7. He was represented by M. Lavan Green, Jr. and Edgar R. Donnald, Jr. R. 7. The state was represented by Megan E. Raymer, Caroline A. Hughes, and Joel A. Kozak. R. 7. Ultimately, the trial court found him guilty on all charges. R. 411:22-412:8. The court issued a life sentence for the murder and thirty years for the attempted murder; it did not issue a sentence with respect to the possession of a weapon charge. R. 416:11-17.

This appeal follows.

STATEMENT OF FACTS

On June 11, 2021, Appellant Mustafa Salaam and his fiancé, Fran Metellus, went to his apartment in Sumter around 7:30 p.m. R. 229:9-24, 336:2-339:25. Their wedding was scheduled for the following day. R. 334:2-23. With them were Metellus's daughter, Rachel, and Rachel's newborn child. R. 340:1-15. The group went up to Appellant's apartment at Chestnut Pointe. R. 339:14-340:5. When they entered, Joyce Bennet and her sister Lorraine Doretha Bennet were already inside.[1] R. 340:1-20. Technically, the apartment was in Lorraine's name. R. 43:11-24. Lorraine originally lived there, but she had mostly moved in with her sister previously and infrequently stayed at the apartment with Appellant. R. 332:16-333:25. Metellus, Rachel, and the baby went to the bedroom, and Lorraine started asking Appellant about his wedding. R. 340:1-341:13. The two had previously dated, and she was upset she had not been told about Appellant's wedding. R. 341:8-13.

Appellant testified that as Lorraine was talking, she started walking aggressively toward Rachel. R. 342:7-14. Metellus then started toward Lorraine to protect her daughter, and then Lorraine pulled a gun out of her purse. R. 342:11-17. Appellant went to disarm Lorraine, and she turned the gun towards him. R. 342:19-343:5. He grabbed Lorraine by the wrist, and in the confrontation the gun fired. Tr. 352:10-20. The two of them then fell, and the firearm went off again. R. 343:21-24. The first shot hit Joyce; the second hit Lorraine. R. 343:24-344:23. Appellant then left the apartment, and Metellus, Rachel, and the baby followed shortly after. R. 349:21-350:9. Appellant testified that when he left, Lorraine's gun was still on the floor. R. 355:22-356:3, 374:17-375:1.

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[1] Both "Lorraine" and "Doretha" were used varyingly throughout the trial to refer to the same person.

Lorraine survived the shot that accidentally struck her head. R. 114:2-20. She testified at trial to a different version of events. Just as Appellant testified, she explained she was in the apartment with Joyce when Appellant and the others arrived that evening. R. 104:5-105:7. In her story, she was upset because other people are not allowed to stay in the apartment as a term of the lease. R. 106:15-22. That was why she went toward the bedroom where Metellus and Rachel were: to tell them they were not allowed to stay there. R. 106:21-107:1. She then returned to the living room and told Appellant she and Joyce were going to leave. R. 110:1-10. Then, according to Lorraine and for no apparent reason, Appellant yelled, "You ain't gonna motherfucking place" as he pointed a gun at them. R. 110:9-18. According to Lorraine, he then "shot us down." R. 110:18-22. Lorraine was eventually life-flighted to the hospital, and unfortunately Joyce did not survive. R. 90:15-91:1. Dr. Nicholas Batalis, the pathologist who performed the autopsy, testified Joyce's manner of death was homicide and the cause of death was a gunshot wound to the head. R. 273:15-21, 279:19-280:12. He testified the bullet entered the back-left side of her head. R. 280:13-22.

Law enforcement officers searched the apartment and discovered three guns in a closet and a Ruger gun box in a desk in the bedroom. R. 154:2-156:8, 180:20-181:15. No weapon was in the Ruger box, but it did contain a sealed test-fire cartridge from the manufacturer. R. 157:3-13, 159:18-160:3. The Ruger box also had a serial number for the weapon that allowed officers to search the ATF database and discover it was purchased by Martha Ann Payton in 2015 in Greer, South Carolina. R. 194:4-21. In addition, officers recovered a loose shell casing from the apartment. R. 175:4-176:11. Brian Malanio, a firearms expert from SLED, testified the loose shell casing might have been fired by the missing Ruger based on his comparison with the test-fire cartridge. R. 286:24-19, 292:8-293:10, 295:1-296:8. There were "limited similarities" between

the casings, and although they could have been fired from the same gun, he was not able to determine if they in fact were. R. 295:1-296:8.

After Appellant testified and the defense rested its case, the state called Martha Payton in reply. R. 382:5-25. Payton testified she dated Appellant for three months in 2015. R. 384:2-11. The state asked her, "Did he ever ask you to purchase a firearm for him?" Tr. 394:2-3. Appellant objected that the question was irrelevant and addressed inadmissible prior bad acts. R. 385:5-10. The trial court overruled the objection stating, "we have ATF records as to who they were registered to or who purchased," and "I think it's relevant." R. 385:11-17.

Ultimately, the trial court found him guilty on all charges. R. 411:22-412:8.

STANDARD OF REVIEW

Whether the trial court erred in the admission of evidence is reviewed to determine if the trial court acted within its discretion. *State v. Swafford*, 375 S.C. 637, 640, 654 S.E.2d 297, 299 (Ct. App. 2007) ("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." (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001))).

ARGUMENT

The state called Payton for the primary purpose of proving Appellant previously had her obtain a firearm not in his name. That is inadmissible evidence of another crime or wrong under Rule 404, SCRE. Rule 404(b) of the South Carolina Rules of Evidence provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Rule 404(b), SCRE; *see generally State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). "[E]vidence of a defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior." *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). "The question for a trial court . . . is whether the evidence also serves some legitimate purpose that is not prohibited by Rule 404(b)." *Id.* The trial court must exercise "rigid scrutiny" in determining whether the state has demonstrated a legitimate purpose. *Perry*, 430 S.C. at 33, 842 S.E.2d at 658 (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807).

Here, Payton's testimony did not serve any legitimate purpose because evidence of this firearm purchase proved nothing of consequence to the case. On the state's evidence and theory of the case, there was no suggestion of a "common scheme or plan." There was also no question of Appellant's identity or the fact of his involvement. In opening statements Appellant argued that when he testifies, "he's going to tell you that it was Ms. Lorraine Bennet who pulled the gun on him" before it accidentally discharged while he was trying to disarm her. R. 22:3-14. Appellant had already testified he was trying to disarm Lorraine when the gun fired unintentionally.

The remaining Rule 404(b) exceptions—motive, intent, and absent of mistake or accident—can be considered together. Broadly speaking, these three points were Appellant's defense: that he lacked motive and malice and that the gun fired unintentionally. Payton's

testimony about the previous firearm purchase did nothing to prove any of these points. Officers uncovered an empty gun box from the apartment, and based on the ATF's database, Payton purchased the weapon in 2015. Connecting Payton to the gun box directly—or even Appellant through her—did not make it more likely Appellant intentionally shot the Bennetts with malice. He obtained the gun over five years before the alleged murder. That cannot reasonably be evidence he intentionally shot the Bennetts. It had no tendency to prove Appellant's motive, intent, or the absence of mistake, but the 404(b) exceptions are the *only* permissible use of such evidence. *See* Note, Rule 404, SCRE ("[U]nlike the federal rule which does not limit the purposes for which evidence of other crimes may be admitted, the South Carolina rule limits the use of evidence of other crimes, wrongs, or acts to those enumerated . . . ."); *see also* 16 Corpus Juris, *Criminal Law* §1133, at 587 (1918) ("The admission of evidence which shows or tends to show the commission of other offenses by the accused has been and should be carefully restricted.").

There is only one way in which Payton's testimony could prove intent or malice: criminal propensity. By suggesting that Appellant previously obtained the weapon improperly,[2] the state relied upon "the inevitable tendency" of other crimes to demonstrate his bad character and therefore intent and guilt. *Perry*, 430 S.C. at 30, 842 S.E.2d at 657 (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923)). The only way in which proof of the circumstances surrounding the purchase of this gun could show intent is if one accepts the "legally spurious

[2] At sentencing, the solicitor reported that Appellant has a prior conviction for domestic violence of a high and aggravated nature, which would preclude him from possessing a firearm. R. 413:19-25; *see* S.C. Code Ann. § 16-25-6530(A)(1) (forbidding those convicted of high and aggravated domestic violence from ever possessing a firearm). It is not clear from the record that, at the time of Payton's testimony, the trial court knew Appellant was not permitted to possess a firearm. Nonetheless, evidence that he asked someone else to put the gun in their name tends to raise the assumption of criminal activity. That assumption has the same prejudicial effect.

presumption of guilt" that flows from the evidence of another crime. *Id.* (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807).

Even if the evidence had any legitimate probative value, that value was substantial outweighed by the danger of the improper propensity. "Once bad act evidence is found admissible under Rule 404(b), the trial court *must* then conduct the prejudice analysis required by Rule 403, SCRE." *State v. Thompson*, 420 S.C. 386, 398, 803 S.E.2d 44, 50 (Ct. App. 2017) (quoting *State v. Spears*, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013)); *see also State v. Clasby*, 385 S.C. 148, 155, 682 S.E.2d 892, 896 (2009) (quoting *State v. Gaines*, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008)). Because the evidence concerned a matter not in dispute, the probative value was very low in the context of the case. *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) ("The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case."). The empty gun box was found in his apartment; thus, there was little value in further evidence it was his gun box. Critically, although Payton's testimony tended to establish it was his gun and gun box, it did not have any tendency to establish the gun was on him that day, that he drew it in aggression, or that he intentionally shot the Bennetts. Altogether, the evidence was of such little value it was more than substantially outweighed by the clear danger the factfinder would believe Appellant is simply a suspicious criminal with criminal purposes. It therefore should have been excluded.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse his convictions and remand the case for a new trial.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of March, 2026.

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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 9th day of March, 2026.