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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-000669

THE STATE,

RESPONDENT

v.

ERNEST CONDRE BETHEL,

PETITIONER

Unpublished Opinion No. 2025-UP-383

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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PETITIONER'S QUESTION PRESENTED

1. Did the Court of Appeals err in finding the Trial Court did not abuse its discretion in admitting evidence of the Petitioner's alleged involvement in a prior shooting as the same location when the State failed to prove the prior bad act by clear and convincing evidence, the propensity evidence was not logically relevant to a material fact at issue, and the striking similarity of the evidence enhanced the substantial unfair prejudice to Petitioner?

RESPONDENT'S COUNTER STATEMENT TO QUESTIONS PRESENTED

1. Did the Court of Appeals err in deciding that the prior act was proven by clear and convincing evidence, that the prior bad act was related to the determination of whether the Petitioner acted in self-defense, and although that prior bad act was in close similarity to the convicted offenses and the risk of prejudice did not substantially outweigh the probative value regarding Petitioner's self-defense theory?

STATEMENT OF THE CASE

On August 22, 2019, appellant Ernest C. Bethel (“Bethel”) murdered Christopher Lott and Tolliver Wise and attempted to murder Cameron Jenkins and Gregory Martin all in Richland County. On December 18, 2019, the Richland County Grand Jury indicted Bethel for 2 counts of murder, 2 counts of attempted murder, and 1 count of possession of a weapon during a violent Crime (Indictment Nos. 2019-GS-40-8050 through 8054). The State of South Carolina was represented by Deputy Solicitor, Dan Goldberg and Assistant Solicitor, Nicholas Fowler of the Fifth Circuit Solicitor’s office. Justin Kata, Esquire, represented Bethel on these charges. On April 17, 2023, Bethel proceeded to a jury trial before the Honorable Clifton E. Newman, Circuit Court Judge. On April 20, 2023, a jury of his peers found Bethel guilty of both murders, both attempted murders and the weapons charge. After the reading of the verdict Bethel appeared before Judge Newman who sentenced him to a 50 year period of incarceration for each murder, 30 years for each attempted murder, and 5 years for the weapon charge. (App. p. 423 l. 25 – p. 424 l. 10). Bethel filed a timely notice of appeal before the South Carolina Court of Appeals.

On November 26, 2025, the Court of Appeals filed an unpublished opinion affirming the decision of the trial court. *State v. Bethel*, Op. No. 2025-UP-383 (S.C. Ct. App. filed November 26, 2025). In this case Judges McDonald, Hewitt, and Turner decided the trial court did not err in allowing into evidence the Petitioner’s prior bad act, because they were logically related to a determination of whether the Petitioner acted in self-defense. The Court of Appeals also found that the risk of prejudice did not substantially outweigh the probative value.

WHY CERTIORARI SHOULD BE DENIED

The Supreme Court reviews the Court of Appeals by writ of certiorari only where special reasons justify the exercise of that power. *Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 544 (2000). Pursuant to Rule 242 of the South Carolina Rules of the Appellant Court, “a writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general, indicates the character of reasons which will be considered:

1. Where there are novel questions of law;
2. Where there is a dissent in the decision of the Court of Appeals;
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
4. Where substantial constitutional issues are directly involved;
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242, SCACR

In reviewing these criteria none applies to the present case. The Court of Appeals properly and unanimously affirmed the decision of the trial court. There have been numerous South Carolina Appellant court cases relating to the inclusion of prior bad acts pursuant to Rule 404(b), SCRE and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). So this is not a novel question of law.

The question relating to the admission of a prior bad act in order to prove that self-defense did not exist was properly administered by the Court of Appeals. There was clear and convincing evidence provided by the State proving the prior act was committed by the Petitioner. This decision was not in conflict with any prior decision made by this Court; there was no federal question raised

so no decision made by the Court of Appeals in the opinion conflicted with a prior opinion made by the United States Supreme Court; and the decision was unanimous. The Court of Appeals decision was lawful, so their opinion should not be subject to review.

STATEMENT OF FACTS

Approximately 1 to 2 weeks before the murders of Christopher Lott and Tolliver Wise and the attempted murders of Cameron Jenkins and Gregory Martin, Bethel was inside *McCary's* Bar and Grill (hereinafter *McCary's*) on Bush River Road in Columbia, S.C. While there, Bethel got into an altercation with a female patron at the bar. This led to a further altercation with the Assistant Manager of *McCary's*, Kerry Ross, who intervened in the altercation between Bethel and the female patron. Bethel eventually punched Ross in the face. Bethel left by the front door of the bar and eventually circled the parking lot area at the back of the bar. Ross started out the front door behind Bethel and told him to his face that he was banned from *McCary's* and not to return. Ross then decided to go through the bar and to go out the rear door in pursuit of Bethel. When Ross opened the back door of the bar, Bethel was standing outside the back door with a firearm [a pistol] in his hand, Bethel fired several shots up into the air. Ross told the manager of *McCary's* and the bar tender that Bethel was banned from *McCary's*. (App. p. 151-57; 104-14; 184-96). There were two other witnesses to this incident in addition to Ross, Gregory Martin, who worked at the bar, and Amiracle Wright, a patron of the bar. (App. p. 155-57; 106-14; 184-96). Martin witnessed the same altercation between Bethel and Ross, and after Bethel left, Martin heard gunshots fired outside the bar in the parking lot area. (App. p. 106-14). Amiracle Wright witnessed the same altercation Bethel had with Ross after Bethel got into an altercation with a female in the bar prompting Ross to intervene. Wright was then outside the bar in the parking lot area after this altercation between Bethel and Ross and witnessed Bethel firing the gun into the air. (App. 184-96).

A week or two later, on **August 22, 2019**, Bethel had two acquaintances drive him to *McCary's* at approximately 2:25 a.m. after drinking at two other bars in the area.¹ Bethel later admitted to police he was drunk when he arrived at *McCary's* on August 22nd. Bethel got out of the car first, leaving his 2 friends in their car. He approached the front door of *McCary's* this time carrying a loaded semi-automatic pistol hidden on his person and peered through a glass window in the front door to see who was inside. When Bethel did not see Assistant Manager Ross with whom he had the previous altercation and who had banned him from returning to *McCary's*, Bethel entered *McCary's* through the front door. After Bethel was able to enter the establishment, his 2 accompanying friends got out of their car and entered *McCary's* as well. Bethel's actions and the crimes he committed on August 22, 2019, were all recorded on several surveillance cameras, the footage of which was played for the jury. (App. 67-70; 70-102; 103-115; 183-98; 151-57; 300-302).

Immediately upon entry through the front door of *McCary's* on August 22, 2019, Bethel was met by Tolliver Wise, a regular patron, who shook Bethel's hand and hugged Bethel and eventually told Bethel he was not allowed to come in the bar. John Miller and Christopher Lott, two other regular patrons of *McCary's*, also walked over and told Bethel he needed to leave because he was banned from *McCary's*.² Bethel told the men he wanted to talk to someone who worked there. Cameron Jenkins, the bartender on duty, and Gregory Martin, the cook, walked over to

¹ At the previous bar, Bethel ran into Amiracle Wright. Bethel told Wright that he was going to *McCary's* next. Wright warned Bethel that he should not go to *McCary's* because Bethel knew he had been banned from that establishment because of the previous incident. Bethel stated he was going anyway and would tell *McCary's* employees that it was his twin brother who was involved in the prior incident 1 to 2 weeks earlier. (App. p. 184-96).

² There was testimony that *McCary's* and its regular patrons were a "community" that watched out for each other, hence several regular patrons of the bar told Bethel he had to leave because of the prior incident 1 to 2 weeks earlier. (App. p. 99, l. 16-18; 73, l. 16-20; 74, l. 10-24; 78, l. 3-10; 90).

diffuse the situation and told Bethel he was banned from *McCrory's* and he had to leave. Bethel refused to listen to either man and argued with them and the nearby patrons. Bethel eventually stuck his hand in the face of one of the patrons, John Miller. As they were arguing, Miller threw a drink on Bethel.³ Bethel responded by pushing and punching Miller and the two began to fight and went to the floor. Jenkins, the bartender, grabbed Bethel around the waist in an attempt to separate Bethel and Miller. Someone else grabbed Miller and restrained him. Jenkins eventually was able to pull Bethel away from Miller and with the help of others, push Bethel out the front door of *McCary's*. As the front door was shutting, Tolliver Wise, who had hugged Bethel when he entered the bar, saw Bethel outside the front door of the establishment reaching for his gun.⁴ Christopher Lott grabbed the front door handle from the inside of *McCary's* as the door was shutting and held the front door shut. After the door shut, Wise drew his gun anticipating Bethel was going to fire shots. Wise was correct. (App. p. 67-70; 70-102; 102-115; 184-96; 305-08)

Video surveillance captured Bethel outside the front door of *McCary's* after the front door closed completely drawing his semi-automatic pistol and taking several steps. Bethel then raised and pointed his semi-automatic pistol at the front door of *McCary's* and fired seven shots through the front door striking four different victims, Wise, Lott, Jenkins, and Martin. Wise, who saw and heard the shots coming through the front door, was struck in the chest by one bullet but was able to get off return fire with a 9mm semi-automatic pistol after first telling his sister, Amira Wright,

³ It appears on the surveillance video that Bethel actually touched Miller's face. As a result, Miller threw a drink on Bethel. (App. 67-70; 235-51; See also 370, l. 16-21; 349-50).

⁴ There were multiple surveillance cameras which captured what occurred simultaneously both outside and inside *McCary's*. (App. 67-70; 235-51). The cameras also showed what was occurring down to the seconds on a digital clock. At trial the State showed the actual surveillance video from *McCary's*, and a separate exhibit showing each camera angle from *McCary's* side by side simultaneously as the crimes occurred (App. 67-70; 235-51). This allowed the jury to see what was occurring outside *McCary's* at the same time as was what occurred inside *McCary's*. (App. p. 67-70; 235-51; 360-61; 370-73).

and a friend of hers to flee to the bathroom. Wise's sister thought Bethel was shooting up in the air again like the prior incident one to two weeks earlier, but Wise signaled to her that Bethel was shooting through the door and that she and her friend needed to flee to the bathroom. (App. p. 70-102; 103-115; 126-29; 183-98; 151-57; 171-82; 212-19; 227-35).

Two of the victims, Christopher Lott and Tolliver Wise, died from the gunshot wounds inflicted by Bethel. The bartender, Cameron Jenkins, who testified at trial, identified Bethel, and recounted exactly what occurred before the shooting. He suffered a gunshot wound to the neck, and the fired bullet remained in his neck at trial. Gregory Martin, the cook, who also testified at trial, identified Bethel, and testified to what occurred. He suffered catastrophic injuries and multiple surgeries but was able to survive the multiple gunshot wounds he received from Bethel. (App. p. 70-102; 103-115; 148-51; 183-98; 212-219; 227-35; 171-182).

After the crimes, Bethel ran to his friend's car in the parking lot, turned, and fired five more shots back at *McCary's* indiscriminately. Bethel then fled the crime scene in his friend's car. (App. p. 67-70; 126-29; 199-211; 286-90; 326-31). Bethel disposed of the semi-automatic pistol; therefore, it was never recovered. However, SLED's firearms expert was able to testify that all of the fired shell casings found outside *McCary's*, twelve in all, were fired by the same weapon. (App. p. 126-31; 199-211).

Bethel was arrested and charged with two counts of murder and two counts of attempted murder. Bethel was questioned several days later by the FBI. Bethel admitted he was present at the bar and drunk. He denied he had a gun and denied he fired any bullets. He admitted at trial that he lied to police when interviewed about whether he had a gun or fired any shots. (App. p. 294-329).

Bethel testified at trial. He admitted he fired the seven shots through the front door of *McCary's* and that he struck four separate people, killing two, and severely wounding two others. He claimed he fired additional shots, only two, when he got into his friend's car. He actually fired five shots near the car. He claimed he acted without malice and was merely acting in self-defense or defense of others [his friends] when he fired his weapon. The jury rejected the claim of self-defense finding the State had disproved self-defense. (App. p. 271-89; 294-329; 399-409).

Notably, in his closing argument to the jury, Deputy Solicitor Dan Goldberg pointed out to the jury that the surveillance video of the actual crimes showed Bethel's actions on a digital clock down to the second. The same cameras showed Wise's actions in response to Bethel's actions down to the second. Goldberg pointed out that the jury could watch the surveillance videos and see that Bethel reached for his gun before the front door even closed and Wise saw Bethel go for his gun, but Bethel could not see Wise pull his gun because of Bethel's position and seconds passed before Wise drew his gun. Goldberg also pointed out that in the video Bethel can be seen finishing drawing his weapon after the front door closed, and Bethel can be seen taking several steps and then pointing his firearm at the exterior of the front door and firing seven shots into the front door of *McCary's* where the men who had just ejected Bethel would have been standing, striking and eventually killing Christopher Lott and Tolliver Wise and severely wounding the bartender, Jenkins and the cook, Martin. And, Goldberg pointed out that Bethel fired the seven shots through the front door of *McCary's* before Wise was able to return fire. (App. p. 360-61; 370-73; App. p. 235-51).

ARGUMENT

- 1. The Court of Appeals did not err in deciding that the prior act was proven by clear and convincing evidence, that the prior bad act was related to the determination of whether the Petitioner acted in self-defense, and although that prior bad act was in close similarity to the convicted offenses the risk of prejudice did not substantially outweigh the probative value regarding Petitioner's self-defense theory.**

Bethel argues that Judge Clifton Newman erred in admitting evidence of the prior incident he was involved in at *McCary's* one to two weeks before the murders and attempted murders because it was allegedly improper SCRE 404(b), evidence and was not relevant; not proved by clear and convincing evidence; and because of its similarity to the actual crimes its probative value was substantially outweighed by the danger of its' prejudicial effect pursuant Rule 403, SCRE.

Rule 404(b) evidence where the State proved the prior incident by clear and convincing evidence and the evidence was relevant where it showed motive, intent, and absence of mistake in shooting the victims where Bethel claimed self-defense at trial. Further, the probative value of this evidence did not substantially outweigh the danger of prejudice pursuant to Rule 403. The probative value of the prior incident was high since it led directly to Bethel being removed from *McCary's* the night of the crimes which directly led to Bethel shooting each victim. For each of these reasons, the decision of the Court of Appeals should not be upheld by this Court.

the evidence was admissible under 404(b), SCRE

Pursuant to Rule 404(b), SCRE,

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), of the SCRE, provides for the admission of such evidence, not to prove action in conformity therewith, but to prove motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE. The substance of Rule 404(b)

is the same as the rule of evidence stated in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), followed prior to the adoption of the SCRE. Lyle, 125 S.C. at 416-17, 118 S.E. at 807. As noted, evidence of other bad acts or crimes is inadmissible, unless it can be shown by the prosecution the evidence is necessary to establish a material element of the crime charged. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990), the Court defined the term “necessary” as being synonymous with the term relevant:

Bell requests that this Court limit the Lyle rule by finding that other acts evidence is admissible only if necessary. Relying mainly on State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), Bell argues that the trial judge erred in admitting the other acts evidence because it was not needed. Bell notes that the testimony of an eyewitness who identified Bell as the abductor as well as other evidence linking him to the crime. In Johnson, we stated that evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. 293 S.C. at 324, 360 S.E.2d at 319. Consistent with our rulings since Lyle, we define necessary as synonymous with relevant. Thus, evidence of other crimes is never admissible unless relevant to establish a material fact or element of the crime charged.

Bell, 302 S.C. at 27-28, 393 S.E.2d at 369.

Proof of Bad Act by Clear and Convincing Evidence

Bethel first claims the State did not prove the prior incident occurred by clear and convincing evidence because Bethel was not arrested or convicted for the prior incident. This is incorrect. “To be admissible, other crimes that are not the subject of conviction must be proved by clear and convincing evidence.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Appellate courts do not review a trial court's ruling on the admissibility of other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence, the trial [court]'s ruling will not be disturbed on appeal. Id. at 6, 545 S.E.2d at 829.

Evidence of bad acts does not have to be proof beyond a reasonable doubt but need only be proven by clear and convincing evidence. State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997); Bell, 302 S.C. 18, 393 S.E.2d 364. Where a witness's testimony is the sole evidence of a bad act, the determination of the witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate the witness's veracity. State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008); State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003). Should the trial judge determine the witness's testimony clearly and convincingly establishes the bad act occurred, an appellate court is bound by the trial judge's factual findings unless clearly erroneous. State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013); Kirton, 381 S.C. 7, 671 S.E.2d 107; Tutton, 354 S.C. 319, 580 S.E.2d 186. An appellate court will not conduct a *de novo* review of a trial judge's ruling on the admissibility of bad act evidence on the issue of whether the evidence rises to the level of clear and convincing evidence. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001); State v. Perry, 420 S.C. 643, 803 S.E.2d 899 (Ct. App. 2017). A trial judge's ruling admitting bad act evidence will be upheld on appeal if it is supported by any evidence. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300; State v. Smith, 391 S.C. 353, 705 S.E.2d 491 (Ct. App. 2011), *reversed on other grounds*, 406 S.C. 215, 750 S.E.2d 612 (2013); Sweat.

Here, contrary to Bethel's argument in his petition, the State proved the facts of the prior incident, by clear and convincing evidence through the testimony of 3 different witnesses, which was sufficient.

Amiracle Wright testified, and during her testimony she stated that Bethel got into an altercation with Mr. Kevin Ross. (App. p. 185 l. 12-14). Ms. Wright stated Bethel then walked outside and started shooting in the air. She testified to actually witnessing this shooting. (App. p.

185 l. 17-22). Ms. Wright also testified that about a week later she saw Bethel at a Reggae bar. Bethel told her that he was going back to McCary's. (App. p. 186 l. 23). Ms. Wright testified that she told Bethel that he was not allowed there, and he told her that he will just tell them it was his twin brother that did the shooting. (App. p. 186 l. 23 – p. 187 l. 2).

Ms. Wright testified that during the incident at McCary's she heard gun shots after Bethel was thrown out the club. She thought it was Bethel shooting in the air again. However she was told by her brother, victim Tolliver Wise, that it was Bethel shooting through the door. (App. p. 190 l. 3-6).

Kevin Ross also testified during the trial. Mr. Ross stated that he told Bethel not to come back after throwing him out of the club. (App. p. 153 l. 13). Mr. Ross stated that he looked at the surveillance cameras and saw Bethel shooting in the air. (App. p. 153 l. 14-16). Mr. Ross testified that he then opened the door and witnessed Bethel standing by the door firing in the air. (App. p. 154 l. 9-11).

Gregory Martin also testified during the trial that Bethel was not allowed inside McCary's. (App. p. 102 l. 6). Mr. Martin also mentioned the argument that got Bethel thrown out the club during the initial incident. Once Bethel was outside Mr. Martin testified that he heard gunshots. (App. p. 108 l. 3-5). When the second altercation started with Bethel, Mr. Martin testified that he tried to keep everything calm because Bethel was not supposed to be inside the club. (App. p. 109 l. 9-12). Mr. Martin testified that once Bethel was pushed outside, there were gunshots through the door. (App. p. 110 l. 3-4).

There was ample clear and convincing evidence that the Petitioner had a previous altercation at the club a week or two earlier, which led to him shooting in the air outside the club, and later shooting into the club after being thrown out a second time. Mr. Wright testified that she

actually saw Bethel shooting in the air outside the club after being thrown out. During the actual incident she was told by her brother Tolliver that Bethel was shooting into the club. This was when the shooting was occurring so this must be considered an excited utterance which is considered a hearsay exception. *See*, Rule 803(2), SCRE.

Mr. Ross testified that he threw Bethel out telling him not to return. Mr. Ross also testified that he looked into the cameras and actually saw Bethel shooting into the air outside the club after being thrown out and told not to return. Mr. Martin testified that during the second incident there were gunshots into the club once Bethel was thrown out.

These three eyewitnesses' testimony was clear and convincing evidence that both of these incidences occurred. Bethel had knowledge that he was banned from that club, this is proven with the testimony of Ms. Wright when Bethel told her he was willing to lie to enter the club. There was also sufficient clear and convincing evidence

Clear and convincing is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established, and such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal. *See State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

The evidence was relevant

Bethel next argues that the prior incident was not relevant to any issue in the case and did not fit under any exception to Rule 404(b). The opinion of Bethel is incorrect. *See State v. Brooks*, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000) (stating there must be a logical relevance between the prior bad act and the crime for which the defendant is accused).

Bethel claimed at trial that the shootings of the four victims were in self-defense and defense of others. Bethel claimed the prior incident one to two weeks earlier as described by State's witnesses did not even occur, and he was not banned from *McCary's*. Bethel testified he did not hit Assistant Manager Ross in the prior incident, and he did not fire a gun up in the air one to two weeks earlier. Bethel claimed, as a result, when he entered *McCary's* on the night of the crimes, the patrons and employees had no reason to approach him, argue with him or remove him from the bar. According to Bethel, he was without fault in bringing on the difficulty, he acted reasonably, and he had no other means of avoiding the difficulty. (Tr. pp. 271-329).

The State's evidence showed to the contrary. Bethel's actions one to two weeks before the crimes are directly relevant to this case because the prior incident was what led to Bethel being banned from *McCary's* and what directly led to the confrontation just inside the front door on the night of the crimes. On the night of the crimes, Bethel was told to leave by employees and patrons of *McCary's* because of the prior incident which resulted in him being banned from *McCary's*, and he refused to leave even when told by employees of *McCary's* that he had to leave. Bethel continued to argue and eventually stuck his hand in the face of Miller and Miller threw a drink on Bethel resulting in the fight between Bethel and Miller that Jenkins and Martin tried to break up. This led directly to Bethel being pushed out of the front door of the bar and the door shut. Whereupon Bethel fired seven shots indiscriminately into *McCary's* with the loaded weapon he carried secreted on his person killing two and wounding two.

The prior incident also showed Bethel was the aggressor. The evidence of the prior incident showed Bethel knew he was banned from *McCary's*, and instead of staying away, he returned to *McCary's* one to two weeks later in a different vehicle carrying a loaded semi-automatic pistol hidden on his person, and then tried to enter *McCary's* without being caught. Upon being stopped

and told by patrons and employees that he must leave because he was banned, Bethel did not leave but escalated the situation and continued to argue and eventually stuck his hand in the face of a patron instigating a physical conflict. This was especially relevant where Bethel claimed he acted in self-defense. This evidence negated that Bethel was without fault in bringing on the difficulty or that he acted reasonably in shooting indiscriminately into a crowded bar, or that he did not have another means of avoiding the difficulty. This evidence showed Bethel was at fault in bringing on the difficulty, he did not act reasonably, and he had other means of avoiding the difficulty. Bethel could have simply not returned to an establishment from which he was banned on the night of the crimes. Bethel's argument that the prior incident had no relevance to this case is simply false.

The evidence was admissible to prove motive, intent, and absence of mistake or accident

Bethel next argues that the prior incident does not fall under any exception to Rule 404(b), SCRE. The Respondent disagrees. Bethel's actions one to two weeks before the crimes were admissible to show motive, intent, and the absence of mistake or accident especially where he claimed self-defense. Rule 404(b), SCRE. Here, Bethel's defense at trial was self-defense and defense of others and that he did not intentionally or maliciously shoot anyone or act with gross recklessness. He claimed the fact that he hit four people was an accident or mistake while acting in self-defense, not an intentional shooting with malice. As a result, his prior actions *one to two weeks previously* at *McCary's*, an altercation with a female patron and the physical abuse of Assistant Manager Ross, and his firing a gun up in the air after being ejected and banned from the bar were admissible and their probative value increased to show motive, malice, intent, and the lack of accident or mistake in the shooting of the four victims in this case. State v. Key, 277 S.C. 214, 284 S.E.2d 781 (1981)(fact that defendant had threatened victim with a pistol on two or three different occasions was admissible in prosecution for ABHAN to show absence of mistake or

accident in shooting the victim); State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (Ct. App. 1999)(in murder and ABWIK prosecution, fact that defendant had previously been convicted for CDV against victim and made prior threats to kill the victim with a pistol, was admissible to refute defendant's claim the shooting was an accident); Martucci, 380 S.C. 232, 669 S.E.2d 59 (admission of prior incidents of abuse or neglect were not error where evidence was admissible as proof of intent and absence of accident, this was especially true because defendant disputed motive and intent to commit homicide by child abuse).⁵

Bethel quotes State v. Robinson, 438 S.C. 421, 439, 882 S.E.2d 883, 893 (Ct. App. 2023)(citing Johnson, 433 S.C. at 559, 860 S.E.2d at 701) for the proposition that the evidence of the prior incident in this case is precisely what Rules 403 and 404(b) of the South Carolina Rules of Evidence seek to exclude from trials. The Respondent disagrees. Robinson involved the State introducing into evidence a large amount of inadmissible *testimony about gang affiliation, membership, and conduct or activity* in a murder case in which there was testimony the shooting

⁵ See also Smith, 391 S.C. 353, 705 S.E.2d 491 (court did not err in admitting evidence defendant had broken child's leg about 3 months before child's death, the femur injury was highly relevant to show defendant's motive for attempting to "chemically restrain" the child with medicine, and was critical to show the overdose leading to death was not a mistake or accident); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008)(where defendant was convicted of criminal solicitation of a minor, involving solicitation over the internet of a person defendant thought was a minor, but in fact a police officer, evidence of the defendant's previous chats with a Pennsylvania police officer were properly admitted under Rule 404(b), to prove among other things the absence of mistake, where defendant subsequently engaged in similar chats with a S.C. officer); State v. Talley, 77 S.C. 99, 57 S.E. 618 (1907)(where defendant was on trial for obtaining goods by false pretenses, having allegedly submitted a false claim for payment to a county, it was proper for the State to cross-examine him as to other duplicate claims which he had made against the county in the past; the State's case depended on whether the defendant had obtained double pay for services rendered by fraud or by honest mistake; the burden being on the State to prove fraudulent intent, it was competent to prove past similar offenses); State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981)(evidence of night-hunting was introduced in homicide trial to prove the absence of mistake or accident by the defendant).

was provoked by a prior shooting earlier in the night, which was admissible. Robinson, 438 S.C. 439, 882 S.E.2d 883. In Johnson also, the evidence that was properly admitted was gang affiliation and activity where the murder **was directly related to gang activity and explained why the victim was murdered**. Id. Here, it was *res gestae* of the crime, it was prior difficulties and threats between Bethel and *McCary's*; it proved motive, state of mind, intent, and who was the aggressor on the night of the crimes, and it proved malice toward *McCary's* and its employees and patrons, the absence of mistake or accident where the defendant claimed self-defense, and Bethel was not without difficulty in causing the conflict, did not act reasonably, and could have avoided the difficulty altogether by not returning to *McCary's* on August 22 armed with a loaded firearm, a place from which he was properly banned. The evidence also showed the reasonableness of the actions of the victims on the night in question, which could not be understood and comprehended without the jury understanding the details of the prior incident.

The evidence was admissible under Rule 403, SCRE

Finally, Bethel also claims the probative value of this evidence was substantially outweighed by the danger of unfair prejudice to him under Rule 403, SCRE. Bethel's argument is without merit. The prior incident was just *one to two weeks before* the murders and attempted murders in this case. The dispute Bethel had with patrons and employees immediately before the crimes in this case was directly related to the prior incident resulting in Bethel being banned from returning to the bar.

In addition to establishing the requirements for admissibility under Rule 404(b), the State must show "the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes." State v. Perry, 430 S.C.

24, 44, 842 S.E.2d 654, 665 (2020); *see* Rule 403, SCRE (providing a trial court may exclude relevant evidence when the probative value is substantially outweighed by the danger of unfair prejudice). “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998).

A trial judge’s weighing of probative value versus prejudicial effect under Rule 403, SCRE, is reviewed under the abuse of discretion standard and should be reversed only in exceptional circumstances. State v. Gadson, 439 S.C. 278, 886 S.E.2d 719 (Ct. App. 2023)(referencing State v. Brooks, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct App. 2019)(quoting Collins, 409 S.C. at 534, 763 S.E.2d at 28); Sweat, *supra*. “A trial [court’s] balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise due to a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009); *quoting* State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-94 (Ct. App. 2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Only exceptional circumstances justify reversing the Circuit Court Judge’s decision on 403 grounds. State v. Huckabee, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (2017); Hamilton, 344 S.C. at 357, 543 S.E.2d at 593. “If there is any evidence to support the admission of the bad act evidence, the trial [courts]’s ruling will not be disturbed on appeal.” *See* Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

The prior incident and what occurred were necessary for the jury to understand why Bethel was banned from *McCary’s* before the night in question and why everyone acted the way they did on the night of the crimes, i.e. approaching Bethel and telling him to leave. Rule 403, SCRE. The challenged evidence also showed without question that Bethel was not without fault in bringing on the difficulty on the night of the crimes because he had been banned from the bar for previously

striking the Assistant Manager of the bar and shooting a gun up in the air, and he returned to the same bar again, after being warned by a victim's sister he should not return to *McCary's* because he was banned, but he did so anyway this time with a loaded semi-automatic pistol secreted on his person and argued with patrons and management about why he was banned leading to his expulsion from the club and then Bethel shooting through the front door seven times indiscriminately. Further, no one contended Bethel shot at anyone in the prior incident, but he simply fired the gun up in the air. Nor was he arrested for the prior incident. As a result, there was no unfair prejudice to Bethel. Judge Newman's determination must be affirmed. State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)(the determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case).

The probative value of bad act evidence may be shown by the similarity of the crime charged, or whether a real connection can be drawn between the two incidents, and whether the evidence is relevant to a material issue. Lyle, 125 S.C. 406, 118 S.E. 803; State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). Here, after hearing argument on the admissibility of the evidence under 404(b) and Rule 403, Judge Newman implicitly found the testimony was relevant and its probative value was not substantially outweighed by the danger of prejudice to Bethel. The learned trial judge appropriately determined the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice to Bethel. Holland, 385 S.C. 159, 682 S.E.2d 898. Bethel has failed to show Judge Newman abused his discretion in admitting this evidence in this case. Id. Judge Newman's determination is fully supported by the record.⁶

⁶ Bethel cites to State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984). However, Gore dealt with the State questioning the defendant on trial for arson and murder, about a prior trailer fire involving another person the defendant lived with, in which the State admitted on appeal there was no

Three (3) different witnesses testified to the prior incident which occurred only *1 to 2 weeks* before the murders and attempted murders. (App. p. 151-57; 104-107; 183-96). *McCary's* Assistant Manager Kevin Ross testified Bethel punched him in the face. (App. p. 151-57). Ross told Bethel to leave, and he was banned from returning to *McCary's*. (App. p. 151-57). All 3 witnesses saw Bethel leave *McCary's* after the prior incident. And, 1 witness, Gregory Martin, then heard gunshots immediately outside the bar. (App. p. 103-108). Two (2) witnesses, Ross and Amiracl Wright, testified Bethel was holding a firearm [a pistol] in the parking area behind the bar and shooting the gun up into the air after the incident inside *McCary's*. (App. p. 151-57; 183-96). No one testified Bethel shot anyone on the prior occasion or shot at anyone, Bethel just shot up in the air. (App. p. 151-57; 183-98; 104-107). Just *one to two weeks later*, Bethel returned to *McCary's* from which he was banned armed with a loaded semi-automatic pistol hidden on his person. Before going to *McCary's*, Bethel had two friends drive him to several other bars. At one of those bars, Amiracl Wright saw Bethel, and Bethel stated to Wright that he was going to *McCary's* bar. (App. p. 183-96). Wright told Bethel he could not go to *McCary's* because he was banned because of the prior incident. Bethel told Wright he was going anyway and would tell employees at *McCary's* it was his twin brother who committed the prior incident in order to get in the bar. (App. p. 183-98). Bethel then had his 2 friends drive him to *McCary's* where he approached the front door alone and looked inside to see if Assistant Manager Ross was present. When he did not see Ross, he immediately entered the bar and so did his two friends who followed. Bethel was then

probative evidence linking the defendant to the prior fire. The State did not even attempt to prove Gore committed the prior fire, just questioned him about the coincidence of a prior fire in the home of someone he lived with, prejudicing him before the jury. Id. Here, the State proved Bethel committed the prior incident by the testimony of three witnesses; the prior incident was just one to two weeks prior to the crimes; and the prior incident involved *McCary's* and one of its employees.

confronted by patrons and staff who informed him he would have to leave because he was banned because of the prior incident. An argument ensued. The tussle between Bethel and Miller then ensued where the bartender Jenkins was able to pull Bethel away from Miller and push Bethel out of the bar with help from others. Once the door closed, within seconds, Bethel fired seven shots through the front door killing two and severely wounding two others. Judge Newman did not abuse his discretion in admitting this testimony as its probative value in the case was not substantially outweighed by the danger of unfair prejudice to Bethel because the prior incident and its details established the *res gestae* of the crime, Bethel's malice toward *McCary's* and anyone associated with *McCary's* including employees and patrons, prior difficulties between the parties, malice, intent, and showing Bethel was the aggressor, and Bethel's intent when he fired back into the club indiscriminately was malicious and his motive was retribution for being ejected from the bar, not self-defense. There is no merit to this appellate ground. Judge Newman must be affirmed.

CONCLUSION

For the above stated reasons, Bethel's convictions and sentences for two counts of murder, two counts of attempted murder, and possession of a weapon during the commission of a violent crime must be affirmed.

Respectfully submitted,

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