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S.C. SUPREME COURT

March 4, 2019

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11629
Columbia, South Carolina 29211

RE: The State, Respondent, v. Wallace Steve Perry, Petitioner
Appellate Case No: 2017-001965

Dear Mr. Shearouse:

Pursuant to Rule 208(b)(7), SCACR, I am notifying the Court of the following supplemental citations:

State v. Houston, 17 S.C.L. 300, 1 Bail. 300 (S.C. App. L. & Eq. 1829) (admitting evidence of prior forgeries in a forgery case “to shew that the prisoner has passed other counterfeit notes of a similar character” . . . “for although these may be the foundation of other prosecutions, yet they afford evidence, and sometimes very strong evidence, of the knowledge of the falsity of the paper, on which the indictment is founded.”).

State v. Petty, 16 S.C.L. 59, Harp. 59 (S.C. Const. App. 1823) (finding admissible proof of prior instances when a defendant passed forged notes during trial for passing a forged note and holding: “But let it be admitted that it is a crime, yet if the proof of it has a tendency to support the issue, in the case before the court, it is admissible. It has been determined, as to this very offence, that proof of a man’s having passed other forged notes, may be given in evidence.”).

State v. Winter, 83 S.C. 251, 65 S.E. 243 (1909) (finding evidence of prior similar acts—buying stolen goods—provided proof defendant received stolen goods knowing them to be stolen).

State v. Odel, 2 Tread. 758, 3 Brev. 552 (1816) (finding if prior bad act had been the same as current crime it would have been admissible into evidence, but since significant dissimilarities existed it was inadmissible).

State v. Stokes, 279 S.C. 191, 304 S.E.2d 814 (1983) (finding no connection between the prior bad acts, which were in no way similar, and determining the trial judge erred in admitting the evidence).

State v. Tutton, 354 S.C. 319, 330-31, 580 S.E.2d 186, 192 (Ct. App. 2003) (finding that the similarities were insufficient to support the inference that Tutton employed a common scheme or plan to commit the assaults alleged).

State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997) (finding “the only point of similarity with any merit is the alleged similar clothing worn by the robbers” and as a result, “there is insufficient similarity between the two crime sprees to prove a common scheme or plan under *Lyle*.”).

State v. Berry, 332 S.C. 214, 219, 503 S.E.2d 770, 773 (Ct. App. 1998) (“In this case, there are insufficient similarities between the attack on the victim and the attack on Polite to connect the incidents as part of a common scheme or plan. The incidents occurred fifteen months apart, under different circumstances, at different times, in different places, and in different ways. That both women coincidentally wore glasses and both claimed Berry grabbed their throats does not render the attacks sufficiently connected or similar to justify admission of evidence of the Polite incident under the common scheme or plan exception.”).

State v. Davenport, 321 S.C. 134, 138, 467 S.E.2d 258, 260–61 (Ct. App. 1996) (finding “to be admissible under the common scheme exception, the similarity or connection between the prior bad act and the current charge must be close” and concluding the use of a knife and the lack of a connection between the victims and Davenport was insufficient to establish a common scheme or plan).

State v. Collins, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014) (“[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE, is whether there is a danger of unfair prejudice that substantially outweighs the probative value of the evidence.”).

The first issue on appeal in the present case is whether the Court of Appeals correctly found the trial judge properly admitted evidence of Petitioner’s prior sexual abuse of his step-daughter as evidence of a common scheme or plan under Rule 404(b), SCRE. Oral argument is scheduled for March 6, 2019. Thank you for your attention to this matter. Please do not hesitate to contact me at (803) 734-3747 should there be any questions or concerns.

Sincerely,



J. Benjamin Aplin

Senior Assistant Deputy Attorney General

cc: Kerri A. Rupert, Esquire