STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ALEXANDER RASHEEN MATTHEWS,

APPELLANT

APPELLATE CASE NO 2018-000170

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# FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in overruling Appellant's objections to improper character evidence regarding an irrelevant incident between Appellant and his girlfriend, where the testimony was unrelated to the charges at trial, where the discussion painted Appellant in a negative light, and where the testimony yielded information about Appellant's arrest, subsequent conviction, and status as an inmate at Evans Correctional Facility?

## STATEMENT OF THE CASE

A Spartanburg grand jury indicted Appellant for murder, burglary in the first degree, and third degree arson in June 2016. R. 309-312. He proceeded to a bench trial before the Honorable J. Mark Hayes, II on January 23, 2018. Abel Gray and Allison Mabbs appeared on behalf of the State, and Richard Whelchel and Daniel MacDonald represented Appellant. Following a three-day trial, Judge Hayes found Appellant not guilty of the burglary charge, guilty of voluntary manslaughter, and guilty of third degree arson. R. 303, ll. 5 – 10. Appellant was sentenced to twenty-five years' incarceration on the voluntary manslaughter charge and fifteen years on the arson charge. R. 308, ll. 9 – 14.

This brief follows.

## STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866. The admission and exclusion of evidence is largely a matter of trial judge discretion and his rulings will not be overturned on appeal unless he manifestly abuses his discretion and the defendant suffered prejudice as a result. State v. Thompson, 305 S.C. 496, 502, 409 S.E.2d 420, 424 (Ct.App.1991).

## ARGUMENT

**The trial court erred in overruling Appellant's objections to improper character evidence regarding an irrelevant incident between Appellant and his girlfriend, where the testimony was unrelated to the charges at trial, where the discussion painted Appellant in a negative light, and where the testimony yielded information about Appellant's arrest, subsequent conviction, and status as an inmate at Evans Correctional Facility.**

*Relevant facts*

On June 17, 2014, law enforcement and firefighters arrived at the home of Willie Mae Gray, found her in the home, extinguished the fire, and attempted to revive her. R. 14, l. 3 – R. 16, l. 25; R. 35, ll. 15 – 20. Gray passed away. R. 20, l. 5 – R. 21, l. 22. No burns were found on her body. R. 36, ll. 4 – 5. The cause of death was determined to be strangulation. R. 238, ll. 6 – 15. The fire marshal testified that the fire was intentionally set. R. 45, ll. 20 – 24. A Doral cigarette butt was located outside the house and sent to SLED for testing. R. 51, ll. 18 – 21; R. 110, ll. 1 – 9.

A fire safe, open and empty, was located in Gray's home. R. 62, ll. 1 – 23. No fingerprints were found on the safe. Similarly, a pen taken from Gray's home did not contain any fingerprints. R. 68, ll. 14 – 17. A fingerprint and palm print taken from the front storm door did not yield any identifying information. R. 64, l. 24 – R. 65, l. 9. Law enforcement noted that dresser drawers had been pulled open and jewelry boxes had been opened; the contents had been removed and gone through. R. 63, ll. 14 – 24.

The decedent was once married to a man named Billy James Gray whose nickname was Tree. R.75, ll. 14 – 24. Tree was a known drug dealer in Spartanburg County. R. 75, l. 25 – R. 76, l. 81, l. 22. In the words of the decedent's son, Willie James Miller, Tree was "good at what

he did, unfortunately." Id. The three lived together, and Tree would bring home thousands of dollars. Id. At one time, law enforcement located drugs and $150,000 in the Gray household. Id.

James Gray, son of Billy James Gray, was nicknamed Little Tree. R. 77, ll. 18 – 25. Little Tree was bothered by the fact that he did not receive his fair share of his father's money. R. 81, ll. 10 – 20. According to the lead detective in this matter, Little Tree came by the decedent's house and asked for some money the day of the fire. R. 90, l. 19 – R. 91, l. 18. The decedent only gave Little Tree "a couple of dollars" which upset him. Id. He remarked that "[h]alf of this is mine anyway." Id.

Little Tree was arrested a day or two after the fire on unrelated charges. R. 117, ll. 11 – 21. Notably, at the time of arrest he was found to be in possession of a woman's ring. Id.

Little Tree's interactions with the decedent notwithstanding, the case "went cold for a brief period" of between eight months and a year. R. 93, ll. 15 – 25. Law enforcement began re-investigating the case and spoke with Samantha Brewton, a neighbor and friend of the decedent. R. 126, l. 21 – R. 127, l. 25.

Samantha Brewton and the decedent had an altercation immediately prior to the date of the fire. R. 129, ll. 18 – 25. The decedent accused Brewton stealing a one hundred dollar bill and called the police. R. 131, ll. 9 – 24; R. 133, ll. 19 – 21; R. 134, ll. 8 – 9. The two never "patch[ed] things up" before the decedent passed away. Id. Brewton, who had prior convictions of shoplifting, arson, financial identity fraud, and felony driving under the influence with bodily injury, smoked cigarettes and was allowed to smoke on the decedent's porch when she was over at her house. R134, l. 22 – R. 135, l. 7.

Sandra Brewton, sister to Samantha, was dating Appellant at the time of the fire. R. 136, l. 24 – R. 137, l. 24. Sandra was at home that evening, as was Appellant when Samantha Brewton called her. R. 138, l. 21 – R. 139, l. 17. After the fire, Appellant continued to live with Sandra for a couple of weeks. R. 141, ll. 3 – 8. At trial, when she was asked what caused him to "finally leave [her] home for good," counsel for Appellant objected:

> I know, I believe I know, what the solicitor is trying to get out of this particular witness. It involves an incident between my client and this woman. It has nothing to do with the allegations in this particular trial. And I would object to it, Your Honor.

R. 142, ll. 2 – 7. The trial judge overruled the objection and let the witness answer "for the limited purpose" of describing the relationship between Sandra Brewton and Appellant. R. 142, ll. 8 – 9.

Within seconds of discussing the incident, defense counsel again objected to hearsay when Sandra began to explain how Appellant had allegedly paid her son to leave the house. R. 142, ll. 11 – 19. Counsel argued that the witness would have only gathered that information by hearing it from her son. Id. The judge again overruled the objection and told counsel that he would be able to "cross-examine her on the credibility of the statement." Id.

Sandra Brewton described alleged threats uttered by Appellant. R. 143, ll. 5 – 9. She testified that after hearing them, she left the house to go to her sister's. R. 143, l. 12 – R. 144, l. 12. When she returned to her house, a television was missing. Id. Law enforcement was called, that Sandra Brewton advised the police that she believed Appellant had stolen the television. Id.

When asked if Appellant ever touched her, defense counsel again objected and noted his ongoing objections. R. 144, ll. 13 – 25. The trial judge asked that the line of questioning not "get too far off." Id. The objection and request from the judge notwithstanding, the solicitor asked whether Appellant was arrested. R. 145, ll. 2 – 8. Sandra Brewton testified her daughter

called her to tell her that Appellant had broken a window trying to get into her home, thus prompting yet another hearsay objection from defense counsel. R. 145, l. 19 – R. 146, l. 16.

Counsel objected and pointedly remarked that he was unsure what the point of this testimony was. Id. The trial judge then sustained the objection based on the line of questioning getting into "collateral issues." R. 146, ll. 6 – 16. The police took Appellant to jail. R. 146, ll. 17 – 21.

With a different witness, Christopher Taylor from the Spartanburg Police Department, on the stand, the prosecution again delved into this unrelated incident. R. 211, l. 10 – R. 212, l. 18. Defense counsel objected and questioned the relevance. Id. Taylor remarked that Appellant was convicted of "some crime involving Ms. Brewton." Id. The solicitor then elicited information regarding Appellant's status as an inmate at Evans Correctional Institution in Bennettsville. Id.

*Discussion*

"In a criminal case, the State cannot attack the character of the defendant unless the defendant first places his character in issue." State v. Nelson, 331 S.C. 1, 6, 501 S.E.2d 716, 718 (1998); Rule 404(a)(1), SCRE. "In a similar vein, evidence of other crimes or bad acts is generally inadmissible to prove the crime charged unless the evidence tends to establish (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan, or (5) identity." Nelson, 331 S.C. at 6, 501 S.E.2d at 718; Rule 404(b), SCRE. "Both rules are grounded on the policy that character evidence is not admissible 'for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged.'" Nelson 331 S.C. at 6, 501 S.E.2d at 718-19. "Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad person." Id.

"Evidence of other crimes must be put to a rather severe test before admission." State v. Timmons, 327 S.C. 48, 52, 488 S.E.2d 323, 325 (1997).

Earlier this year in State v. Lawson, this Court found that the trial court abused its discretion "by admitting testimony referencing Kirkland [Correctional Institute] ... because the reference indicated ... that Appellant had a prior criminal record and the reference was unnecessary." 424 S.C. 51, 57, 817 S.E.2d 509, 512 (2018). Similarly, none of the objectionable testimony from either Sandra Brewton or Christopher Taylor was necessary to the fact finder.

In State v. Tate, 288 S.C. 104, 105, 341 S.E.2d 380, 381 (1986), the Court found that the six-man photographic array containing the mug shot of the defendant should not have been admitted into evidence because it implied that he had a prior criminal record, and thereby improperly placed his character into evidence. The Court cited precedent that a "mug shot" cannot be admitted into evidence unless: "(1) The state had a demonstrable need to introduce the photograph; and (2) the photographs themselves, if shown to the jury, must not imply that the defendant had a prior criminal record; and (3) the photograph must not be introduced in such a manner to draw attention to the source or implication of the photograph." 288 S.C. at 105, 341 S.E.2d at 381. The Tate Court found that neither of the first two prerequisites were met. Id. at 106, 341 S.E.2d at 381. Specifically, the Court found that "the markings on the photographs, particularly the date, which was almost one year prior to the trial of this case, would clearly infer to the jury that appellant had a prior criminal record." Id. The Tate Court ruled that "[t]he prejudicial effect of these photographs outweighs their probative value and the prejudice was neither cured nor rendered harmless by other events which occurred at trial." Id.

In State v. Owens, 293 S.C. 161, 166, 359 S.E.2d 275, 277 (1987), the Court rejected the appellant's argument that testimony of three state witnesses injected improper evidence of his

prior criminal record because each witness stated he met appellant in prison. The Owens Court found that such was not "testimony regarding any prior bad act by appellant," as the evidence produced "indicated only that appellant was in jail for the crime for which he was then being tried." 293 S.C. at 166, 359 S.E.2d at 277. Additionally, the appellant had himself introduced testimony by three inmates and a corrections officer who each stated he knew appellant in prison. Id. Thus, the testimony of the State's witnesses did not prejudice Owens. Id.

In State v. Council, 335 S.C. 1, 11-13, 515 S.E.2d 508, 513-14 (1999), the Court affirmed the denial of the defense's motion for mistrial after SLED agent Counts testified that he obtained the defendant's fingerprint card from "SLED records for comparison." The Court found that it was "questionable whether the jury even understood the implication of Count's statement," and cited to other cases where "references to a defendant's past conduct were too vague to be prejudicial." 335 S.C. at 13, 515 S.E.2d at 514. The Council Court distinguished Tate, writing:

> In *Tate*, appellant's mug shot was introduced into evidence. The date on the mug shot was almost one year prior to the trial thus inferring to the jury that appellant had a prior criminal record. In this case, the fingerprint card was never introduced into evidence, and therefore the jury was not aware of when SLED obtained the card. Therefore, there was no evidence before the jury of when or for what purpose the fingerprint card was made.

Id. at 13, n. 7, 515 S.E.2d at 514 n. 7.

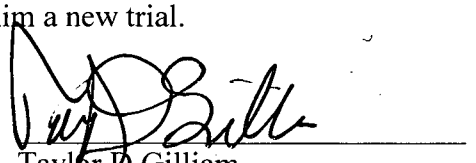
Here, evidence that the defendant was previously incarcerated at the Department of Corrections would generally not be admissible. Rule 404, SCRE; see also State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986) (holding defendant prejudiced by implication that he had a prior criminal record).

In sum, the trial court erred in overruling defense counsel's multiple objections to the testimony that he threatened Sandra Brewton, stole her television, broke into her house, was arrested, was convicted, or that he was housed at Evans. The references did more than imply that

Lawson had a prior criminal history; multiple witnesses outright testified accordingly. As such it constituted improper character evidence because Appellant did not first put his character at issue. Furthermore, the testimony was unnecessary it was wholly irrelevant to the fire and death of Willie Gray; the testimony elicited by the solicitor was not used to establish a material fact or element of the crime charged. Appellant is accordingly entitled to a new trial.

## CONCLUSION

Based on the foregoing, Appellant Alexander Rasheen Matthews respectfully requests that this Court reverse his convictions and grant him a new trial.



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This 17th day of May, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 17, 2019

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