

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of General Sessions

**S.C. Supreme Court**

George C. James, Circuit Court Judge

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Case No. 2006-GS-45-176

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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

PETITIONER.

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**PETITION FOR WRIT OF CERTIORARI**

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that a petition for rehearing was made and was finally ruled upon by the South Carolina Court of Appeals.

## QUESTIONS PRESENTED

### I.

Whether the Court of Appeals misapplied Batson v. Kentucky<sup>1</sup> in concluding that the trial court properly granted the State's Batson motion?

### II.

Whether the Court of Appeals erred in using the factors outlined in State v. Wallace<sup>2</sup> as opposed to the factors delineated in State v. Clasby<sup>3</sup> to evaluate the Petitioner's claim that the trial court improperly permitted the State to admit evidence that the Petitioner abused the victim on one separate occasion pursuant to Rule 404(b), SCRE?

### III.

Whether the Court of Appeals erred in finding that the evidence of the Petitioner's abuse of the victim on a separate occasion was not unduly prejudicial pursuant to Rule 403, SCRE?

### IV.

Whether the Court of Appeals erred in denying the Petitioner's argument that a directed verdict should have been granted on the basis of venue?

### V.

Whether the Court of Appeals erred in using preservation rules to avoid evaluating the Petitioner's novel claim, which was fully examined and ruled upon by the trial court, that a prior conviction should not be used as a predicate "most serious" conviction for the purposes of S.C. Code Ann. §§17-25-45 and 17-25-50 when the evidence of the conduct of the conviction was also admitted as continued illicit conduct evidence pursuant to Rule 404(b), SCRE?

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<sup>1</sup> 476 U.S. 79 (1986).

<sup>2</sup> 384 S.C. 428, 683 S.E.2d 275 (2009).

<sup>3</sup> 385 S.C. 148, 682 S.E.2d 892 (2009).

## STATEMENT OF THE CASE

The Petitioner Robert Troy Taylor was indicted in Williamsburg County for criminal sexual conduct with a minor in the second degree and kidnapping. On July 10-12, 2007, the Petitioner proceeded to trial by jury on these charges. At the conclusion of the trial, the Petitioner was found guilty as charged. The Honorable George C. James, presiding circuit judge, sentenced the Petitioner to consecutive life without parole sentences pursuant to S.C. Code Ann. §17-25-45.<sup>4</sup>

The Petitioner timely filed an appeal to the South Carolina Court of Appeals. In a published opinion, the Court of Appeals affirmed the Petitioner's convictions and sentences. State v. Taylor, 396 S.C. 193, 720 S.E.2d 522 (Ct. App. 2011) (Taylor I); App. pp. 449-459. Both the Petitioner and the Respondent petitioned the Court of Appeals for rehearing. App. pp. 459-470; pp. 473-486. The Court of Appeals denied the Petitioner's petition for rehearing, but granted the Respondent's petition for rehearing. App. pp. 471-472; p. 487. The Court of Appeals then withdrew its prior published opinion and substituted another published opinion in its place. State v. Taylor, \_\_\_ S.C. \_\_\_, 731 S.E.2d 596 (Ct. App. 2012) (Taylor II); App. pp. 488-498. The Petitioner then filed a second petition for rehearing challenging the rulings made in the substituted opinion. App. pp. 499-511. The Court of Appeals denied this second petition for rehearing as well. App. pp. 512-513.

The Petitioner's petition for rehearing was denied by the Court of Appeals. The Petitioner now seeks a writ of certiorari.

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<sup>4</sup> The Petitioner's prior most serious conviction was a criminal sexual conduct with a minor in the second degree charge from Georgetown County. This Court has granted certiorari from the denial of the Petitioner's Application for Post-Conviction Relief that was filed pertaining to that charge.

## STATEMENT OF FACTS

The Petitioner was the pastor of a church in Murrell's Inlet, South Carolina. On November 6, 1998, the victim and several other youths in the church went on a camping trip with the Petitioner and other adults as a part of a church outing to a location near Andrews, South Carolina. App. p. 162, line 16-p. 164, line 20. The victim testified that the Petitioner had set up his own tent while everyone else was sleeping under a large tarp. App. p. 166, lines 5-16. The victim was awoken by the Petitioner, who grabbed him by the mouth, picked him up, and took him to the Petitioner's tent. App. 166, line 25-p. 167, line 4. The Petitioner then took all of the victim's clothing off and made the victim touch his penis and rectum while doing the same to the victim. App. p. 167, lines 8-16. Following the touching, the Petitioner engaged in anal sex with the victim. App. p. 167, line 19-24. After the Petitioner finished having sex with the victim, he picked up the victim, carried the victim back to the tarp, and slept next to the victim, holding him all night long. App. p. 168, lines 13-21. The Petitioner also told the victim not to tell anyone what had happened. App. p. 168, lines 22-25.

The 1998 incident concerned the offense of conviction. The victim also testified about a separate incident that occurred in the summer of 1999. According to the victim, he went on a youth group trip to the beach in Georgetown County and returned to the church to shower. App. p. 171, line 2-p. 172, line 17. However, all of the showers were occupied. App. p. 172, lines 9-19. The Petitioner, who was also at the church, offered to take the victim and another youth group member, Charles, to the Petitioner's home to shower. App. p. 172, lines 20-23. The Petitioner's home was located less than half a mile from the church. App. p. 172, lines 24-25. As the victim was showering, the Petitioner entered the bathroom, took all of his clothing off, and touched the victim's penis and rectum. App. p. 174, line 23-p. 175, line 4. The Petitioner

then engaged in anal intercourse with the victim. App. p. 175, lines 14-20. After he finished, the Petitioner told the victim not to tell anyone what had occurred. App. p. 176, lines 2-5. The Petitioner then drove the victim and Charles back to the church. App. p. 177, lines 6-10. The Petitioner's wife, the Petitioner's child, and Charles were all in the house at the time of the second assault. App. p. 173, line 18-p. 174, line 6; p. 176, lines 6-22.

The Petitioner's nephew, Trevor, testified for the defense that he went on the camping trip in 1998 as a member of the youth group. App. p. 284, line 22-p. 285, line 16. He testified that he stayed up almost the entire night. App. p. 287, line 23-p. 288, line 2. Trevor's sleeping bag was next to the Petitioner's, who was sleeping with his three-to-four year old son. App. p. 288, lines 7-25. He testified that no one got up all night and that everyone, including the Petitioner and the victim, remained in the same location when they got up the next morning. App. p. 290, line 2-p. 291, line 11.

## ARGUMENT

### **Standard of Review**

“In criminal cases, the appellate court sits to review errors of law only.” State v. Baccus, 67 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “This Court is bound by the trial court's factual findings unless they are clearly erroneous.” Id.

**I. The Court of Appeals misinterpreted the facts of the case, misapplied the Batson framework, and erroneously affirmed the trial court's Batson ruling on a basis not accepted by the trial court.**

A. How the Issue Arose Below

During the first jury selection, the Petitioner exercised all ten of his peremptory strikes, eight of which were used to strike white individuals.<sup>5</sup> See App. p. 10, lines 10-19. At the conclusion of the jury selection process, the State moved to quash the jury pursuant to Batson v. Kentucky, 476 U.S. 79 (1986). App. p. 10, lines 19-23. In accordance with the Batson procedure, the trial court required defense counsel to provide race-neutral reasons for his peremptory strikes. App. p. 10, line 24-p. 11, line 3.

Defense counsel's race-neutral explanations were accepted by the trial court with the exception of one juror: Juror 146. Defense counsel explained that he struck her because

I have found over the years that the more education jurors have the less likely they are to adopt arguments—they usually come with their own idea or agenda. Over the years, I've learned to shy away from jurors with higher education. And, in addition to that, I also know her husband personally and we just don't get along.

App. p. 11, line 22-p. 12, line 3. In accordance with the Batson procedure, the State then argued that this race-neutral reason was pretextual because defense counsel did not use a peremptory strike to strike an African-American female juror—Juror 138—who was an accountant with

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<sup>5</sup> The Petitioner is also white.

Tupperware and had sixteen years of education. App. p. 16, lines 1-12. Defense counsel explained that he didn't actually know how much education Juror 138 had and further explained that his primary focus was not education but a position in management:

[Juror 146 is] an Administrative Assistant. Inasmuch as she would be in management that she would have got there by promotion or her qualification. Certainly she would have met the qualification to be in management. But she is in management. I do have the note that the lady worked at Tupperware as an accountant. I know that probably at least a substantial number of Tupperware employees and I don't know a black person at Tupperware that is in management.

App. p. 16, line 24-p. 17, line 7. Defense counsel reiterated his concern that Juror 146 was in management, and that Juror 138 was not, later in the proceedings. See App. p. 34, lines 10-11 (“Judge, when I talk about education, I’m talking about the actual position a person is in”); p. 34, line 12-p. 36, line 10.

At the conclusion of the hearing, the trial court found that the State had proven that defense counsel’s strike of Juror 146 was racially motivated and quashed the jury. See App. p. 37, lines 7-16. In accordance with the Batson procedure, the trial court prevented the Petitioner from using a peremptory strike against Juror 146 during the second jury selection, and Juror 146 was ultimately seated on the jury. App. p. 43, lines 1-5.

On appeal, the Petitioner argued that the trial court erred in granting the State’s Batson motion. See App. pp. 388-391. The Court of Appeals rejected this argument, concluding, *inter alia*, that there was nothing clearly erroneous in the trial court’s ruling. Taylor II, *supra*, 731 S.E.2d at 600. The Petitioner filed a petition for rehearing arguing that the Court of Appeals should reconsider its findings and grant relief on this issue. See App. pp. 500-502. This petition was denied by the Court of Appeals. See App. pp. 512-513.

## B. Discussion

The Petitioner asserts that, with all due respect to the Court of Appeals, the Court of Appeals' ruling that the trial court properly quashed the Petitioner's jury pursuant to Batson was replete with factual and legal errors and, most importantly, misapplies the Batson framework to reach an incorrect conclusion. Accordingly, the Petitioner respectfully asserts that certiorari should be granted with regard to this claim. See Rule 242(b)(3)-(5), SCACR.

The Equal Protection Clause of the Fourteenth Amendment prohibits the use of a peremptory strike against a prospective juror if the basis for the strike is the juror's race or gender. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009); see also Batson v. Kentucky, *supra*; J.E.B. v. Alabama, 511 U.S. 127 (1994). This Court has clearly set forth the procedures for evaluating a Batson claim by a trial court:

When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one. The proponent of the strike must offer a race or gender neutral explanation. The opponent must show the race or gender neutral explanation was mere pretext, which is generally established by showing the party did not strike a similarly situated member of another race or gender.

Id. at 508-509, 682 S.E.2d at 822 (internal citations omitted).<sup>6</sup>

The requirements for establishing prejudice are equally clear. If the trial court improperly grants the State's Batson motion but "one of the disputed jurors is seated on the jury, then the erroneous Batson ruling has tainted the jury and prejudice is presumed." Edwards, *supra*, 384 S.C. at 509, 682 S.E.2d at 823. On appeal, this Court will uphold a trial court's finding of purposeful discrimination unless it is clearly erroneous. Id. at 509, 682 S.E.2d at 822.

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<sup>6</sup> This procedure was first outlined by the United States Supreme Court in Purkett v. Elem, 514 U.S. 765 (1995), which this Court adopted in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996).

Initially, the Petitioner would note that the trial court prevented the Petitioner from striking Juror 146, and that juror was eventually seated on the jury. See App. p. 43, lines 1-5. Consequently, if the Petitioner can demonstrate that the trial court improperly granted the State's Batson motion, then "[t]he proper remedy ... is the granting of a new trial." Edwards, supra, at 509, 682 S.E.2d at 823.<sup>7</sup>

The Petitioner respectfully submits that the Court of Appeals made several undeniable errors in concluding that the trial court properly granted the State's Batson motion. The Court of Appeals began its analysis by stating that "the State moved to quash the jury after Taylor used ten strikes to strike white jurors." Taylor II, supra, 731 S.E.2d at 600. This is incorrect as a matter of fact. The Petitioner used ten strikes, but only eight of them were used to strike white jurors; the other two strikes were used to strike black jurors. See App. p. 10, lines 10-12 ("The Defendant has exercised all of his challenges, *eight* of which were used against white males and white females") (emphasis added).

The Court of Appeals then presented defense counsel's explanation for striking Juror 146, which included a statement that "I also know her husband personally and we just do [not] get along." Taylor II, supra, 731 S.E.2d at 600. In a footnote, the Court of Appeals appeared to criticize the Petitioner's failure to argue on appeal "that defense counsel's poor personal relationship with Juror 146's husband was a proper race neutral explanation for the strike." Id. (footnote 1). In addition to stating that the issue on appeal was defense counsel's failure to proffer a race-neutral reason, which was not the issue on appeal, the Court of Appeals' implication that the Petitioner could have justified the strike based on defense counsel's relationship with the juror's husband is directly foreclosed by this Court's holding in Payton v.

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<sup>7</sup> The Petitioner would note that the Court of Appeals initially expressed its "concern[] with the potential for prejudice with Juror 146 seated on the re-struck jury." Taylor I, supra, 396 S.C. at 200, 720 S.E.2d at 525. This language was removed from Taylor II.

Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998). In Payton, this Court held that “a discriminatory explanation will vitiate the entire selection process regardless of the genuineness of the other explanations for the strike.” 329 S.C. at 59, 495 S.E.2d at 210. Therefore, the Petitioner could not have raised the issue that the Court of Appeals apparently identified as potentially viable, which demonstrates that the Court of Appeals simply misunderstood the prevailing law in this context.

Additionally, after reciting the arguments made by the parties to the trial court, the Court of Appeals held that “we are unable to find anything clearly erroneous in the trial court’s determination Taylor *failed to offer a race neutral explanation* for striking Juror 146.” Taylor II, *supra*, 731 S.E.2d at 600 (emphasis added). The issue on appeal was not whether or not the Petitioner offered a race-neutral reason for striking Juror 146, which would be an issue pertaining to the second step of the Batson procedure. See generally Payton, *supra*, at 56, 594 S.E.2d at 208 (holding that because the reason for the strike was that the juror was a “redneck”, it “was not race-neutral on its face, [and] we need not reach the third step of the analysis”); State v. Cochran, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006) (holding that “unless the discriminatory intent is inherent in a fundamentally implausible explanation, the opponent of the strike must make a bona fide showing that the proponent of the strike seated a juror who shared nearly every quality with the struck juror other than race to establish pretext”). To the contrary, the issue was whether or not the trial court found that the race-neutral reason presented by defense counsel was pretextual—an issue pertaining to the third step of the Batson procedure. Since the Court of Appeals subsequently concluded that “the State demonstrated Taylor’s explanation was mere pretext” and that it was “defer[ring] to the trial court’s finding of

purposeful discrimination,” the Court of Appeals unquestionably reached conflicting legal rulings with regard to this issue. Taylor II, *supra*, 731 S.E.2d at 600.

Finally, turning to the actual merits of the issue, it is clear that the Court of Appeals erred in upholding the trial court’s finding of purposeful discrimination because the language of the Court of Appeals’ opinion appears to reject the basis of the trial court’s ruling. As explained above, defense counsel initially argued that he struck Juror 146 based on her education, but clarified that he struck her based on her position in management and her level of employment. Importantly, defense counsel explained that he was unaware of the specific levels of education of each of the jurors, *see* App. p. 16, lines 20-21; p. 34, lines 13-16, so that when he spoke “about education,” he spoke “about the actual position a person is in.” App. p. 34, lines 10-11. Despite this explanation, the trial court found that Juror 138 was similarly situated because of her education, and made his ruling explicitly contingent on the education argument initially presented by defense counsel:

The Court: ... The troubling thing about the State’s reasoning is because of her degree of education and then explained that, but, of course, *I’ve got to go with my initial interpretation of it or my analysis of what you explained about her education.*

...

[Juror 138] even though a black female *with four years of post-high school education* and employed with the same company for 18 years as an account[ant] you accepted her but did not accept someone who is an administrative assistant *with less formal education* who was a white female.

App. p. 36, line 22-p. 37, line 16 (emphasis added). However, on appeal, the Court of Appeals grounded its ruling in its determination that the State demonstrated pretext based on defense counsel’s explanations pertaining to Juror 146’s employment:

*Although employment is a race-neutral reason for striking a juror, the State demonstrated Taylor's explanation was mere pretext by pointing to a similarly situated African-American juror whom Taylor seated. See State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999) (noting "it is legitimate to strike potential jurors because of their employment"). Considering the record as a whole, we see nothing clearly erroneous in the trial court's determination and defer to the trial court's finding of purposeful discrimination.*

Taylor II, *supra*, 731 S.E.2d at 600 (emphasis added).

The distinction between level of education and level of employment is critical because Juror 138 is a similarly situated individual if the former standard is used but not if the latter standard is used. The trial court erred in utilizing the former standard because defense counsel unmistakably did not use his strike on the basis of the jurors' education. The Court of Appeals erred in misinterpreting the trial court's ruling by holding that the trial court properly granted the State's Batson motion using the level of employment standard when in fact the trial court actually used the level of education standard. In other words, the Court of Appeals reached a result that is contradictory in reasoning to the trial court's conclusions. The Petitioner respectfully submits that the Court of Appeals should have concluded that the trial court erred in "go[ing] with my initial interpretation ... of what you explained about her education" and found that the Petitioner's actual reason for striking the juror—her position in management—was not pretextual. App. p. 36, line 25-p. 37, line 2. Since, as explained above, Juror 146 was reseated on the second jury, the Petitioner should be granted a new trial.

In this case, the Court of Appeals misstated the record, failed to realize that Payton controlled the argument that it implied the Petitioner could have raised, reached conflicting conclusions regarding precisely what step of the Batson procedure it was reviewing, and affirmed the trial court's ruling for reasons that the trial court never accepted. In other words, there is virtually nothing in this segment of the Court of Appeals' opinion that is correct as a

matter of law or fact. Furthermore, as has been shown, the trial court improperly concluded that defense counsel's race-neutral explanation for striking Juror 146 was pretextual inasmuch as the Petitioner was clearly consistent in his strike of Juror 146 and his decision not to strike Juror 138. Certiorari is warranted to review the Court of Appeals' numerous erroneous rulings with regard to this issue.

**II. The Court of Appeals erred in applying the test set forth in State v. Wallace as opposed to the more limited test applied in State v. Clasby to improperly find that the trial court correctly admitted evidence of the 1999 incident pursuant to Rule 404(b), SCRE.**

**III. The Court of Appeals erred in concluding that evidence of the 1999 incident should not have been excluded pursuant to Rule 403, SCRE.**

A. How the Issues Arose Below

The Petitioner was charged with criminal sexual conduct with a minor in the second degree in Georgetown for engaging in anal intercourse with the victim in this case in the Petitioner's home in 1999. The Petitioner ultimately pleaded guilty to that charge. See App. p. 130, lines 3-7.<sup>8</sup>

Prior to the victim's testimony before the jury, the Petitioner moved to exclude any testimony regarding the underlying facts of the 1999 incident pursuant to Rule 403 and Rule 404(b), SCRE. App. p. 106, line 23-p. 107, line 11. The trial court conducted an *in camera* hearing and permitted the victim to testify about the facts of both of the incident. The victim testified that when he was eleven years old, he went on a camping trip with the youth group at the Petitioner's church on November 6, 1998. App. p. 109, lines 3-7. After everyone else had fallen asleep, the Petitioner carried the victim back to the tent where he was sleeping, touched the victim's rectum and penis, and forced the victim to do the same to him. App. p. 109, line 18-p. 110, line 11. The Petitioner then engaged in anal intercourse with the victim. App. p. 110, lines 12-16. The Petitioner then told the victim not to tell anyone about the assault, carried the victim back to the tarp where everyone else was sleeping, and slept next to the victim the rest of the night. App. p. 110, lines 17-22.

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<sup>8</sup> As noted above, this Court has granted certiorari to review the denial of Post-Conviction Relief with regard to this conviction.

The victim further testified that during the summer of 1999, when he was twelve years old, he went on a youth group trip to the beach and had gone back to the church to shower. App. p. 118, lines 14-16. The Petitioner then asked the victim and another member of the youth group if they wanted to come to his house to shower, and they accepted. App. p. 118, lines 17-19. While the victim was showering, the Petitioner entered the bathroom, took off his clothing, got in the shower with the victim, and proceeded to touch the victim again. App. p. 113, lines 7-12. The Petitioner then engaged in anal intercourse with the victim. App. p. 113, lines 13-17. After the assault concluded, the Petitioner told the victim not to tell anyone what had happened. App. p. 114, lines 11-17. The victim then got dressed and left the bathroom. App. p. 125, lines 9-10.

At the conclusion of the hearing, the Petitioner moved to exclude the victim's testimony on the basis that the evidence was inadmissible under Rule 403 and Rule 404(b), SCRE. App. p. 133, line 12-p. 134, line 25. The trial court ultimately ruled that the evidence of the 1999 incident was admissible, finding that the evidence constituted "continued illicit intercourse between the same parties." See App. p. 140, line 11-p. 148, line 22. The Petitioner renewed his objection prior to the victim's testimony about the 1999 incident, which the trial court overruled. See App. p. 170, lines 9-12.

On appeal, the Petitioner argued that Rule 403 and Rule 404(b), SCRE, prohibited admission of the victim's testimony about the 1999 incident. See App. pp. 392-397. The Court of Appeals found that the evidence was properly admitted. With regard to the Petitioner's Rule 404(b) argument, the Court of Appeals found that "[t]he similarities between the 1998 rape and the 1999 rape outweigh the dissimilarities" and found that the Petitioner's "argument is without merit." Taylor II, supra, 731 S.E.2d at 601. With regard to the Petitioner's Rule 403 argument, the Court of Appeals found that "the trial court properly found the probative value of the 1999

rape substantially outweighed the danger of unfair prejudice to Taylor.” Id. at 602. The Petitioner filed a petition for rehearing and argued that the Court of Appeals should grant relief on both of these issues. See App. pp. 502-504. This petition was denied by the Court of Appeals. See App. pp. 512-513.

## B. Discussion

The Petitioner asserts that the Court of Appeals’ conclusion that the bad act evidence was properly admitted pursuant to Rule 403 and Rule 404(b), SCRE, misapplied this Court’s relevant precedents. Consequently, the Petitioner respectfully contends that this Court should grant certiorari with regard to these claims. See Rule 242(b)(3), SCACR.

As a general rule, evidence of other crimes or bad acts is inadmissible to prove that the charged crime occurred. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Other crimes or bad acts are admissible to establish a common scheme or plan when two or more crimes are so closely related to each other that proof of one tends to establish the existence of the other. Rule 404(b), SCRE. In determining whether or not evidence should be admitted pursuant to the common scheme or plan exception, the court “must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 278 (2009). If the similarities outweigh the dissimilarities, the evidence of the other crime or bad act is admissible under Rule 404(b), SCRE. Id.

Even if evidence of another bad act falls within a Rule 404(b), SCRE, exception, a court may still exclude the evidence if the probative value of the bad act evidence is substantially outweighed by the danger of undue prejudice of admitting the bad act. Rule 403, SCRE; see also State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009). “The determination of the prejudicial

effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.” State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

The Petitioner contends that the Court of Appeals erred in its Rule 404(b), SCRE, analysis by focusing on all of the factors outlined in State v. Wallace, *supra*, as opposed to the narrower focus of State v. Clasby, *supra*. The Petitioner submits that proper application of the Wallace factors highlighted in Clasby would result in a finding that the 1999 incident should not have been admitted by the trial court. The Petitioner will first examine the differences between Wallace and Clasby before turning to how those cases should have been utilized by the Court of Appeals in this case.

In Wallace, this Court was presented with a case where the State sought to admit evidence that the defendant sexually abused the victim’s sister. 384 S.C. at 431-432, 683 S.E.2d at 276-277. This Court held that trial courts should consider five factors in multiple-victim cases:

[W]hen determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

Id. at 433-434, 683 S.E.2d at 278. This Court then cited two cases for support, both of which also dealt with multiple victims of the same defendant: State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989); and State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984). Id. at 434.

In Clasby, decided the same day as Wallace, this Court was presented with a case where the State sought to admit evidence that the defendant sexually abused the same victim on occasions prior to the charged offense. 385 S.C. at 151-153, 682 S.E.2d at 893-894. This Court then held that “a close degree similarity exists between the crimes charged and the bad act

evidence” and found that the evidence was admissible. Id. at 156, 682 S.E.2d at 896. Immediately after reaching this conclusion, this Court cited to Wallace for the following holding: “holding that in weighing the similarities and dissimilarities between the crime charged and the bad act evidence a trial court should consider, among other factors, the location where the abuse occurred, the use of coercion or threats, and the manner of the occurrence, for example, the type of sexual battery.” Id. at 157. In other words, the Court cited Wallace’s final three factors, and not the first two factors, for courts to consider in a same-victim case. This Court then cited to several same-victim cases for support: State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955); State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). Id. at 157-158, 682 S.E.2d at 896-897.

The Petitioner submits that by citing to the final three factors identified in Wallace, Clasby narrows Wallace’s five-factor test to a three-factor test in same-victim cases: (1) the location where the abuse occurred; (2) the use of coercion or threats; and (3) the manner of the occurrence. The Petitioner submits that this narrowing is reasonable and proper, as the first two factors identified by Wallace in multiple-victim cases—the age of the victim and the relationship between the victim and the perpetrator—are constant in same-victim cases and thus would not constitute a similarity that would indicate the presence of a common scheme or plan. The Petitioner draws additional support for this conclusion from this Court’s use of the plural “victims” instead of the singular “victim” in the first two factors outline in Wallace, which further indicates that those factors should not be used in same-victim cases.

The distinction between the Wallace test and the Clasby test is critical in this case because the Court of Appeals unmistakably used Wallace’s five factors instead of the narrower

focus of Clasby to find that the 1998 and 1999 incidents were similar and admissible under Rule 404(b), SCRE. The Court of Appeals' discussion of the case parallels the Wallace factors to the number:

*Turning to the Wallace factors*, the 1998 and 1999 rapes occurred nine months apart when Victim was 11 to 12 years old [“(1) the age of the victims when the abuse occurred”]. Taylor was the Victim’s pastor [“(2) the relationship between the victims and the perpetrator”]. While the physical locations where the rapes occurred are not identical, both rapes occurred in connection with church organized outings [“(3) the location where the abuse occurred”]. After both rapes Taylor threatened Victim to prevent him from revealing the rapes [“(4) the use of coercion or threats”]. Finally, the type of sexual battery in 1998 is identical to the sexual battery in 1999 [“(5) the manner of the occurrence, for example, the type of sexual battery”].

Taylor II, *supra*, 731 S.E.2d at 601 (emphasis added) (bracketed citations to Wallace, *supra*, 384 S.C. at 433-434, 683 S.E.2d at 278). The Court of Appeals then concluded that “with the exception of the physical location of the rapes, all the Wallace factors are highly similar” and found that the evidence was properly admitted under Rule 404(b), SCRE. *Id.*

The Petitioner respectfully submits that the Court of Appeals erred in applying all of Wallace's factors opposed to Clasby's factors. If all of the Wallace factors are used in same-victim cases, as they were here, it will be virtually impossible for a defendant to challenge the use of other bad acts as the defendant starts at an immediate disadvantage due to the unavoidable fact that the first two Wallace factors will always be found to be similarities. The Petitioner contends that certiorari should be granted to clarify the use of Wallace in same-victim cases and to correct the Court of Appeals' erroneous use of all of Wallace's factors in this case.

Turning to the application of Clasby's three factor test in this case, it is clear that both the trial court and the Court of Appeals erred in finding that evidence of the 1999 incident was admissible. The Court of Appeals is correct that the type of sexual battery and the evidence of

threats are consistent between the 1998 and the 1999 incidents. However, virtually everything else that occurred during each incident is dissimilar. In 1998, the incident occurred on a camping trip. In 1999, the incident occurred at the Petitioner's home. In 1998, the incident occurred after the Petitioner put his hand over the victim's mouth, forcibly carried him away to another location at the camping site, and engaged in intercourse with the victim. In 1999, the incident occurred after the Petitioner entered the bathroom with the victim and engaged in intercourse with him. There is no evidence that a forcible kidnapping occurred, that the Petitioner forcibly prevented the victim from screaming out, or that the Petitioner physically carried the victim away to a separate location in 1999. In 1998, the Petitioner carried the victim back to the tarp where everyone else was sleeping and slept next to him by holding him close throughout the course of the night. In 1999, after the sexual battery was completed, the Petitioner left the bathroom and left the victim alone. All of these factors are critical to determining whether or not there was a "common scheme" in the Petitioner's assaults against the victim, and none of these facts were even examined by the Court of Appeals. It is clear that there was no "common scheme" as, aside from the actual type of assault, virtually nothing about the incidents is similar. Under Clasby, the evidence of the 1999 incident should have been excluded.

The Petitioner also submits that the Court of Appeals' decision is in conflict with the decision of the Court of Appeals in State v. Fonseca, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009), which was adopted by this Court in full in State v. Fonseca, 393 S.C. 229, 711 S.E.2d 906 (2011). In Fonseca, a same-victim case, the Court of Appeals found that evidence that the defendant had rubbed the victim's vagina and exposed his penis to her in 2001 was inadmissible as evidence of a common scheme or plan when the defendant was charged with rubbing "his genitals up against hers in a manner simulating intercourse" in 2003. 383 S.C. at 644, 681

S.E.2d at 2. The Court of Appeals held that there was “no compelling argument of any similarities between the two occurrences,” and that there was nothing that could “overcome the fact that the incidents are remote in time,” despite the fact that they occurred at the same location and involved similar, though not exactly the same, physical conduct. Id. at 649, 681 S.E.2d at 5. However, had the Court of Appeals utilized all of Wallace’s factors in Fonseca, as the Court of Appeals did in this case, the incidents would have undoubtedly been found to be similar, since they involved the same parties at roughly the same age and the victim’s relationship to the defendant remained static. Consequently, the Petitioner submits that the Court of Appeals’ decision in this case is also in conflict with the Court of Appeals’ decision in Fonseca, which was adopted by this Court as its own, and that the result reached in Fonseca should be the result reached in this case.

Finally, the Petitioner argues that he was prejudiced by the admission of the 1999 incident in this case. The Court of Appeals correctly identified “the prejudicial effect of admitting evidence of other crimes, wrongs, or acts based upon the degree of similarity with the charged crime.” Taylor II, *supra*, 731 S.E.2d at 601. Since the evidence in this case consisted almost entirely of the victim’s testimony, the error in bolstering his about the 1998 incident through his testimony concerning the 1999 incident cannot be harmless. Furthermore, the Petitioner was able to mount a defense to the 1998 incident, but not the 1999 incident, due to his guilty plea pertaining to the 1999 incident. Had the 1998 incident been the only sexual assault the Petitioner had to defend against, the Petitioner would have stood a much stronger chance in securing a not guilty verdict on both charges stemming from that incident. Accordingly, the Petitioner submits he has demonstrated error by the Court of Appeals and resulting prejudice,

and that certiorari should be granted by this Court to review this portion of the Court of Appeals' opinion.

Assuming, *arguendo*, that the Court of Appeals properly concluded that the evidence of the 1999 incident was properly admitted under Rule 404(b), SCRE, the Petitioner submits that the Court of Appeals erred in finding that the evidence of the 1999 incident should not have been excluded pursuant to Rule 403, SCRE. Admission of the 1999 incident made it virtually impossible for the Petitioner to defend against the charges since he would have to disprove that both crimes occurred and he had already pleaded guilty to the 1999 incident. This constitutes undue prejudice to the Petitioner. Consequently, the Petitioner submits that the evidence of the 1999 incident should have been excluded pursuant to Rule 403, SCRE, and that the Court of Appeals erred in reaching the contrary conclusion.

**IV. The Court of Appeals erred in upholding the trial court's denial of the Petitioner's motion for a directed verdict based on venue.**

A. How the Issue Arose Below

At trial, the State presented the testimony of four witnesses. The first witness, Gaye Allen Cooke, was a child therapist who did not testify about the facts of the case. See App. p. 51, line 15-p. 68, line 9.

The second witness was the victim's mother. She testified that she had been told that the camping trip took place in Williamsburg County because the victim told her that the trip was in Williamsburg County. App. p. 90, line 22-p. 91, line 5. She was also told by someone that the campsite was located on "the other side of Andrews." App. p. 91, lines 16-17. She did not go on the camping trip. App. p. 90, lines 14-16; p. 91, lines 24-25.

The third witness was the victim. He testified the location of the campsite was "[j]ust outside of Andrews." App. p. 164, line 20. He acknowledged that certain parts of Andrews were located in Georgetown County as well as in Williamsburg County. App. p. 165, lines 11-13. The victim further testified that he did not know where the campsite was located and that the only reason he thought it was in Williamsburg County was because someone had told him that the campsite was there. App. p. 224, lines 8-18.

The fourth and final witness was Laura Rogers, a sergeant with the Williamsburg County Sheriff's Office. She testified that she got directions from the victim over seven years after the 1998 incident. App. p. 230, lines 17-22; p. 247, lines 3-16. She followed these directions to a location that she found which she described as "very deep" in Williamsburg County. See App. p. 247, line 17-p. 248, line 9. She thought that the location "was familiar" to the description of the campsite given to her by the victim. App. p. 254, line 2.

At the close of the State's case, the Petitioner moved for a directed verdict due to the State's failure to prove that the incident occurred in Williamsburg County. App. p. 259, line 5-p. 261, line 7. The trial court denied the direct verdict motion because "there is evidence, however weak [about] the whereabouts of the alleged incident." App. p. 267, lines 17-18. The Petitioner renewed his motion at the conclusion of his case, which the trial court denied as well. App. p. 304, line 7-p. 307, line 6.

On appeal, the Petitioner argued that the trial court erred in denying his motions for a directed verdict on the basis of venue. See App. pp. 398-401. The Court of Appeals rejected this argument, finding that "the State presented sufficient evidence to establish the 1998 rape occurred in Williamsburg County." Taylor II, supra, 731 S.E.2d at 602. The Petitioner filed a petition for rehearing arguing that the Court of Appeals should reconsider its findings and grant relief. See App. pp. 504-505. This petition was denied by the Court of Appeals. See App. pp. 512-513.

#### B. Discussion

The Petitioner asserts that the Court of Appeals' finding that the State presented sufficient evidence of venue was manifestly erroneous given the evidence presented at trial. Therefore, the Petitioner respectfully requests that certiorari should be granted with regard to this issue. See Rule 242(b), SCACR.

"A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). "[V]enue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient to establish jurisdiction." Id. at 334.

In the present case, the State alleged that the 1998 incident occurred in Williamsburg County. App. pp. 377-378. The Court of Appeals held that “the State presented sufficient evidence to establish” venue in Williamsburg County based on its recitation of the record. Taylor II, supra, 731 S.E.2d at 602. The record, however, clearly demonstrates that there was no such evidence. The victim’s mother testified that she was told the incident occurred in Williamsburg County by the victim. The victim testified that he was told the incident occurred in Williamsburg County by someone else. Consequently, since there is no evidence to infer that the incident occurred in Williamsburg County from the victim’s testimony or his mother’s, the only testimony that could provide evidence of venue is that given by Sergeant Rogers.

Sergeant Rogers testified that she followed the victim’s directions, given seven years after the incident, to a location “very” deep in Williamsburg County that “was familiar” to what the victim had described. App. p. 248, lines 8-9; p. 254, line 2. It is impossible for this location to be the area where the incident occurred as the campsite was near Andrews, which is located on the border between Williamsburg County and Georgetown County, and could not be “deep” in Williamsburg County. Consequently, there is no evidence that was presented at the trial that the incident occurred in Williamsburg County, and the Court of Appeals erred in upholding the denial of the Petitioner’s directed verdict motion on the basis of venue. The Petitioner respectfully submits that certiorari should be granted on this issue to review the clearly erroneous findings of the Court of Appeals.

**V. The Court of Appeals erred in finding the Petitioner's argument that a life without parole sentence should not have been imposed pursuant to S.C. Code Ann. §17-25-50 unpreserved for appellate review.**

A. How the Issue Arose Below

Following the jury's verdict, the Petitioner argued that the LWOP notice should be quashed because "this offense does not qualify for life without parole." App. p. 322, lines 12-13. Specifically, the Petitioner argued that since the predicate "most serious" conviction occurred later in time than the offenses of conviction, he should not be sentenced to life without parole. See App. p. 324, lines 4-14. The trial court denied this motion, but specifically permitted the Petitioner to file "a Motion for Reconsideration of sentencing so that he can more fully set forth his position to inapplicability of [§17-25-45] to these proceedings." App. p. 335, lines 8-11.

The Petitioner then filed a motion to reconsider the sentence. App. p. 337. At the hearing on the motion, the Petitioner argued that S.C. Code Ann. §17-25-50 barred imposition of life without parole sentences in this case:

Mr. Barr: And of course, Judge, under the circumstances we would certainly take the position that ... that with respect to the parties, with respect to the various allegations surrounding these two events that they ... they certainly could easily be looked upon as one as opposed to two separate incidents.

The Court: Under 17-25?

Mr. Barr: Under 17-25.

App. p. 346, lines 14-19 (ellipses in original). Building on this argument, the trial court asked the State whether because "it is my ruling that [the offenses constitute] one common scheme or plan for Lyle purposes, does that require me to find that it's one continuous event for sentencing purposes?" App. p. 352, lines 18-23. In its order denying the Petitioner's motion to reconsider sentence, the trial court answered that question in the negative:

The defendant now claims that pursuant to S.C. Code Section 17-25-50, the Williamsburg County conviction and the Georgetown County conviction should be treated as one offense for sentencing purposes. ... The defendant urges this result on the basis that the Williamsburg and Georgetown crimes involved the same victim and on the basis that the Georgetown County incident was admitted into evidence ... as part of a common scheme or plan. I disagree. The defendant's actions did involve a common scheme or plan ...; however, there is no authority for the proposition that separate offenses which amount to a "common scheme or plan" ... are necessarily "so closely connected in point of time that they may be considered as one offense" under Section 17-25-50. ... Therefore, the LWOP notice should not be quashed on this basis.

App. pp. 367-368.

On appeal, the Petitioner argued that the trial court erred in sentencing him to life without parole due to the interplay of Rule 404(b), SCRE, and §17-25-50 in this case. See App. pp. 402-406. The Court of Appeals found that this issue was not preserved for appellate review because it was raised in the first instance at the motion to reconsider sentence hearing and because the trial court raised the issue *sua sponte*. Taylor II, *supra*, 731 S.E.2d at 603. The Petitioner filed a petition for rehearing arguing that the Court of Appeals should reconsider its conclusions, find that the issue was preserved, and grant relief. See App. pp. 506-509. This petition was denied by the Court of Appeals. See App. pp. 512-513.

#### B. Discussion

The Petitioner asserts that the Court of Appeals' finding that this claim was unreviewable on appeal was both directly contrary to this Court's holdings regarding issue preservation and was an improper refusal to hear a novel claim regarding the interplay between Rule 404(b), SCRE, and S.C. Code Ann. §17-25-50. Accordingly, the Petitioner respectfully submits that certiorari should be granted with regard to this claim. See Rule 242(b)(1); (3), SCACR.

S.C. Code Ann. §17-25-45 authorizes prosecutors to seek a mandatory life without parole sentence if a defendant, upon conviction for a “most serious” offense, has been convicted previously of another “most serious” offense.<sup>9</sup> Criminal sexual conduct with a minor in the second degree is a “most serious” offense. S.C. Code Ann. §17-25-45(C)(1). “For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious ... offense, as may be applicable, on a separate occasion, prior to the instant adjudication.” S.C. Code Ann. §17-25-45(F). S.C. Code Ann. §17-25-50, the critical provision at issue in this case, provides:

In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense notwithstanding under the law they constitute separate and distinct offenses.

S.C. Code Ann. §§17-25-45(F) and 17-25-50 must be construed together. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003), overruled on other grounds by Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009). §17-25-50 precludes an LWOP sentence imposed pursuant to §17-25-45 “when the multiple offenses are inextricably connected and share an immediate temporal proximity.” Bryant, 384 S.C. at 532, 683 S.E.2d at 284. Stated differently, §17-25-50 prohibits the imposition of an LWOP sentence when the facts of the offense of conviction and the facts of the prior “most serious” conviction constitute “one continuous course of conduct.” Gordon, 356 S.C. at 151, 588 S.E.2d at 109. “The cases which have found ‘one continuous course of conduct’ under §17-25-50 have been cases in which, for example, the

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<sup>9</sup> At the time of the Petitioner’s trial, the two-strike portion of §17-25-45 was mandatory regardless of the prosecutor’s decision to seek its application. See S.C. Code Ann. §17-25-45(G) (2007). The statute has since been amended to give the prosecutor the discretion to use the statute in all cases. See S.C. Code Ann. §17-25-45(G) (2010). This amendment is not material to the case, as the prosecutor formally sought the LWOP sentences imposed in this case.

defendant had two convictions arising out of a single incident; or situations which involve crimes closely connected in point in time; or apply to a single continuous crime spree.” Koon v. State, 372 S.C. 531, 533-534, 643 S.E.2d 680, 682 (2007) (internal citations omitted).

The Court of Appeals did not reach the merits of the Petitioner’s argument pertaining to the application of §17-25-50 in this case because it found that the Petitioner “never raised it during trial” and only “approach[ed] the issue at the post-trial motion hearing.” Taylor II, *supra*, 731 S.E.2d at 603. The Court of Appeals also found that the Petitioner “argue[d] one ground for error at trial and a different ground for error on appeal” because it found that the Petitioner “repeatedly maintained the trial court erred in sentencing him to life without parole because the predicate most serious offense, the 1999 rape, occurred after the 1998 rape” “at trial and during argument on his motion to reconsider.” Id. The Petitioner submits that these rulings are in an inherent conflict, as the Court of Appeals acknowledged that the Petitioner argued the issue at the post-trial motion hearing but then stated that the Petitioner did not argue the issue. Since the Petitioner *did* argue the issue at the post-trial hearing, and raised it before the trial court did, see App. 346, lines 14-17 (“under the circumstances we would certainly take the position that ... they certainly could easily be looked upon as one as opposed to two separate incidents”), the Court of Appeals clearly erred in finding that the issue was unpreserved due to defense counsel’s failure to argue the issue at the post-trial motion hearing.<sup>10</sup>

Furthermore, the Petitioner submits that the Court of Appeals erred in finding that this claim was unpreserved because it was raised in the first instance at a post-trial motion hearing. While the specific claim certainly was not fully broached until the post-trial motion hearing, the

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<sup>10</sup> The Petitioner would also note that the trial court certainly felt that the Petitioner argued the issue in the first instance. See App. pp. 367-368 (“*The defendant urges* [application of §17-25-50] on the basis that the Williamsburg and Georgetown crimes involved the same victim and on the basis that the Georgetown County incident was admitted into evidence ... as part of a common scheme or plan”) (emphasis added).

trial court explicitly permitted the Petitioner to file post-trial motions to reconsider the sentence if he developed any argument that would prevent imposition of a life without parole sentence. See App. p. 335, lines 6-13; see also p. 325, lines 13-20. The Petitioner should not have been forced, to preserve his sentencing arguments for appeal, to make his arguments immediately when he had been given permission by the trial court to make his arguments at a later date. See generally Rule 18(a), SCRCrimP (“Counsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced”).

Finally, the Court of Appeals’ refusal to rule on the merits of this issue frustrates the purpose of preservation rules as set forth by this Court. “Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). “Imposing such a requirement on the appellant ‘is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.’” Id. (quoting I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)). This is not a case where the Petitioner is attempting to reverse the trial court on an issue the trial court never addressed. Instead, the trial court heard oral argument on the Petitioner’s claim and made full findings regarding the applicability of Rule 404(b), SCRE, and §17-25-50 to this case. Stated differently, the trial court was given “a fair opportunity to rule on the issue[]” and, by filing a full order on that issue, the trial court “provide[d] [this Court] with a platform for meaningful appellate review.” Herron, 395 S.C. at 465, 719 S.E.2d at 642. The Petitioner submits that this Court should grant certiorari and use that platform to rule on the novel claim that the Petitioner presents on this appeal.

The Petitioner asserts that the considerations governing the admission of the 1999 incident in this case pursuant to Rule 404(b), SCRE, and the considerations governing the application of §17-25-50 converged in this case.<sup>11</sup> Both the trial court and the Court of Appeals found that evidence of the 1999 incident was properly admitted to show a “pattern of continuous illicit conduct.” See App. p. 138, lines 21-22; Taylor II, *supra*, 731 S.E.2d at 601 “(In our view, the concept of continued illicit intercourse between the same parties in sexual abuse cases is another way of stating the common scheme or plan exception to Rule 404(b)”). The Petitioner submits that any set of actions that meet the definition of “continuous illicit conduct” must be subsumed within the definition of “continuous course of conduct.” Both terms require a sequence of actions that are so closely connected that they are treated under the law as one continuous criminal scheme.

This Court’s precedents bear this argument out. Determining whether or not other crimes, wrongs, or acts are admissible as a common scheme or plan pursuant to Rule 404(b), SCRE, requires a trial court to “analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” State v. Wallace, *supra*, 384 S.C. at 433, 683 S.E.2d at 278. Similarly, in virtually every case applying §17-25-50, this Court has focused on the facts of each incident and compared their similarities and dissimilarities to the facts of the offense of conviction. See Bryant v. State, *supra*, 384 S.C. at 533, 683 S.E.2d at 284 (“Bryant committed the three separate armed robberies on different days, at different locations, and the robberies involved different victims”); Koon v. State, *supra*, 372 S.C. at 534, 643 S.E.2d at 682 (“We find the March 28th burglary of a different building, in a different location, which occurred two weeks later, clearly constitutes a separate

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<sup>11</sup> The Court of Appeals initially found that the Petitioner made a “persuasive” argument regarding the interplay of Rule 404(b), SCRE, and §17-25-50 in this case. See Taylor I, *supra*, 396 S.C. at 205, 720 S.E.2d at 528 (footnote 4). This statement was removed in the substituted opinion in Taylor II.

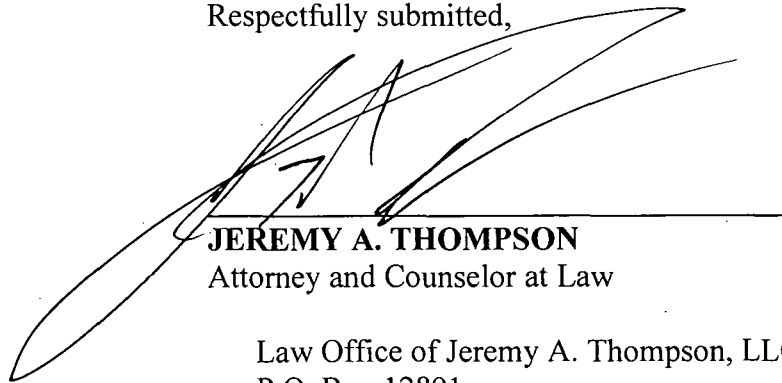
burglary”). Clearly, the considerations present in §17-25-50 cases are the same as those present in common scheme or plan cases.

Inasmuch as the analysis used for the application of Rule 404(b), SCRE, should have been the same analysis used for application of §17-25-50, the Petitioner respectfully submits that the trial court should have found that the 1998 incident and the 1999 incident constituted a “continuous course of conduct” and one offense for the purpose of §17-25-50. The Petitioner’s life without parole sentences, therefore, are invalid. The Petitioner submits that certiorari should be granted to review this novel issue.

CONCLUSION

It took the Court of Appeals approximately sixteen months after hearing oral argument and two full published opinions to reach a final conclusion in this case. As has been demonstrated, the rulings reached by the Court of Appeals are contradictory, misstate the evidence, and are contrary, both in spirit and in letter, to prior rulings of this Court and of the United States Supreme Court. Consequently, all of this Court's primary reasons for granting certiorari, absent a dissent in the Court of Appeals, are present in this case. See Rule 242(b), SCACR. For all of these reasons, the Petitioner asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,



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**ATTORNEY FOR PETITIONER.**

This 26<sup>th</sup> day of September, 2012.

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of General Sessions

George C. James, Circuit Court Judge

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Case No. 2006-GS-45-176

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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

PETITIONER.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that one copy of the Petitioner's Petition for Writ of Certiorari and one copy of the Appendix in the above-entitled case has been served upon opposing counsel, William M. Blicht, Jr., Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 26<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
JEREMY A. THOMPSON  
ATTORNEY FOR PETITIONER

SWORN TO BEFORE me this 26<sup>th</sup> day  
of September, 2012.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: 7/10/2022



LAW OFFICE OF  
**JEREMY A. THOMPSON**

S.C. Supreme Court LLC

September 26, 2012

SEP 28 2012

RECEIVED  
pm 9-26-12

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211-1330

RE: State of South Carolina v. Robert Troy Taylor; 06-GS-45-176  
Appellate Case No.: 2012-208606

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Petition for a Writ of Certiorari, one unbound and two copies of the Appendix, and the original and seven copies of the Motion to Exceed Page Limitations in the above-captioned matter. I would appreciate your filing the original and six copies each of the petition and the motion, the unbound copy and one bound copy of the Appendix, clocking the extra copies, and returning the extra copies to me in the enclosed self-addressed, stamped envelope. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

  
Jeremy A. Thompson  
Attorney and Counselor at Law

JAT/  
Enclosures

cc: The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals (w/ certiorari petition)  
William M. Blich, Jr., Assistant Attorney General (w/ enclosures)  
Robert Troy Taylor, #315084 (w/ enclosures)  
Anthony Taylor (w/ enclosures)  
Nancy Ritchey (w/ enclosures)