STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County

Honorable Milton Kimpson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERENCE M. STUKES,

APPELLANT

APPELLATE CASE NO. 2025-002401

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in admitting alleged prior bad acts of appellant that bore no meaningful resemblance to the charged crime and that fit under none of Rule 404(b), SCRE's exceptions?

STATEMENT OF THE CASE

Appellant was indicted for attempted murder and a weapons charge and on July 28, 2025, was tried before the Honorable Milton G. Kimpson and a jury. Stephanie Taylor, Anna Browder, and Morgan Monroe represented the State. Jennifer Davis, Jennie Rischbieter, and Laura Young represented appellant. The jury convicted appellant and Judge Kimpson sentenced him to twenty years' imprisonment for attempted murder and a consecutive five years for the weapons charge. This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

ARGUMENT

1.

The trial court erred in admitting alleged prior bad acts of appellant that bore no meaningful resemblance to the charged crime and that fit under none of Rule 404(b), SCRE's exceptions.

Appellant Terence Stukes and India Moody were romantically involved and had a child together. Tr. 2, 184-87. Moody lived in Columbia. Tr. 2, 181. Moody and Stukes never lived together at Moody's house in Columbia and Stukes lived in Bishopville and then later in Camden. Tr. 2, 187. Tr. 2, 208. Moody's three children and Moody's mother, Tammy Martin, lived with her. Tr. 2. 182. Moody testified that she broke up with Stukes in October 2022, shortly after their child was born. Tr. 2, 188.

As will be discussed in more detail, over Rule 404(b) objections, Moody testified about multiple allegations of violence by Stukes beginning in November 2022 after the breakup. Tr. 2, 189-205. Moody obtained a restraining order against contact from Stukes to her and their son. Tr. 2, 194. Stukes was charged with attempted murder on one of the Rule 404(b) incidents for allegedly shooting at Moody, but in what the solicitor described as "kind of a weird situation," the charge was dismissed when the "investigator on that case missed prelims." Tr. 1, 187-88. Moody filed a lawsuit against Richland County related to the dismissal of the charges. Tr. 2, 291-92. When asked if she filed this lawsuit on cross-examination, Moody replied, "I'd rather not answer," before eventually admitting the lawsuit's existence. Tr. 2, 291-92.

Despite her claims regarding Stukes' bad acts, an attempted murder charge, and the lawsuit, the two remained in contact. Tr. 2, 268-89. On cross-examination, Moody's testimony was defensive about her contacts with Stukes. Tr. 2, 268-89. She portrayed the communications

as related only to her son, or to stave off further violence from Stukes. Tr. 2, 268-89. When confronted with a sexually explicit message, she denied sending it and claimed her social media account had been hacked. Tr. 2, 270-73.

In May, 2023, their child became sick with what was ultimately determined to be an allergy to penicillin. Tr. 2, 208. Moody took the baby to several doctors who initially told her the child only had an ear infection. Tr. 2, 208. The baby did not improve and Moody took him to the hospital in Camden, where Stukes lived. Tr. 2, 208-09. She contacted Stukes and he came to the Camden hospital. Tr. 2, 210. The doctors in Camden decided to send the child back to Columbia to the children's hospital by ambulance. Tr. 2, 210-11. Moody agreed to let Stukes ride to Columbia with the child in the ambulance and Moody drove her car. Tr. 2, 211.

Moody and Stukes then spent approximately four days together at the hospital in Columbia. Tr. 2, 241-43. On the day the baby was released from the hospital, Stukes became concerned about how he would get back to Camden. Tr. 2, 214-15. Moody claimed Stukes threatened her, so she drove the two of them back to the Camden hospital where Stukes had left his bike. Tr. 2 214-15. She reiterated that they were not going to get back together and claimed Stukes then became angry, slammed the car door, and ran behind her car yelling she would "regret this," which she interpreted as a threat. Tr. 2, 215-16.

Moody returned to her home in Columbia and later that night hung out in her driveway with her cousin and friend who lived across the street, Danvonta Phelps, nicknamed "Dayday." Tr. 2, 217. Moody's daughter, JB, was across the street at Phelps' house with her best friend, Phelps' daughter. Tr. 2, 218, 184. The girls were watching the baby. Tr. 2, 218. The group drank and stayed in the driveway from approximately 9:30PM until 1:00AM. Tr. 2, 246-48.

Phelps smoked marijuana. Tr. 2, 19. Moody said she had one beer. Tr. 2, 217. Phelps said she was drinking "'club tails.'" Tr. 2, 19.

Moody went into her house to use the bathroom before going across the street to get the baby from Phelps' house. Tr. 2, 218-19. She was walking alone near her car when she felt something hard hit her in the back of the head. Tr. 2, 219-20. She then felt a punch in the back that turned out to be a stab wound from a knife. Tr. 2, 220. Moody turned around and began fighting her masked attacker. Tr. 2, 220. She grabbed the mask and it came down, "Around his neck." Tr. 2, 255. She said, "Terence," and he replied, "huh." Tr. 2, 220. The attacker had a baton and a knife. Tr. 2, 220. The attacker continued to hit and stab Moody and the man she claimed was Stukes said, "I'm going to kill you, bitch." Tr. 2, 220-222.

Phelps was back in his house when Moody's daughter, JB, came to him, terrified, and said someone was attacking her mother. Tr. 2, 25. Phelps looked out his front door and saw Moody on the ground and someone beating her. Tr. 2, 27-28. The man had two weapons. Tr. 2, 29. Phelps went outside to help Moody. Tr. 2, 29-31.

On direct-examination, Phelps said the man had nothing covering his face and was wearing a black toboggan, a do-rag, or a ski mask. Tr. 2, 30, 33. Phelps was able to see the man's face. Tr. 2, 33. He made an in-court identification of the attacker as Stukes. Tr. 2, 41.

Things changed on cross-examination. Phelps admitted that he had seen Stukes at Moody's house before and knew him as Moody's baby's father. Tr. 2, 57. He then admitted that the night of the attack, he told the police the person was wearing a ski mask and that he could not pick the person out of a lineup. Tr. 2, 63-64. He told the police the attacker was "some dude." Tr. 2, 63-64. He did not identify the attacker as Stukes that night. Tr. 2, 65.

On direct-examination, Phelps said the attacker ceased his assault on Moody and chased him after trying to steal Moody's car. Tr. 2, 31-37. Phelps claimed the man accused him of flirting with Moody before the chase. Tr. 2, 31-37. Phelps ran to get a machete to "even up the fight," but the man stole Phelps' phone when it fell from his pocket and ran off. Tr. 2, 34-37.

The police arrested Stukes at his workplace several days after the attack. Tr. 1, 357-362. Stukes fled from the police and they found a knife in his pocket that Moody said was the same knife used in the attack because it had a lanyard. Tr. 1, 357-362. Tr. 1, 224. On direct, the solicitor asked Moody the leading question, "And when you were grabbing onto the lanyard, were there any maybe incidents where you grabbed onto the grip of the knife possibly? Tr. 2, 225. Moody replied, "Possibly." Tr. 2, 225.

Martin testified that Moody came in the front door "huffing and puffing" and saying Stukes was trying to steal her car. Tr. 1, 270. She went outside and claimed she saw Stukes chasing Phelps with a weapon. Tr. 1, 270. However, the 911 call Martin made indicated Martin was likely inside asking questions of Phelps and Moody whether the attacker had a weapon, calling into question whether Martin actually saw the attacker. Tr. 1, 293-94. A police investigator confirmed after having her memory refreshed with a recording that Martin was not able to give a description of the attacker because she was inside. Tr. 1, 244-49. JB testified that she recognized the attacker as Stukes, but did not tell the police this on the night of the attack and first described it to the solicitors in May 2025. Tr. 2, 91-94.

The defense filed a pretrial motion seeking the exclusion of the prior bad act evidence. R. ___ (Def. Mot. Lim. Prior Bad Acts). Judge Kimpson heard extensive argument from both sides. Tr. 1, 155-194. The State sought admission of incidents in November 2022. Tr. 1, 155-194. The first incident was an assault where Stukes allegedly punched Moody in the face and

maced her. The second incident was Moody's obtaining a restraining order against Stukes after the punch. The third incident involved stalking and slashing her tires. The most serious incident was coming to her house, after the issuance of the restraining order and shooting at Moody, which led to the attempted murder charge that became the subject of Moody's lawsuit after. Tr. 1, 155-194. R. ___ (Def. Mot. Lim. Prior Bad Acts).

Defense counsel correctly argued this evidence was only to show Stukes' bad character and propensity for violence. It met none of the exceptions of Rule 404(b). Furthermore, the unfair prejudice greatly outweighed any probative value. The State attempted to argue that the incidents were similar enough to the charged crime to constitute a common scheme or plan that could establish identity, motive, and intent. Judge Kimpson ruled the evidence was admissible as it went to identity and intent and the prejudice did not outweigh the probative value. Tr. 1, 189-91. The State led Moody through each of the prior bad acts on direct-examination before getting to the charged conduct and the defense's contemporaneous objections were overruled. Tr. 2, 188-207. Tr. 2, 239-40.

The trial court erred in admitting this evidence. As defense counsel correctly noted when she began her argument, "Rule 404 is at its core a rule of exclusion." Tr. 1, 156. Rule 404 prohibits bad character evidence. Rule 404(a), SCRE. The alleged bad acts occurred months before the attack and there was no temporal connection. In order to be admissible, bad character evidence must have some logical connection to the crime. State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

Perry returned our jurisprudence to its original state, based on the rigorous logic of Lyle, overturning State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). The Court wrote:

> As we said in Lyle, "Whether evidence of other ... crimes properly falls within any of the recognized exceptions ... is often a difficult matter to determine." 125

> S.C. at 416-17, 118 S.E. at 807. Rule 404(b) of our Rules of Evidence provides, "Evidence of other crimes, wrongs, or acts ... may ... be admissible to show ... the existence of a common scheme or plan ...." The trial court's standard for making this determination is the Lyle "logical connection" test. The State must demonstrate to the trial court that there is in fact a scheme or plan common to both crimes, and that evidence of the other crime serves some purpose other than using the defendant's character to show his propensity to commit the crime charged. Similarity can be important to meeting that burden, but as we held in Lyle and in all our decisions for over eighty years afterward, there must be more. 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."

125 S.C. at 417, 118 S.E. at 807.

Even if bad character evidence is otherwise admissible under Rule 404(b) is still subject to the balancing test under Rule 403. "The State must also convince the trial court that 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. Rule 403, SCRE. Whether the State has met its burden "should be subjected by the courts to rigid scrutiny," considering the individual facts of and circumstances of each case." Perry, at 44, 842 S.E.2d at 665.

The question in this case was identity. Intent, as offered by the State, was a red herring. The defense did not dispute that Moody's attacker intended to kill her. He attacked her with a knife and a baton and expressly said he was going to kill her. Therefore, the only real question was identity. But to be admissible to identity, the acts must contain such a close similarity that they are "signature" style crimes. See People v. Molineux, 6 Bedell 264, 61 N.E. 286 (N.Y. 1901).

Unconnected events that bear only a general similarity are not admissible under Lyle or Rule 404(b). See State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993). In Parker, the defendant

was accused of beating another boy to death in a mall parking lot with a baseball bat. Parker at 232, 433 S.E.2d at 831-32. Evidence of another fight involving the defendant in the same parking lot was admitted. Id. The Court engaged in a lengthy discussion of Lyle evidence and stated that if the acts were of "such a close similarity," then the probative value would "overrule" the prejudicial effect. Id. Ultimately, the Court held the acts only bore a general similarity, but that it was harmless error to admit them. Id.

In State v. Cope, 405 S.C. 317, 748 S.E.2d 194 (2013), the issue was whether the co-defendant committed the rape and murder of Cope's daughter by himself or with Cope. Id. at 335, 748 S.E.2d at 203 (majority); Id. at 354, 748 S.E.2d 213-14 (Kittredge, J., dissenting). Cope is a difficult case in which the defendant sought to offer evidence that his co-defendant committed other assaults after breaking into other women's homes. The Court concluded the crimes were not sufficiently similar for admission. Id. at 337-38, 748 S.E.2d at 204-05. The first dissimilarity noted by the Court was that the crimes occurred after the event in the Cope case and that they involved adults, not children. Id.

The acts here were not similar. They did not involve the same weapons. No signature line or threat was used. The attacker in the charged crime wore a mask, concealed his identity, and attempted to steal Moody's car, but the prior bad acts were unconcealed domestic-style disputes. The only similarity was the victim, but that is not enough to pass Lyle. See State v. Fonseca, 383 S.C. 640, 649, 681 S.E.2d 1, 5 (Ct. App. 2009) *affirmed* 393 S.C. 229, 229, 711 S.E.2d 906, 906 (2011).

Nor can the prior bad acts survive the balancing test of Rule 403 inherent in Rule 404. The prior acts were unfairly prejudicial as they portrayed Stukes as a serial abuser of women and a person of bad character. They inflamed the jury's passions against Stukes and likely caused

the jury to overlook the problems with the shaky identification evidence. Moody's claim that he pulled a mask down around the attacker's neck—something more like a fishing neck gaiter—conflicts with Phelps' description of a ski mask that could not come down around someone's neck. The defense successfully showed the other witnesses' identifications were late or conflicted with prior statements. Furthermore, Moody had a pending lawsuit against Richland County that would be undercut if Stukes was not the attacker. Without the impermissible Lyle evidence, there is a reasonable possibility that appellant would not have been convicted.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.

s/David Alexander

_____

David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 8th day of October, 2026.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 8th day of October, 2026.

s/David Alexander
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