STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case Tracking No. 2011-194088

The State, Respondent,

vs.

Ladorrean Collington, Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENT 3

I. The trial court did not err in admitting evidence of prior difficulties between Appellant and the victim because the evidence formed the res gestae of the crime and defined the motive of Appellant in organizing the crime. Further, the issue is not preserved as it relates to the bulk of the evidence and is entirely harmless as it relates to the remainder. 3

II. The trial court did not err in admitting the content of the voicemail. The voicemail helped establish the motive of Appellant in organizing the crime and was part of the res gestae of the crime committed. 16

III. The trial court did not err in denying the motion to sever Appellant's case from that of his codefendant 18

CONCLUSION 22

TABLE OF AUTHORITIES

Cases

Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006) 7

Highfield v. State, 246 Ga. 478, 272 S.E.2d 62 (1980) 7

Hughes v. State, 346 S.C. 554, 552 S.E.2d 315 (2001) 18

McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933) 7

S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 590 S.E.2d 511 (Ct. App. 2003) 7

State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) 10, 11

State v. Amerson, 311 S.C. 316, 428 S.E.2d 871 (1993) 9

State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007) 10

State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982) 6

State v. Brown, 277 S.C. 203, 284 S.E.2d 777 (1981) 7

State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) 12

State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) 17

State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005) 10

State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988) 5

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) 5, 6, 7

State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005) 8

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 9

State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002) 18

State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) 8, 14

State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973) 19

State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) 8, 14

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) 10, 11, 15

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) 9

State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). 9

State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001) 10, 11

State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980) 13

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) 9

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) 14

State v. Silver, 307 S.C. 326, 414 S.E.2d 813 (Ct. App. 1992) 6

State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996) 6

State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993) 13, 19

State v. Stuckey, 347 S.C. 484, 556 S.E.2d 403 (Ct.App.2001) 18

State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004) 13

State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) 14

State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003) 12

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005) 18

State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) 12

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 9

State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004) 10

United States v. Masters, 622 F.2d 83 (4th Cir.1980) 11

Other Authorities

40 C.J.S., *Homicide*, Section 228 13

Rule 404(b), SCRE 10, 11, 15

STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in admitting evidence of prior difficulties between Appellant and the victim because the evidence formed the res gestae of the crime and defined the motive of Appellant in organizing the crime. Further, the issue is not preserved as it relates to the bulk of the evidence and is entirely harmless as it relates to the remainder.

II. The trial court did not err in admitting the content of the voicemail. The voicemail helped establish the motive of Appellant in organizing the crime and was part of the res gestae of the crime committed.

III. The trial court did not err in denying the motion to sever Appellant's case from that of his codefendant.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court did not err in admitting evidence of prior difficulties between Appellant and the victim because the evidence formed the res gestae of the crime and defined the motive of Appellant in organizing the crime. Further, the issue is not preserved as it relates to the bulk of the evidence and is entirely harmless as it relates to the remainder.

Appellant contends the trial court erred in allowing evidence of prior difficulties between Appellant and the victim before the jury. The issue is not preserved as it relates to the bulk of the evidence because Appellant failed to offer a contemporaneous objection. Further, because much of the evidence was admitted without objection, any error is entirely harmless. Finally, the trial court properly allowed the evidence because it formed part of the res gestae of the crimes for which Appellant was charged and also demonstrated her motive in arranging the crimes to be committed.

Factual Background

The evidence Appellant contends was improperly admitted includes: the breaking of the victim's window, a threatening note left at the scene of a window breaking, a threatening text message, a verbal and physical altercation between victim and Appellant, and the confrontation between Appellant and the victim's girlfriend. (See App.Br. 9). Most of the evidence was presented through the testimony of Anthony Graham, a friend of the victim who was staying with the victim and the victim's girlfriend at the time of the burglary and murder. The note was admitted through the testimony of a responding officer. Finally, the victim's girlfriend testified to the confrontation between herself and Appellant.

Graham testified the victim lived with his girlfriend, but Appellant believed he should be with her. Graham testified victim and Appellant got into a verbal altercation which turned into a physical one when Appellant ripped the chain off of the victim's neck. (T.412-413; R.___). Graham testified Appellant threatened to go get her gun and so Graham and the victim headed back to the victim's home watching over their shoulder for Appellant. (T.413-415; R.___).

Graham then testified after they arrived back at the victim's home, they heard a window break. Graham testified he saw Appellant leaving the scene. (T.417-418; R.___). Graham testified the individual who made the report of the broken window was joking with the victim about the fact Appellant had previously broken his window. (T.419; R.___).

Graham testified he and the victim received calls and messages on their phones from an upset Appellant. He also testified the victim's girlfriend called the victim to tell him she was in a confrontation with Appellant. (T.424; R.___). Graham then testified the victim showed him a text message the victim received from Appellant which read "something about you and your mama could get it." (T.426; R.___).

After detailing the events of the break-in and murder, including the fact he believed Appellant sent the men to the house to commit the crimes (T.434; R.___), Graham then testified about a voicemail left on his phone by Appellant. (T.426-440; R.___). The voicemail made it clear Appellant was upset with the victim. The voicemail detailed the confrontation between Appellant and the victim's girlfriend, and then included threats to the victim indicating he better watch his back because he made her mad and that he was going to get it. (State's Exhibit 72).

After testifying without objection about Appellant breaking her windows on two occasions, the victim's girlfriend testified to a confrontation between herself and Appellant. (T.536-537; R.___). She testified she confronted Appellant about the broken windows and Appellant was "crazy" and calling her names. She testified she just wanted to "get away from her as fast as she could." (T.538; R.___).

Officer Cradic testified he responded to the victim's home after the report of a broken window. (T.1067-1068; R.___). He testified a note was found at the scene, he read the note, and copied the note's contents. (T.1069-1071; R.___). He testified the note read: b***h, I will be back, n****r, f**k you. F.Y. b***h a**, AIDS infected b***h. Yeah, we all got it. D-baby.

Preservation

Appellant moved pre-trial to exclude evidence of prior difficulties between Appellant and the victim. The trial court specifically ruled: "I appreciate that, but I cannot rule on that Motion at this point in time. I appreciate your bringing it to my attention but when I hear the questions and answers you can make a proper objection." (June 2 T.76; R.___). After even more discussion on the issue, the court again stated: "I will reserve ruling on this particular matter." (June 2T.78; R.___).

Normally, a motion *in limine* to exclude evidence made at the beginning of trial does not preserve the issue for appellate review because a motion *in limine* is not a final determination. State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). "A ruling on the motion is not the ultimate disposition on the admissibility of evidence. It remains subject to change based upon developments during trial." State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988). Additionally, a trial judge does not abuse his

discretion when he refuses to rule on the admissibility of evidence until offered in the regular course of trial. See State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); see also, State v. Silver, 307 S.C. 326, 329, 414 S.E.2d 813, 815 (Ct. App. 1992) (finding no prejudice due to the trial judge's refusal to rule until the evidence was offered at trial). Cleary, the trial court's pretrial *in limine* ruling is not sufficient to preserve the issue for review on appeal.

"Making a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." See State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). The Appellate Courts have crafted an exception to this rule:

> [W]here a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection. The issue is preserved: Because no evidence was presented between the ruling and [the] testimony, there was no basis for the trial court to change its ruling. Thus, ... [the] motion was not a motion in limine. The trial court's ruling in this instance was in no way preliminary, but to the contrary, was a final ruling. Accordingly, [the defendant] was not required to renew her objection to the admission of the testimony in order to preserve the issue for appeal. State v. Mueller, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995).

State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001).

At trial, the solicitor made reference to the prior difficulties during her opening statement. (T.230; R.___). Appellant failed to object to any reference to the prior difficulties. At no time did Appellant renew his objection as is required to preserve it for review on appeal. See Simpson, 325 S.C. at 42, 479 S.E.2d at 60.

Further, counsel's mention of the prior difficulties during opening statement does not constitute admission of the evidence such that Appellant can rely on the rule enunciated in Forrester. The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented. State v. Brown, 277 S.C. 203, 284 S.E.2d 777 (1981). The solicitor is permitted in opening statement to outline the facts the State intends to prove. Highfield v. State, 246 Ga. 478, 272 S.E.2d 62 (1980).

While a creative argument, the statements of counsel are not considered evidence and cannot be relied on under the Forrester rule for preservation. See Ex parte Morris, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."); McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (appellate courts repeatedly have held "that statements of fact appearing only in arguments of counsel will not be considered"); S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("[a]rguments made by counsel are not evidence"). Specifically, the trial court specifically instructed the jury that the opening statements were not evidence and could not be considered by the jury as evidence. (T.225; R.___). As a result, Appellant cannot rely on the State's opening statement to create preservation and to turn the trial court's *in limine* ruling into a final ruling.

Finally, counsel for Appellant failed to object to the majority of the evidence presented by the State through Anthony Graham. (T.412-426; R.___). Counsel did not raise an issue with regard to any of the testimony by Graham until after his testimony was

complete and he made a motion for a mistrial. As a result, he did not contemporaneously object as is required to preserve the issue for appeal.

In order to preserve an evidentiary issue for review on appeal, a contemporaneous objection must be made when the testimony is offered. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court). If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. Id. Therefore, the issue regarding admission of all of the prior difficulties which came in through Graham is not preserved for review on appeal.

As it relates to the note found at the scene of the window breaking, Appellant never objected at trial to the admission of the note based on its presenting the prior difficulties to the jury. Instead, his objection centered solely on whether the officer would be reciting hearsay because he did not read the note or whether he was properly refreshing his memory with the incident report the officer wrote. (T.1032-1034-1070; R.___).

Appellant cannot raise one issue at trial and argue a different issue on appeal. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at trial on the grounds raised on appeal, that it was improper character evidence, but objected only on the basis of relevancy). Therefore, the issue as it relates to the note found at the victim's house is not properly before the Court. As a result, the only possible issue preserved for review on

appeal relates to the confrontation between Appellant and the victim's girlfriend as testified to by Appellant's girlfriend.

Merits

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000) (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993) (appellate courts are bound by the trial court's fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law)). This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Appellant was charged as an accessory before the fact of burglary and armed robbery. In order to convict Appellant, the State was required to show: "(1) that the defendant advised and agreed, or urged the parties or in some way aided them, to commit the offense; (2) that the defendant was not present when the offense was committed; and

(3) that the principal committed the crime." State v. Bixby, 373 S.C. 74, 75 n.2, 644 S.E.2d 54, 55 n.2 (2007).

The State asserted the evidence was admissible as part of the res gestae of the crime and because it met several exceptions delineated in Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (evidence of other crimes may be admissible when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime).

Res Gestae

Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Fletcher, 363 S.C. 221, 246, 609 S.E.2d 572, 585 (Ct. App. 2005). "The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." Fletcher, 363 S.C. at 246, 609 S.E.2d at 585 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

> when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae' " or the "uncharged offense is 'so linked together in

> point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... '[and is thus] part of the res gestae of the crime charged.' And where evidence is admissible to provide this 'full presentation' of the offense," [t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "*res gestae*."

State v. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001).

The evidence presented all occurred in the week leading up to the home invasion, burglary, and murder. The testimony and other evidence such as the messages indicated Appellant intended to "get back" at the victim for living with the other woman. Further, Graham testified his initial reaction was Appellant "sent them boys over here because - - because of so much stuff was going on." (T.434; R.___). Additionally, the prior difficulties were clearly intertwined with the actual planning and arranging of the crimes by Appellant and the commission of the crimes by her co-defendants. A complete story could not have been presented to the jury without establishing a background for the actual home invasion, burglary, armed robbery, and murder. As a result, the trial court properly concluded the testimony was admissible as part of the *res gestae* of the case.

Lyle or Rule 404(b)

Additionally, the evidence clearly satisfied the requirements of Lyle and Rule 404(b).[1] Evidence of a prior bad act is admissible if it tends to demonstrate the motive of

[1] To the extent Appellant attempts to argue the prior bad act evidence was not established by clear and convincing evidence, this issue was clearly never raised to the trial court. Further, multiple individuals testified to the bad blood between the Appellant and the victim and so the prior bad acts were established by clear and convincing evidence.

the individual or establish a common scheme or plan. A common scheme or plan can be shown through "a pattern of continuous misconduct." State v. Tutton, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) Appellant only argues regarding the similarities test as enunciated in State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277–78 (2009). However, the Court also upheld the continuous conduct basis for finding a common scheme or plan in State v. Clasby, 385 S.C. 148, 159, 682 S.E.2d 892, 898 (2009) (concluding evidence of the defendant's continued illicit sexual abuse "prior to the indicted offenses constitutes the archetypal 'common scheme or plan' evidence").

The evidence clearly shows an escalating pattern of continuous misconduct by Appellant. She breaks the windows of the home where the victim is residing, leaves threatening messages in which she threatens the victim, and ultimately sends individuals to get even with the victim by breaking into his home and robbing him. As a result, the trial court properly concluded the evidence established a common scheme or plan whereby Appellant was upset with the victim and planned to get even.

Additionally, the evidence clearly establishes Appellant's motive for arranging, planning, and encouraging her co-defendants to commit the home invasion. Appellant was upset with the victim for leaving her and moving in with his girlfriend. She made numerous threats to the victim and subsequently carried out the threats by arranging and encouraging the home invasion.

The State had to demonstrate Appellant orchestrated the home invasion even though she did not participate. "Accessory before the fact . . . requires a showing that the accused: (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that

some principal committed the crime. The State need only prove that some principal committed the crime at the behest of the accessory." State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993)(citations omitted). The State had to demonstrate Appellant had some motive to solicit the home invasion, especially in light of Appellant's argument she received nothing by having the burglary and armed robbery committed.

This case is very similar to the case of State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), in which the State sought to admit a prior domestic violence against the appellant to demonstrate his motive for breaking into the home where his former live in girlfriend now resided. This Court found the incident of domestic violence demonstrated Sweat's motive because it showed the break-in was "driven by anger over [the former girlfriend] causing him to go to jail and terminating their relationship, and that he intended to "get his property." Id. at 126, 606 S.E.2d at 513. As the Court explained: "Evidence of previous difficulties or ill feelings between the accused and the victim and of facts showing the cause of such difficulties or ill will is admissible on the question of motives where there is some connection of cause and effect between the evidence and the crime." Id. (Citing State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); 40 C.J.S., *Homicide*, Section 228).

Here the prior difficulties clearly establish the motive for Appellant to plan, arrange, and encourage the home invasion which lead to her being charged with accessory before the fact of burglary and armed robbery. She clearly intended to get even with the victim because he had broken off any relationship with her and was living with his new girlfriend. The prior difficulties, as was established in Sweat, indicate she arranged the home invasion out of jealousy and anger.

Further, during the cross-examination of one of the co-defendants, Appellant's counsel directly asserted she had no motive to arrange the home invasion:

> Q. She set it up, did the whole thing. What was she going to get out of it?
> A. I don't know. I didn't talk to her. She talked to [another co-defendant].
> Q. What was she going to get out of it? Nothing.

(T.877; R.___). The State answered this question by presenting the evidence of the prior difficulties and the threats by Appellant against the victim. The answer presented was her motivation for setting it up was revenge.

Harmless Error

Additionally, the admission of the evidence was entirely harmless in light of the overwhelming evidence of Appellant's guilt and the fact its admission was cumulative to other evidence including evidence solicited by Appellant's counsel. "The key factor for determining whether a trial error constitutes reversible error is 'whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (citations omitted). "An error is harmless if the defendant's guilt has been conclusively proven by competent evidence, such that no other result could have been reached." State v. Johnson, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). Further, the admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003); see also, State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other unobjected-to evidence is harmless).

In the instant case, Appellant failed to object to Graham's testimony so it was all properly admitted and most of the other evidence alleged to be improper by Appellant was merely cumulative to this testimony. It was also cumulative to testimony by Tiffany James, a friend of Appellant. (T.931; 935; R.___). Further, several co-defendant's testified regarding their roles in the home invasion. They each testified Appellant planned and urged them to commit the burglary and robbery. (T.579-580; 702-704; 729-730; 832-833; 839; 877-878; 938-941; 952; R.___). As a result of the significant other evidence in the record, any error is entirely harmless.

Accordingly, the trial court properly found the testimony and evidence admissible under Rule 404(b), Lyle, and as part of the *res gestae* of the case. Further, the probative value of the evidence clearly outweighed the prejudicial nature of the testimony and evidence and so was admissible under Rule 403, SCRE. Therefore, this Court should affirm the trial court's decision to admit the testimony.

II. The trial court did not err in admitting the content of the voicemail. The voicemail helped establish the motive of Appellant in organizing the crime and was part of the *res gestae* of the crime committed.

Appellant maintains the trial court erred in admitting the contents of a voicemail message left on the phone of the victim's friend. The voicemail provided background or the res gestae of the crime and also established Appellant's motive in arranging the crimes to be committed.

Appellant left a heated and threatening voicemail for the victim on Graham's phone. In the voicemail, she recounts the confrontation with the victim's girlfriend. She then threatens that the victim better watch his back. She indicates the victim "done made me mad" and that he was "gonna get it." (State's Exhibit 72). The State admitted this evidence, just like the evidence discussed in Issue I, to demonstrate Appellant's motive for arranging the home invasion and as part of the *res gestae* of the crimes actually committed. The same arguments apply as applied in Issue I.

The res gestae was established because the threats occurred a relatively short time before the incident, established the background for the incident, and explained other testimony such as Graham's testimony that he immediately believed Appellant sent the men to the house because of all the problems occurring before. Further, the evidence fits as part of the escalating misconduct committed by Appellant towards the victim so it, like the other evidence, establishes a common scheme or plan. Finally, the evidence clearly indicates Appellant's motive in arranging and urging the home invasion because she threatened the victim, indicating he was "gonna get it." As a result, the trial court properly admitted the voicemail for the same reasons it correctly admitted the other evidence of prior bad acts by Appellant.

Further, Appellant seems to challenge whether the evidence of the prior bad act was established by clear and convincing evidence and whether the tape was properly authenticated. Neither issue was raised to the trial court, and therefore, neither is preserved for review on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court). Additionally, Graham testified at trial the DVD played contained the message left on his phone by Appellant. He testified it "fairly and accurately represent[ed] the message . . . that she sent to you on your telephone." (T.441; R.___). As a result, the message was properly authenticated and supported by clear and convincing evidence.

III. The trial court did not err in denying the motion to sever Appellant's case from that of his codefendant.

Appellant contends the trial court erred in denying her motion to sever her case from her co-defendant. The trial court properly denied the motion because the same witnesses and the same evidence would be presented to establish Appellant's guilt as well as her co-defendant's guilt. Further, Appellant has failed to argue or establish how she was prejudiced by the court's ruling.

"A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown." State v. Harris, 351 S.C. 643, 652, 572 S.E.2d 267, 272 (2002). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 129 (Ct. App. 2005). The South Carolina Supreme Court has noted "a severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt. . . . An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial." Hughes v. State, 346 S.C. 554, 558–59, 552 S.E.2d 315, 317 (2001).

"The trial judge must act cautiously in allowing a joint trial." Walker, 366 S.C. at 657, 623 S.E.2d at 129 (citation omitted). "A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial." Id. at 657-658, 623 S.E.2d at 129 (citing Hughes, 346 S.C. at 559, 552 S.E.2d at 317; State v. Stuckey, 347 S.C. 484, 556 S.E.2d 403 (Ct.App.2001); State v. Holland,

261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973) (finding trial court's cautionary instructions to the jury in a joint trial "protected the rights of each individual appellant")).

In the instant case, the trial court properly considered the charges and the evidence to be presented. As discussed above, to prove Appellant guilty of accessory before the fact, the State had to demonstrate (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that some principal committed the crime. State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). As a result, the evidence against both Appellant and her co-defendant would come in through the same witnesses and the same evidence would need to be presented. The State had to demonstrate Appellant advised urged or aided in the commission of the crimes of burglary and armed robbery. Then had to prove she was not present, but that the burglary and armed robbery actually were carried out by the individuals that she commissioned to commit the offenses. As a result, no evidence unduly prejudicial to Appellant was admitted in this joint trial that would not have been admitted in Appellant's trial if conducted separately.

Further, Appellant has not and cannot demonstrate that a joint trial would compromise a specific trial right of hers or prevent the jury from making a reliable judgment about her guilt. She was able to effectively and fully cross-examine each witness. Neither defendant testified at trial, nor did the State admit any statements of Appellant's co-defendant implicating Appellant.

Finally, the trial court ensured the jury understood the trial and charges were separate and protected the rights of each defendant, including Appellant. (T.181; R.___). Prior to trial, the court instructed the jury:

> Just because the defendants are being tried together does not link them in any way as to a verdict that you would render in this particular matter or any other respect. These are two separate cases. Separate decisions must be made on each defendant in each distinct charge.
>
> A unanimous verdict will be required on each defendant and each specific charge against each defendant, as indicated, separate decisions.

(T.223; R.___). The trial court also protected Appellant's right to a fair trial during his charging instruction to the jury. He stated:

> The case of each defendant, and the evidence and the law concerning that defendant must be considered by you separately and individually. There are two cases. Each defendant has separate charges. You consider them separately and individually. Your verdict does not have to be the same for both defendants. It doesn't have to be the same on the charges that are levied against them by the State of South Carolina. You might find one defendant guilty of a particular crime, or not guilty of a particular crime, and that doesn't impact your decision, or make your decision as to the remaining charges against that defendant, or the charges against the other defendant.
>
> You can convict one, acquit one, acquit both, convict both, any combination thereof regarding all of the charges. It depends upon your review of the testimony, your examination of the testimony on each defendant and each charge, finding the evidence which convinces you of its truth, and again, weighing that evidence against the State's burden to prove each defendant, on each charge, guilty beyond a reasonable doubt. You will be required to reach a separate verdict on each charge. . . .

(T. 1196; R.___). The trial court then explained each defendant's charges separately and distinct from the other defendant. (T. 1199; R.___). In explaining the verdicts to the jury, the court then stated:

> You can see, and I'll remind you again, these are 2 separate defendants, separate charges, separate decisions on all these matters. Your decision on one does not govern your decision on another. They are all separate, independent matters.

(T.1205-1206; R.___). The trial court clearly and effectively protected Appellant's rights in this joint trial through the instructions he gave the jury.

Appellant seems to contend the charge given regarding Appellant's co-defendant in which the court charged hand of one is the hand of all was prejudicial. This argument is belied by the comments by Appellant's counsel at trial. In discussing the hand of one charge, counsel indicated he had no problem with the charge, which the court specifically tailored to restrict it only to the charges faced by the co-defendant. Counsel went so far as to state: "And Judge, if you are going to charge it, I don't object to it. There's so much language in there explaining it that, in some ways, I think it maybe even would benefit [Appellant]." (T.1109; R.___). Appellant never objected to the charge, which clearly separated Appellant's charges from those of the co-defendant. As a result, prejudice has definitely not been shown.

The trial court correctly allowed the co-defendants to be tried jointly, and through his instructions to the jury, effectively ensured Appellant's rights were not violated by the joint trial and the jury's verdict as to Appellant was not influenced by its verdict as to her co-defendant. Accordingly, this Court should find the trial court did not abuse his discretion in denying the motion to sever.

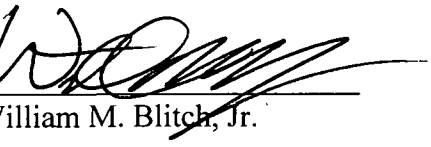
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 22, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case Tracking No. 2011-194088

The State, Respondent,

vs.

Ladorrean Collington, Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) True-billed Indictment(s);

(2) Trial Transcript May 13 and June 6-10 pages 1; 18-19; 23-26; 171-181; 222-225;227-232; 402-471; 480-509; 511-518; 523-563; 573-600; 604-606; 695-804; 827-906; 929-1034; 1065-1075; 1077-1080; 1098-1109; 1120; 1126-1162; 1193-1207; 1210; 1217; 1221-1222; 1226;

(3) Trial Transcript June 2 pages 1; 71-81;

(4) State's Exhibit 72 from June 6-10 Voice Mail; and

(5) State's Exhibit 1 (Response) from June 2 hearing.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 22nd day of October, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

October 22, 2012

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Ladorrean Collington
Appellate Case Tracking No. 2011-194088

Dear Ms. Hackett:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

WMB/erd
Enclosures

cc: ~~Honorable Jenny A. Kitchings (original and one enclosed)~~
Victim Services