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,

Respondent,

v.

ROGER DEREK PETERSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Did the trial court err by refusing to suppress the prior bad act character evidence when 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?

Respondent's Counterstatement

Whether the trial court abused its discretion by denying Appellant's request to suppress evidence of Appellant's conduct outside of the time period contained in the indictment where the evidence concerned part of one unbroken chain of conduct leading to the charge in this case but occurring in a different jurisdiction and the State would be substantially impaired in its ability to prosecute the case if this evidence was excluded.

STATEMENT OF THE CASE

In October 2023, a York County grand jury indicted Appellant for second-degree harassment. (R. 281-282). This original indictment covered a time period of December 14, 2022, to January 27, 2023. (R. 281-282). In March 2025, a York County grand jury amended Appellant's indictment, with the only change being an expanded time period of December 14, 2022, to February 8, 2023. (R. 283-284). On April 2-3, 2025, Appellant proceeded to a jury trial before the Honorable J. Derham Cole. (R. 1).

Before trial, Appellant moved to preclude the State from introducing evidence of contact between Appellant and Victim that occurred outside of the time period listed in the indictment. (R. 7). He contended that any such evidence "would constitute Rule 403[, SCRE] evidence, which [would] require malice." (R. 7). Appellant also moved to exclude evidence of his harassment of other witnesses. (R. 8).

The State asserted that it needed to present evidence of contact between Appellant and Victim from their separation in December 2020 through the indicted time period to present a full picture of the case. (R. 9). The State noted that Appellant and Victim resided in North Carolina both before and after their separation until June 2022 when Victim moved to Rock Hill, South Carolina. (R. 9). The State argued that Appellant's conduct from the separation and continuing onward was a continuous pattern of harassment, both in person and in writing. (R. 9). While Appellant's conduct paused briefly after Victim moved to South Carolina, Appellant continued to unwantedly contact her via letters after he figured out where she had gone. (R. 9). The State contended Appellant contacted Victim at least four times during the indicted time period despite Victim texting him on December 14, 2022, the first day of the indicted time period, and requesting no further contact. (R. 10). The State argued that without the context of the eighteen months

before Victim moved to South Carolina, the State was not confident it would be able to prove harassment beyond a reasonable doubt and would be substantially impaired in its ability to try the case. (R. 11). The State asserted that the evidence was relevant and that the probative value of the evidence was "enormous." (R. 11). Noting that Appellant's motion was based solely on Rule 403, the State indicated it would be happy to discuss res gestae and Rule 404 if the trial court wanted. (R. 11).

The State contended that the four instances of contact during the indicted time period likely would not allow a reasonable person to feel emotional distress without the context of the earlier events. (R. 14-15). Thus, the State argued that the context of those earlier events was necessary to provide the jury with a full understanding of the crime charged. (R. 14-15).

Appellant asserted that the State wanted to show how he harassed Victim before the indicted time period, which the State could only do under Rule 403 if it established those earlier events by clear and convincing evidence. (R. 16). He argued anything that happened in North Carolina constituted evidence of "other acts," which he purported triggered the clear and convincing evidence standard. (R. 20-21).

The State contended that it was not offering the evidence of contact in North Carolina before the indicted time period as propensity evidence or prior bad acts evidence; rather, the State was offering the evidence as evidence of one continuous harassment or a common scheme or plan in an unbroken string of harassment. (R. 21). The State argued that due to the nature of stalking and harassment, if the trial court excluded evidence from North Carolina, then the trial court would be excluding all context surrounding Appellant's harassment of Victim. (R. 21-22). The State asserted that the pattern started in December 2020 and the indictment period was simply where the pattern re-emerged after Victim moved to South Carolina to get away from Appellant. (R. 22).

Citing *State v. King*[1] and Rule 404(b) of the South Carolina Rules of Evidence, the trial court noted that evidence of other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged but may be admissible to show the existence of a common scheme or plan, among other things, and must be logically related to the crime for which the defendant is charged. (R. 22-23).

The State reiterated its argument that the events in North Carolina did not constitute a prior bad act but rather the beginning of the singular bad act, or a sting of actions, charged in this case. (R. 23). In answering the trial court's question concerning why the actions were not separate based on the dates in the indictment, the State contended that this was a jurisdictional issue rather than an evidentiary one as the State did not obtain jurisdiction in this matter until the harassment crossed the state line into South Carolina. (R. 23). The State acknowledged that it could not prosecute Appellant for harassment occurring in other jurisdictions, but the actions that took place in North Carolina before Victim moved to South Carolina were relevant to show Appellant harassed Victim in South Carolina because every unwanted contact after Appellant and Victim's separation was in the same string of action. (R. 23). The State offered to proffer Victim's testimony, which it argued would meet the clear and convincing standard, and reiterated that evidence of Appellant contacting Victim in North Carolina was not prior bad acts evidence because it was evidence of a continuing act. (R. 25-27).

Victim, Joy Murdock, testified that Appellant was her ex-husband and that they were married for approximately 40 years. (R. 28). She left him in October 2020 and moved in with one of her sons, Christian, in a house near her marital home in Greensboro, North Carolina. (R. 28). She lived with Christian for approximately two years from October 2020 to June 2022. (R. 28-29).

[1] 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018).

After she moved out of the marital home, she had "very minimal" communication with Appellant. (R. 29). She received a temporary restraining order against Appellant and otherwise chose to have no contact with him, except for filing taxes as they were still legally married. (R. 29).

State's Exhibit 1 is a screenshot of text messages Victim sent to Appellant requesting that he only text her about business matters in December 2020. (R. 29-30). Victim testified that Appellant did not stop contacting her at this point. (R. 30). Appellant would text her, slowly walk by Christian's house, leave messages in the mailbox, and slowly drive by the house. (R. 30). Victim stated that she was afraid to go out in the yard at Christian's house because Appellant was constantly coming by. (R. 30). Victim testified that the December 2020 text message was not the only time she asked Appellant to stop contacting her. (R. 30-31). She stated she contacted him later requesting the same thing and also orally told him to leave her alone when she saw him in court for their divorce proceedings. (R. 31). State's Exhibit 2 is screenshot of one instance of Victim requesting no contact. (R. 31). She stated that the second text message did not dissuade Appellant, who continued with his actions. (R. 32).

After Victim obtained a temporary restraining order, Appellant continued to call her and appear at Christian's house. (R. 35-36). Victim stated that between February 2021 and when she moved in June 2022, Appellant continued doing the same things: "contact, text, emails, letters." (R. 37-38). According to Victim, the contact was continuous and she never knew when to expect it. (R. 38). Victim recounted a short reprieve when she moved to Rock Hill, which she believed was due to Appellant not knowing where she was between June 2022 and September 2022. (R. 38). However, Appellant continued to leave letters at Christian's house during those months. (R. 39).

Victim identified several letters from Appellant that were dated after she moved to South Carolina. (R. 39; 268-278). Victim testified that upon receiving these letters, she felt she "couldn't have any peace and that it just always upset [her] every time with them." (R. 40). Victim felt "freaked . . . out" by Appellant's letters, which blamed their problems on her and told her what to do. (R. 41). She stated that after Appellant found out she was in Rock Hill, he sent letters but otherwise did not reengage in the rest of his conduct from Greensboro. (R. 40).

After receiving Appellant's second letter in Rock Hill, Victim texted Appellant on December 14, 2022, once again asking Appellant not to contact her. (R. 43). However, Appellant sent another letter, which Victim received on December 29, 2022. (R. 43). According to Victim, that third letter said much of the same as the first two, including: "Wanting us to get back together; saying that I have problems, that I was paranoid. I had mental problems. Same thing. Just wanting to get back together, counseling, etcetera." (R. 43). Victim stated her reaction to this third letter was "not good" because Appellant had not seen her in a while and accused her of having a breakdown, which she denied having. (R. 44).

Victim confirmed seeing a counselor due to "40 years of abuse" and stated that she had been diagnosed with PTSD and anxiety. (R. 48). According to Victim, her diagnoses were the result of Appellant's years of emotional and physical abuse. (r. 50).

After Victim's proffer, the trial court determined that evidence of Appellant's contact with Victim in North Carolina was admissible under Rule 404(b) to show motive or existence of a common scheme or plan. (R. 51). The court found it relevant under Rule 401 and stated that under Rule 403, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. (R. 51). Therefore, the trial court deemed the evidence admissible. (R. 51).

At trial, Victim testified consistently with her proffer testimony and read the messages, letters, and emails Appellant sent to her into the record. (R. 87-137; 264-278, 279). Victim confirmed that State's Exhibits 5 though 17 were all contact from after she moved to South Carolina. (R. 147-48). Victim summarized her testimony by stating that in 2020, she separated from Appellant. (R. 137). At that time or soon thereafter, she asked Appellant to stop contacting her. (R. 137). Appellant continued contacting her. (R. 137). Victim asked Appellant to stop contacting her at other times. (R. 138). Appellant continued contacting her. (R. 138). When she lived with Christian from December 2020 to June 2022, Appellant continued to contact her even after she asked him not to. (R. 138). Appellant continued contacting her after she moved to Rock Hill despite a brief respite. (R. 138). Due to Appellant's contact, Victim testified her life has been stressful and anxious. (R. 138). Victim stated Appellant's unwanted contact has been a lot to handle. (R. 138).

Alex Ruprecht, one of Victim and Appellant's sons, testified that Victim moved in with him in Rock Hill in June 2022. (R. 155-58). According to Ruprecht, Victim moved in with him because she was "still not safe" from Appellant while she was living with Christian. (R. 159-60). When Victim moved to Rock Hill, she did not have any contact with Appellant, but Appellant contacted her "nonstop." (R. 160). Ruprecht testified that when Appellant contacted Victim, she became "visibly upset, crying, like kind of hyperventilating, panic attack type emotions and, you know, it was basically like why won't he leave me alone." (R. 161). Ruprecht stated that Victim's residual emotions after Appellant's contacts would last for a couple of days. (R. 161).

The jury found Appellant guilty of second-degree harassment. (R. 243).

The trial court noted that the maximum sentence for second-degree harassment was 30 days' imprisonment and that Appellant had already spent more time than that in jail. (R. 261).

Therefore, the trial court sentenced Appellant to time served. (R. 261). Further, the trial court found, pursuant to section 16-3-900 of the South Carolina Code, that Appellant's conviction was a qualifying conviction for a permanent restraining order. (R. 261). Thus, the trial court entered a permanent restraining order preventing Appellant from contacting Victim. (R. 261).

This appeal followed.

STANDARD OF REVIEW

The trial court's determinations regarding the admissibility of evidence are within the trial court's discretion 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. *State v. Pagen*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

I. The trial court did not abuse its discretion by denying Appellant's request to exclude evidence of Appellant contacting Victim outside of the time period contained in the indictment because the evidence was not evidence of other crimes, wrongs, or acts but rather evidence of a continuing pattern of intentional, substantial, and unreasonable intrusion into Victim's life. Further, even if evidence was prior bad acts evidence, (a) the evidence was unavoidable res gestae, which made it admissible to provide a full presentation of the case and (b) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

Initially, evidence of Appellant's contact with Victim after their separation but before Victim moved to South Carolina does not constitute evidence of "other crimes, wrongs, or acts" as contemplated by Rule 404 of the South Carolina Rules of Evidence. Appellant's actions in North Carolina continued into South Carolina when Appellant became aware that Victim had moved. (R. 37-38). Further, Victim indicated that Appellant continued to attempt to contact her at Christian's house in Greensboro until Appellant realized Victim moved to South Carolina and started contacting her there. (R. 39). Moreover, because second-degree harassment requires a "*pattern* of intentional, substantial, and unreasonable intrusion into the private life of a targeted individual," Appellant's actions toward Victim from the first time Victim indicated she no longer wanted contact with Appellant in December 2020 are relevant for a jury to determine whether Appellant engaged in a pattern of activity. *See* S.C. Code Ann. § 16-3-1700(B) (defining second-degree harassment). As the State indicated to the trial court, the one and only reason Appellant's indictment did not include the eighteen-month period between Victim and Appellant's separation and Victim's move to South Carolina was due to that conduct occurring in another state. (R. 24).

While the State does not have jurisdiction to prosecute Appellant for his conduct in another state, Appellant's conduct in that other state is an unavoidable part of the *pattern* of conduct required for second-degree harassment and directly contributes to why Victim, or any other

reasonable person in her position, would have suffered mental or emotional distress due to Appellant's actions in South Carolina. *See* § 16-3-1700(B). Appellant's actions in North Carolina are what give substance to the charge in South Carolina because it demonstrates why Appellant's acts in South Carolina are substantial, intentional, and unreasonable and why Appellant's acts in South Carolina were likely to cause mental and emotional distress to Victim or any reasonable person in her situation. Therefore, because Appellant's actions in both North Carolina and South Carolina constitute one unbroken pattern of conduct, evidence of Appellant's actions in North Carolina do not constitute evidence of "other crimes, wrongs, or acts" as contemplated by Rule 404.

However, should this Court determine that evidence of Appellant's conduct in North Carolina does constitute evidence of "other crimes, wrongs, or acts" as contemplated by Rule 404, this evidence is unavoidable res gestae evidence, which made it admissible to provide a full presentation of the case.

"Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rules 401 & 402, SCRE). "The res gestae theory recognizes evidence of other bad acts . . . may be needed to aid the fact finder in understanding the context in which the crime occurred." *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). "The evidence admitted must logically relate to the crime with which the defendant has been charged." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176. Our Supreme Court adopted the following reasoning set forth by the U.S. Court of Appeals for the Fourth Circuit:

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged

> against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . . [and is thus] part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, [t]here is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (alterations in original) (internal quotation marks omitted) (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980)), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014).

"When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." *State v. Preslar*, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005). Under this theory, the temporal proximity of the prior bad act should be closely related to the charged crime. *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, evidence of Appellant's acts in North Carolina are "needed to aid the fact finder in understanding the context in which the crime occurred." *State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) (quoting *Owens*, 346 S.C. at 652, 552 S.E.2d at 753). As the State noted during the pretrial hearing, the State would be substantially impaired in its ability to try this case if it was not allowed to present any evidence of Appellant's conduct toward Victim during those 18 months in North Carolina. (R. 11). Without the context of Appellant's continuous contact and attempts to contact Victim while they were both living in Greensboro after their separation, a fact finder might not understand why Victim was mentally and emotionally distressed when she received Appellant's vague letters mere months after she moved to South Carolina.

Without this evidence, a fact finder's understanding of the case would be confused and partial. *See State v. McGee*, 408 S.C. 278, 289, 758 S.E.2d 730, 736 (Ct. App. 2014) (holding that evidence of related crime committed the day before the crime in question was admissible as res gestae evidence and needed to show the story of the crime in question). Without this evidence, the State would be impaired in its ability to show that Appellant met the various elements of second-degree harassment, namely (1) "a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted individual," (2) "that served no legitimate purpose," and (3) "causes the person and would cause a reasonable person in his position to suffer mental or emotional distress." *See* § 16-3-1700(B). Without this evidence of a year and a half of unwanted contact, a fact finder would be without the entire picture as to why Appellant's letters to Victim in South Carolina caused Victim such emotional and mental distress because the jury would be without knowledge of the endless months Victim dealt with Appellant constantly showing up at her residence without permission or invitation and leaving vague and blaming notes at her doorstep. The context this evidence provides to Victim's emotions, or indeed the emotions of any reasonable person in Victim's place, upon receiving Appellant's unwanted communications in South Carolina makes Appellant's repeated and unwanted acts in North Carolina so inextricably intertwined with his repeated and unwanted acts in South Carolina as to make the North Carolina acts admissible. *See State v. Wood*, 362 S.C. 520, 528-29, 608 S.E.2d 435, 439-40 (Ct. App. 2004) (holding the prior acts were admissible because the prior acts and the crime in question were "so concatenated as to be inextricably intertwined").

Further, "evidence considered for admission under the res gestae theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence." *Dennis*, 402 S.C. at 636, 742 S.E.2d at 26. Rule 403 provides that even if evidence is relevant, it "may be excluded if 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." Appellate courts review Rule 403 findings "pursuant to the abuse of discretion standard, and gives great deference to the trial judge's decision." *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004); *see also State v. Lyle*, 125 S.C. 406, __, 118 S.E.2d 803, 814 (1923) ("Manifestly however, a trial court has no discretionary power to exclude competent evidence that is not merely cumulative, offered as to a material point of fact, the proof of which is essential to the establishment of a party's cause of action or defense.").

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." *Dennis*, 402 S.C. at 636, 742 S.E.2d at 26. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). "All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting *United States v. Rodriguez-Estrada*, 877 F.2d 153, 156 (1st Cir. 1989)).

Here, the trial court did not abuse its discretion in finding that the probative value of the evidence of Appellant contacting Victim in North Carolina was not substantially outweighed by the danger of unfair prejudice. The probative value of this out-of-state evidence is high because it directly contributes to whether Appellant engaged in a "*pattern* of intentional, substantial, and unreasonable intrusion into the private life of a targeted individual" as required for second-degree harassment pursuant to section 16-3-1700(B). Further, his evidence provides context to Victim's

emotional and mental distress upon receiving Appellant's vague and blaming letters mailed to her in South Carolina. As this evidence is part of the larger pattern of conduct—conduct that extended across state lines—surrounding the crime charged, the danger of unfair prejudice is low and cannot be said to *substantially outweigh* the high probative value of the evidence.

Additionally, the trial court determined evidence of Appellant's actions in North Carolina is also admissible pursuant to Rule 404 as evidence of motive and common scheme or plan. This Court, should it reject the State's arguments that the evidence is not a prior bad act and is also admissible as res gestae evidence, should still affirm the trial court's determination under Rule 404 because Appellant's conduct in North Carolina, especially regarding vague written communication, is the same or substantially similar to his conduct in South Carolina with the only difference being Victim's physical location. (R. 51). *See State v. Perry*, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020) ("The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes 'reasonably tends to prove a material fact in issue.'" (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E.2d 803, 807 (1923)). And again, the State offered this evidence to show a pattern of conduct, which was needed to show second-degree harassment, rather than to show propensity. (R. 21-27). Therefore, the trial court did not abuse its discretion in allowing the admission of evidence that Appellant relentlessly contacted Victim in North Carolina before the time period indicated in the indictment.

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CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for second-degree harassment, as well as his associated sentence and the permanent restraining order against him.

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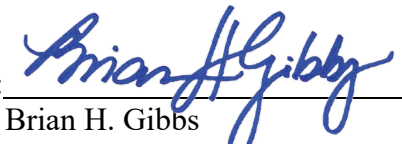
By: 
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PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on Dayne Phillips, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in the South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 31st day of March 2026.

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