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Jul 02 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONTRELL LORENZO HUFF,

APPELLANT

APPELLATE CASE NO. 2025-001890

INITIAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred in admitting part of a video of Appellant rapping in his jail cell, wherein Appellant did not admit to committing the crime but the video reflected negatively on his character, and was evidence of a prior bad act, since Rules 403 and 404, SCRE required exclusion?

2.

Whether the court erred in admitting only part of Appellant's rap video, where the redaction of the song stripped it of important context, since the remaining lyrics should have been admitted pursuant to Rule 106, SCRE?

STATEMENT OF THE CASE

During the October term of 2021, a Darlington County Grand Jury indicted Dontrell Huff, Appellant, for conspiracy and possession of a weapon during the commission of a violent crime. During the August term of 2025, a Darlington County Grand jury indicted Appellant for murder and attempted armed robbery. R. *(indictments, all pages).

Appellant was tried before the Honorable Brian Gibbons and a jury, from September 2 – 4, 2025. Appellant was tried jointly with codefendant De'Shawn Fox. Erin Gaddy represented Appellant. Matthew Rivers and Morgan Kephart represented Fox. Patti Parker and Jonathan Blackwell prosecuted the case. Tr. 1.

Appellant was convicted as indicted. Tr. 617, l. 19 – 619, l. 4. He was sentenced to forty-five years' imprisonment for murder, twenty years for attempted armed robbery, five years for conspiracy, and five years for the weapons offense, with sentences to run concurrently. R. *(sentence sheets, all pages); Tr. 636, l. 13 – 637, l. 20.

This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *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.” *Id.*; see also *State v. Brockmeyer*, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

STATEMENT OF FACTS

Early in the morning on June 9, 2021, Terrence Foard left his home and ran across what initially appeared to be a single-car crash in Darlington County. Foard stopped to help and found a person unresponsive in the driver's seat. Foard turned the car off and called 911. Tr. 119, l. 3 – 121, l. 23; Tr. 126, ll. 18-21. The person had a gunshot wound to the left side of his head, which was from a shotgun. Tr. 125, l. 10 – 128, l. 22; Tr. 308, ll. 3-18.

Later that morning, Shamika Mack woke up at her home in Orangeburg and saw notifications that someone had used her bank card at two locations in the Hartsville and/or Timmons ville areas. Her car was missing. So was her son, Ty'Anthony Mack (Decedent). She reached out to law enforcement in Orangeburg and reported that Decedent was missing and someone had made unauthorized charges on her bank card. Tr. 107, l. 14 – 111, l. 22; Tr. 114, l. 24 – 117, l. 12.

Mack knew Decedent had his younger brother's phone when he disappeared because his own phone was broken. The next day, Mack took Decedent's broken phone in to get it fixed so she could look for clues about his disappearance. When the phone was fixed, a Facebook Messenger thread "popped up" which showed a text conversation between Decedent and a woman with the profile motto: "I'm on demon time." That woman was Desire Hanniball, and in those messages, Decedent indicated he was going to meet up with her. Tr. 110, l. 3 – 114, l. 12; Tr. 380, ll. 7-9; Tr. 185, ll. 5-6.

An investigator recognized Hanniball's profile picture from previous interactions. Law enforcement obtained arrest warrants for Hanniball. After first fleeing to North Carolina, she returned and turned herself in. Tr. 380, l. 7 – 384, l. 16. Law enforcement later interviewed Hanniball. Tr. 390, ll. 7-16. Hanniball was the star witness in Appellant's trial. No forensic

evidence connected Appellant to the crime and he did not know Decedent. Tr. 100, l. 16 – 101, l. 2; Tr. 274, ll. 22-25. However, Hanniball admitted she had intentionally lured Decedent to Hartsville the night he was killed, after having sporadic interactions with him on social media for some time. Tr. 191, l. 4 – 201, l. 19. Hanniball admitted she was present when Decedent was killed and she admitted Decedent had driven her to a local convenience store where he got \$20 out of an ATM. Tr. 205, l. 14 – 210, l. 13. Hanniball also admitted that after Decedent was killed, she wanted to go back to the crime scene to look for the \$20 but stopped short when she saw first responders. Tr. 213, ll. 4-22.

Hanniball alleged she was messaging with Decedent to make Appellant, who was her on-again, off-again boyfriend, jealous. Tr. 186, l. 13 – 187, l. 192, l. 19. According to Hanniball, it worked, and Appellant saw the messages on June 8th. Hanniball claimed that after Appellant saw the messages, they quickly came up with a plan for Hanniball to lure Decedent down to Darlington County to meet, whereupon Hanniball would pretend to buy marijuana from Appellant and his cousin, De'Shawn Fox. Appellant and Fox would then force Decedent out of his car and steal it. Tr. 193, l. 3 – 196, l. 10.

According to Hanniball, Decedent picked her up around 2:00 a.m. They drove to an abandoned house and waited for Appellant and Fox. Hanniball claimed she got out and told Appellant and Fox that Decedent only had \$5 for marijuana. According to Hanniball, they told her to tell Decedent it was not enough money. Hanniball and Decedent left and went to the ATM where Decedent withdrew \$20. They went back to the abandoned house. Tr. 199, l. 18 – 206, l. 21.

Hanniball claimed she again got out of the car and met with Appellant and Fox, and she told them they now had another \$20 but she did not think Decedent would get out of his car

because he appeared to be nervous. According to Hanniball, Fox walked over to Decedent's car window and then Appellant ran over, pulled a shotgun from his pants, and pointed it in Decedent's car window. According to Hanniball, Appellant ordered Decedent to get out of the car but Decedent "went to pull off" instead, and Appellant shot him. Hanniball claimed the three then ran back to her nearby house. Hanniball alleged she had seen the shotgun before and it belonged to Fox. Tr. 206, l. 13 – 211, l. 24; Tr. 214, l. 19 – 215, l. 13.

Hanniball claimed they called Fox's mother, who came and picked him up. According to Hanniball, they also called Appellant's mother but she would not pick them up, so they used the \$20 (Hanniball did not drop it as she initially thought) to take a taxi to Appellant's mother's house. Tr. 212, l. 11 – 213, l. 3; Tr. 216, l. 20 – 218, l. 12; Tr. 258, ll. 2-9. Appellant's mother, Brenda Huff, confirmed that Appellant called her that morning and asked for a ride. Ms. Huff was ill from chemotherapy and did not go. When Ms. Huff heard first responders were over by Hanniball's house, however, she and her sister drove to the area and spoke with a police officer to make sure Appellant had not been hurt. Later that morning when Huff was back home in bed, she heard Appellant's voice and a voice she assumed was Hanniball's. Tr. 487, l. 18 – 493, l. 20.

Law enforcement ultimately would charge Hanniball, Appellant, and Fox with murder and related offenses. Tr. 269, l. 25 – 270, l. 11; Tr. 430, l. 20 – 431, l. 5; Tr. 7, l. 12 – 8, l. 1. At the close of Appellant's joint trial with Fox, defense counsel would argue Hanniball was a "master manipulator." Tr. 525, ll. 3-5. The solicitor would term her "cold" and "depraved," and note Decedent would be "alive today" if not for Hanniball. Tr. 540, l. 3 – 541, l. 8. Fox's counsel would ask: If Hanniball would set someone up to be "killed for \$20," "what would she do to stay out of prison for the rest of her life?" Tr. 577, ll. 8-13.

Hanniball's story contained numerous inconsistencies which were explored during cross-examination. Tr. 249, ll. 23-25; Tr. 253, l. 20 – 254, l. 7; Tr. 265, ll. 11-21; Tr. 235, ll. 1-8; Tr. 254, ll. 22-23. Aside from her testimony and the circumstantial confirmation by Ms. Huff that Appellant was with Hanniball after the shooting, the evidence against Appellant consisted of a TikTok (social media) video of him performing a rap song that the solicitor argued was a statement against interest. The TikTok video was posted after Appellant's arrest and prior to his trial and showed him in his jail cell, rapping. Tr. 43, l. 1 – 48, l. 2. The room was plainly a cell with no furniture or decor and a ventilation hole in the ceiling. The TikTok video was State's Exhibit #34, which is on file with this Court. Its admissibility was hotly contested.

During pretrial motions, the defense moved to exclude evidence of prior bad acts. The solicitor stated the prosecution wanted to introduce the TikTok video. The State wanted the song in evidence primarily because Appellant rapped, "Even if I shot him dead, evidence don't prove it," and rapped something about keeping an "[expletive] on his hip." Tr. 45, l. 24 – 46, l. 5. *See* Court's Exhibit #1; State's Exhibit #34. Defense counsel argued any probative value of the "snippet" the State wanted was outweighed by the danger of unfair prejudice, and the evidence should be excluded pursuant to Rule 403, SCRE. The court asked whether the evidence was admissible as an exception to Rule 404(b), SCRE. The solicitor responded she was not offering it for character but as a statement against interest. Tr. 43, l. 1 – 48, l. 3. Additionally, Fox's counsel and the solicitor concurred that the portion of the video where Appellant referred to "D Dog" and essentially "being loyal" would need to be excluded, apparently due to *Bruton v. United States*, 391 U.S. 123 (1968). Tr. 48, ll. 10-24. The judge stated he would watch the video before ruling. Tr. 49, ll. 1-5; Tr. 69, ll. 9-16.

The parties took up the matter again. Defense counsel argued the video should be excluded as it was not a confession and was likely to improperly “bias” the jury due to “criminal” connotations around rap music. Tr. 144, l. 25 – 149, l. 8; Tr. 154, ll. 11-25. Defense counsel noted Appellant was “clearly in a detention center.” Tr. 158, ll. 1-7. The court noted Appellant had made the video “[f]rom a phone that was apparently smuggled into the Darlington County Detention Center.” “[I]t was taken by a phone which was illegally in the detention center . . . He’s using something contraband that’s illegal.” Tr. 147, ll. 4-5; Tr. 154, ll. 3-6. The solicitor argued Appellant was speaking about this case and the video showed consciousness of guilt since the rap included comments about things like his “Rule 5” and mentioned Desire’s (Hanniball’s) first name. Tr. 158, l. 15 – 161, l. 1. The judge asked her, “is this evidence really so important for the State’s case that you really want it in looking at the long play of where this may go in the benefit of conviction?” Tr. 176, ll. 15-18. The solicitor stated she would redact the video down to approximately thirty seconds. Tr. 176, l. 19 – 177, l. 19. The judge ruled the video was admissible as long as the State redacted the comments about a “bro code” and “D Dog” (i.e., those that might implicate codefendant Fox), finding it was a statement against interest pursuant to Rule 804(b)(3), SCRE. Tr. 180, ll. 2-15; Tr. 371, ll. 8-14. The court stated it had performed Rule 403 balancing and found the evidence was “more probative” than the prejudice of admitting a defendant’s statement against interest. Tr. 364, l. 16 – 365, l. 13.

Outside the presence of the jury, the parties previewed the redacted video. Tr. 365, l. 22 – 367, l. 2. The defense asked that the jury only hear the audio rather than seeing the video depiction too. Tr. 366, ll. 1-6. Earlier, the solicitor had suggested to the judge that he might want to only admit the audio and not video. Tr. 45, ll. 15-17. Nevertheless, the court denied the

request to limit the exhibit to audio, finding Appellant “put” this out on “public domain.” Tr. 366, ll. 7-8.

After watching the redacted video in camera, defense counsel argued the State had removed context in a way that mischaracterized the song. The defense moved that if the portion selected by the State was being admitted, the remaining video (absent the portions arguably referencing Fox) should be admitted under the rule of completeness.¹ Tr. 367, l. 3 – 369, l. 20; Tr. 157, l. – 158, l. 1. The judge denied the request. Tr. 371, ll. 8-16. Defense counsel renewed her objections, including her Rule 404(a)(1) character objection. The video as admitted contained the audio from twenty-seven seconds to one minute and four seconds, with the remaining audio redacted. Tr. 392, l. 15 – 393, l. 9. Thus, the video as admitted included, “Even if I shot him dead, evidence don’t prove it.” It also included, “Can’t even trust my own mama, Man this world is cold, Desire me and you were close . . . I loved you wedded devil, Now I got to let you go.” The remark about keeping an “[expletive] up on my hip” was redacted out. Court’s Exhibit #1; State’s Exhibit #34.

In closing argument, the State cited to the TikTok video as showing Appellant felt betrayed by Hanniball and was hoping she would not testify. Tr. 552, l. 25 – 553, l. 24. The transcript does not reflect how long the jury deliberated but it was more than two hours. Tr. 601, l. 8; Tr. 616, ll. 9-15. During deliberation, the jury asked to watch the TikTok video or see a transcript of it, however no transcript had been entered into evidence. Tr. 601, l. 9 – 603, l. 16;

¹ At R. *(157), ll. 23-24, the transcript reflects that after the court asked defense counsel whether she conceded the remarks about “D Dog” and “bro code” should be excluded, the *court* then responded: “Yeah. I think that we have a diverse enough jury that they are aware—”. This was a transcription error as it is apparent this was defense counsel’s response, which continued onto the next page.

R. *(Court's Exhibit #6). The jury watched the TikTok video three times during deliberation.

Tr. 614, l. 15 – 616, l. 8.

ARGUMENT

1.

The court erred in admitting part of a video of Appellant rapping in his jail cell, wherein Appellant did not admit to committing the crime but the video reflected negatively on his character, and was evidence of a prior bad act, since Rules 404 and 403, SCRE, required exclusion.

The evidence should have been excluded pursuant to Rule 404(a), SCRE and Rule 403, SCRE. Rule 403's "unfair prejudice" concern and Rule 404(a)'s prohibition on character evidence dovetail here. Any probative value was substantially outweighed by the danger of unfair prejudice: the video portrayed Appellant as a thug and a criminal. In addition, or in the alternative, the evidence was inadmissible pursuant to Rule 404(b), SCRE and Rule 403, SCRE, given the contraband and crime inherent in making and disseminating a video from jail.

"In a criminal case, the State cannot attack the character of the defendant unless the defendant himself first places his character in issue." *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) (citing Rule 404(a), SCRE; *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989)). Rule 404(a), SCRE, provides that,

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

...

(emphasis added). "Generally speaking, character refers to an aspect of an individual's personality which is usually described in evidentiary law as a 'propensity.'" *State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998) (cleaned up). See *State v. Braxton*, 343 S.C. 629, 635, 541 S.E.2d 833, 836 (2001) (example of defendant's violence and willingness to produce a pistol was

inadmissible character evidence under Rule 404(a), SCRE). *See also United States v. Smith*, 967 F.3d 1196, 1205 (11th Cir. 2020) (video of defendant Smith’s rap song posted on YouTube “glorifies violence, creating the risk that the jury would view Smith as a violent criminal (which he is) and convict him for that reason instead of based on the evidence at trial”).

“Although relevant, evidence 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.” Rule 403, SCRE. “Unfair prejudice means an undue tendency to suggest decision on an improper basis[.]” *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). “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.” *State v. Holland*, 385 S.C. 159, 171, 682 S.E.2d 898, 904 (Ct. App. 2009) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)).

In *State v. Cheeseboro*, 346 S.C. 526, 533–34, 552 S.E.2d 300, 304 (2001), the South Carolina Supreme Court addressed the admission of rap lyrics written by the defendant when he was in jail awaiting trial on a March 1996 execution-style shooting of three victims at a barbershop who were left lying in a pool of blood. The lyrics included: “No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail [of] bodies on the ground.” *Id.*, 346 S.C. at 549, 552 S.E.2d at 312. Cheeseboro objected to the admission of this document as improper character evidence. *Id.*, 346 S.C. at 550, 552 S.E.2d at 312. The Supreme Court concluded the evidence should have been excluded pursuant to Rule 403, SCRE. *Id.*

In this case, the trial court found the lyrics were admissible as a hearsay exception—a statement against interest. Similarly, in *Cheeseboro*, the trial judge found the lyrics were not hearsay because they were an admission by a party-opponent. “The trial judge admitted these lyrics as an admission against interest under Rule 801(d)(2), SCRE, based on the song’s reference to leaving no prints and bodies left in a pool of blood.” *Id.*, 346 S.C. at 550, 552 S.E.2d at 313. However, that was not the end of the inquiry on admissibility.

We find these references too vague in context to support the admission of this evidence. The minimal probative value of this document is far outweighed by its unfair prejudicial impact as evidence of appellant’s bad character, i.e. his propensity for violence in general. Unlike the letters to Virgil Howard which contain identifying details of the crimes committed, these lyrics contain only general references glorifying violence.

Id. (emphasis added).

In *Cheeseboro*, additionally at issue was the admissibility of the defendant’s letters to one Virgil Howard, regarding a February 1996 shooting of a cab driver. Law enforcement had matched the bullets from the cab driver murder to the bullets from the barbershop murders. *Id.*, 346 S.C. at 545, 552 S.E.2d at 310. In the Virgil Howard letters, the defendant wrote, “I told you about the [cab]. That didn’t come out right because he tried to [resist], so I sent him to the essence. You heard about it. It was the one down by the mall last month . . . Now that I got my [gun] back, I’m about to get busy[.]” *Id.*, 346 S.C. at 536, 552 S.E.2d at 305. The letters “contain[ed] identifying details of the crimes committed.” *Id.* at 550, 552 S.E.2d at 313. The Supreme Court found the Virgil Howard letters admissible pursuant to 404(b) under the motive, identity, and common scheme or plan exceptions. *Id.*, 346 S.C. at 546, 552 S.E.2d at 311. Rule 403 did not bar admission: “In light of the evidence both crimes were committed with the same

gun, the evidence appellant committed the cab driver murder makes it more likely he committed the barbershop murders.” *Id.*

Rules 403 and 404(a), SCRE overlapped in the *Cheeseboro* rap lyrics, as they did here, requiring exclusion. These lyrics did not “contain identifying details of the crimes committed.” *Id.*, 346 S.C. at 550, 552 S.E.2d at 313. Appellant rapped, “*Even if* I shot him dead, evidence don’t prove it.” State’s Exhibit #34. Like *Cheeseboro*, the lyrics were “too vague” to support admission. *Id.* The video had low probative value under Rule 403, SCRE. Any probative value was substantially outweighed by the danger of unfair prejudice, as the video carried the typical negative connotations of a rap video—it portrayed Appellant as a thug and a criminal, rapping in a jail cell making hand gestures which glorified violence (guns; what could a jury could reasonably suspect to be gang signs). Contravening not only Rule 403, but also Rule 404(a), the evidence was unfairly prejudicial “evidence of appellant’s bad character[.]” *State v. Cheeseboro*, 346 S.C. at 550, 552 S.E.2d at 313. *See* Dre’Kevius O. Huff, Rap on Trial: The Case for Nonliteral Interpretation of Rap Lyrics, 5 Savannah L. Rev. 335, 343 (2018) (“In a study conducted by Stuart Fischhoff, defendants who were associated with negative rap lyrics were seen as more likely to have committed a crime (a murder, in his study) than those defendants who were not presented as having authored any rap lyrics.”). Appellant had not put his character in issue. Evidence that Appellant had a criminal or thuggish character was not admissible. Rule 404(a), SCRE; Rule 403, SCRE.

Rule 404(b), SCRE, and Rule 403 also required exclusion of the evidence. As the judge recognized, because Appellant was in his jail cell, he necessarily made the video on a contraband cell phone. This was a bad act demonstrating criminal character. It did not meet one of the exceptions listed in 404(b).

“Rule 404(b) prevents the State from introducing evidence of a defendant’s other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial.” *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). “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), SCORE; *see also State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). “To be admissible against a defendant in a criminal proceeding as evidence of identity, ‘the bad act must logically relate to the crime with which the defendant has been charged.’” *State v. Cope*, 385 S.C. 274, 284, 684 S.E.2d 177, 182 (Ct. App. 2009), *aff’d*, 405 S.C. 317, 748 S.E.2d 194 (2013) (quoting *State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006)). “After conducting a *Lyle* analysis and finding evidence both relevant and admissible as a prior bad act, the trial court must conduct a Rule 403, SCORE analysis to determine whether or not the evidence is unduly prejudicial.” *State v. Beck*, 342 S.C. 129, 136, 536 S.E.2d 679, 683 (2000). Even if otherwise admissible, prior bad act evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *State v. Gillian*, 373 S.C. 601, 646 S.E.2d 872 (2007); Rule 403, SCORE.

The court erred in its admissibility analysis. The court stated it had performed Rule 403 balancing and found the evidence was “more probative” than the legitimate prejudice always present when admitting a defendant’s statement against interest. Tr. 364, l. 16 – 365, l. 13. It was not the legitimate prejudice of a defendant’s statement against interest upon which Appellant rested his challenge. It was the danger of unfair prejudice occasioned by the bad act of Appellant recording himself rapping in his jail cell, sounding and looking like a criminal. Rule 403, SCORE; Rule 404(a), SCORE; Rule 404(b), SCORE. Although the court found the evidence was admissible

under Rule 804, SCRE, that is an exception to the hearsay rules, not an exception to all other evidentiary rules. Passing muster on hearsay does not guarantee admissibility. *Cheeseboro*, 346 S.C. at 550, 592 S.E.2d at 313.

Admittedly, whether the video was akin to a statement against interest is relevant to whether the evidence went to identity under Rule 404(b) or had probative value under Rule 403, SCRE. It did not. Interpreting the content of the video required speculation. The content of the entire song seems to indicate Appellant had seen his discovery (references to “my Rule 5” and his mother) and was firm in his desire to go to trial (“I told Kim I’m going to trial. She said you talking foolish.”). The lyrics were “even if” Appellant shot him, the evidence did not prove it. Court’s Exhibit #1. Appellant had the right to go to trial and to require the State to meet its burden of proof. He had the right to see his discovery. This was not probative of guilt. In closing, the solicitor argued Appellant’s references to “Desire” and his mother showed Appellant felt betrayed by them. However, anyone—guilty or innocent—would feel betrayed if his discovery reflected his girlfriend or mother was going to be a witness against him in a murder case. This, too, was not probative of guilt. Moreover, the content of the entire song, not just the lyrics cherry-picked by the State, was not probative of guilt.

Stating these things, or rapping about them, did not show identity. This was not a case like *Cheeseboro*, *supra*, where establishing a connection to one crime (through the Virgil Howard letters regarding the cab driver murder) showed identity in a second crime (the barbershop murders). In this case, the video was like the rap lyrics in *Cheeseboro*—“too vague in context to support [] admission”. *Cheeseboro*, 346 S.C. at 550, 592 S.E.2d at 313. The video was improper propensity evidence which showed Appellant had a criminal character, as he had a cell phone (contraband) in jail. The evidence should have been excluded pursuant to Rules 403 and 404(b), SCRE.

The court abused its discretion. The court surprisingly refused defense counsel's reasonable request to mitigate unfair prejudice by limiting the evidence to audio rather than showing the jury the video. Even the solicitor admitted this might be necessary. Nevertheless, the court denied the request. Assuming *arguendo* this Court concludes the lyrics were admissible, there was no need to show Appellant in his cell making problematic hand gestures. The danger of unfair prejudice from the video should have resulted in the exclusion of the video even if the audio was proper for admission. Rule 403, SCRE.

"The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained." *State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014). "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *Id.*, 409 S.C. at 538, 763 S.E.2d at 29 (cleaned up). "[W]here there is other properly admitted evidence of conduct demonstrating the particular character trait in question, there is no reversible error." *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (citing *Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300). "The erroneous admission of character evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record." *Haselden, supra* (citation omitted). See *State v. King*, 334 S.C. at 514, 514 S.E.2d at 583–84 (improper admission of remote thefts suggested to jury that defendant was guilty of committing murder and arson because of criminal propensity to commit crimes and bad character; improper testimony "permeated the trial" and was not harmless).

The error was not harmless. The case was largely dependent on the credibility of codefendant Hanniball, who was facing life in prison and whom the solicitor termed "cold" and

“depraved.” Appellant did not know Decedent. No forensic evidence tied Appellant to the crime. The evidence did not otherwise depict Appellant as a thug and criminal. *See State v. Lyle*, 125 S.C. 406, 118 S.E. at 807 (“the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors”). The jury zeroed in on the TikTok video, re-watching it three times during deliberation. This was not evidence which had “minimal impact.” *Haselden*, 353 S.C. at 196, 577 S.E.2d at 448. There was a reasonable possibility the improper evidence could have changed the outcome of the trial. *State v. King*, 334 S.C. at 514, 514 S.E.2d at 583–84.

The court erred in admitting only part of Appellant's rap video, where the redaction of the song stripped it of important context, since the remaining lyrics should have been admitted pursuant to Rule 106, SCRE.

It was error to refuse the defense's request to admit the remaining lyrics which explained and clarified the portion selected by the State. The rule of completeness required the court to do so.

Rule 106, SCRE, provides: "When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." "Rule 106 is based on the rule of completeness and seeks to avoid the unfairness inherent in the misleading impression created by taking matters out of context." *State v. Cabrera-Pena*, 361 S.C. 372, 379, 605 S.E.2d 522, 525 (2004) (citing *State v. Taylor*, 333 S.C. 159, 170, 508 S.E.2d 870, 876 (1998)). "Only that portion of the remainder of a statement which explains or clarifies the previously admitted portion should be introduced." *Taylor*, 333 S.C. at 171, 508 S.E.2d at 876. Where "the state elects to use a witness to elicit portions of a conversation (and incriminating statements therein) made by a defendant, the rule of completeness requires the defendant be permitted to inquire into the full substance of that conversation." *Cabrera-Pena*, 361 S.C. at 380, 605 S.E.2d at 526.

In addressing Rule 106, SCRE in *State v. Tennant*, 394 S.C. 5, 15, 714 S.E.2d 297, 302 (2011), the South Carolina Supreme Court found no abuse of discretion by the trial court in refusing the defendant's request to admit his purported suicide note, since the note, "while relevant, was not so inextricably connected to the letter introduced by the State that its omission

was patently unfair.” See *State v. Patterson*, 367 S.C. 219, 227–28, 625 S.E.2d 239, 243 (Ct. App. 2006) (“The defense put Richardson’s statement to police at issue, and fundamental fairness required the entire statement be admitted into evidence.”).

The rule of completeness has long existed in South Carolina. Its importance to justice, fairness and truth-seeking is plain. See *State v. Jackson*, 265 S.C. 278, 284, 217 S.E.2d 794, 797 (1975) (“When part of a conversation is put into evidence, an adverse party is entitled to prove the remainder of the conversation, so long as it is relevant, particularly when it explains or gives new meaning to the part initially recited.”); *State v. Thomas*, 159 S.C. 76, 156 S.E. 169, 172 (1930) (“the plainest principles of justice requires that if one of the statements is to be used against the party, all the other statements tending to explain it or to qualify this use should be shown and considered in connection with it”) (cleaned up).²

The first line of lyrics, which was excluded, was: “Pray for me.” Other excluded lyrics were: “Ain’t nobody had no faith that I was coming home. I pray to God.” “I heard y’all praying for me.” “Y’all thanks for the support.” Court’s Exhibit #1. Additional excluded lyrics contained Appellant talking about keeping his head high, indicating how hurt he felt by seeing “his mama crying” in court when Appellant was “denied” (bond), and discussing how Appellant wanted to “go berserk” from the situation, which would “make your soul cry.” These lyrics, particularly regarding the impact of God and prayer on Appellant’s fate, keeping his head high, and how hurt he was, would have painted a very different picture for the jury. They explained and clarified the admitted portion. Because they indicated praying to God would result in a just

² Prior to the adoption of Rule 106, SCRE, the party seeking to introduce the remainder of a document had to wait until cross-examination or presentation of that party’s case. *State v. Taylor*, 333 S.C. at 170 n. 5, 508 S.E.2d at 875 n. 5. Rule 106 changed this by allowing the adverse party to require introduction of the remainder contemporaneously with the original proffer. *State v. Patterson*, 367 S.C. at 227, 625 S.E.2d at 243.

outcome for Appellant, they implied Appellant's was a just cause. Appellant mentioned prayer five times. None of that was before the jury. These lyrics ought in fairness to have been considered beside the snippet that was most useful to the State. Rule 106, SCRE; *see State v. Tennant*, 394 S.C. at 15, 714 S.E.2d 297, 302 ("The standard here is 'fairness'").

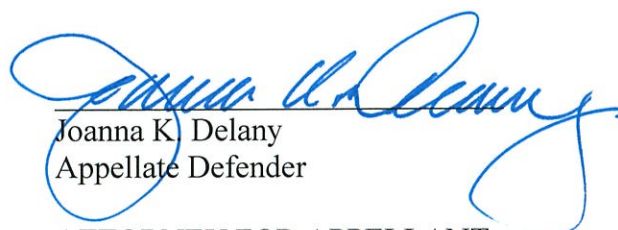
Whether error is harmless depends on the circumstances of the particular case. The materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial. *State v. Taylor*, 333 S.C. at 172, 508 S.E.2d at 876. *See State v. Cabrera-Pena*, 361 S.C. at 380, 605 S.E.2d at 526 ("Although we find Cabrera-Pena should have been permitted to cross-examine Membreno concerning the remainder of what Cabrera-Pena said in his conversation during the interview, we find this error harmless beyond a reasonable doubt given the overwhelming evidence of guilt in this case."); *State v. Jenkins*, 322 S.C. 414, 417 n. 3, 472 S.E.2d 251, 253 n. 3 (1996) ("The error was not harmless as the testimony was clearly prejudicial and the other evidence of petitioner's guilt was far from overwhelming.").

This case was largely dependent on the credibility of codefendant Hanniball, who was also charged with the murder, facing life imprisonment, and testifying in hopes of a benefit. Although Hanniball claimed to have seen Appellant fire the fatal shot in the wee hours of the morning, she incredibly claimed she saw no muzzle flash. *See generally State v. Carrington*, 386 N.W.2d 512, 517 (Wis. Ct. App.), *rev'd*, 397 N.W.2d 484 (Wis. 1986) ("An analyst from the state crime laboratory testified that the muzzle flash of Carrington's sawed-off shotgun would appear as a bright light even if fired at a forty-five degree angle."). Hanniball's credibility was suspect. No forensic evidence tied Appellant to the crime. The TikTok video appeared central to the jury's decision. The jury re-watched it three times during deliberations. The court's ruling

permitting the jury to hear only this snippet could “reasonably have affected the result of the trial.” *Taylor*, 333 S.C. at 172, 508 S.E.2d at 876. The error was not harmless.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.



Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

This 2nd day of July, 2026.