STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CURTIS ALLEN BABB, JR.

APPELLANT

APPELLATE CASE NO 2019-001529

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# INITIAL BRIEF OF APPELLANT

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1.

Whether the trial judge erred in allowing the state to introduce a video which showed numerous bullet holes in the exterior of the victim's house where the solicitor admitted that the bullet holes were from unrelated crimes making the video irrelevant, confusing, and unfairly prejudicial?

2.

Whether the trial judge erred in denying Appellant's motion to suppress evidence regarding a shotgun which was evidence of a distinct crime against Appellant for which he was not charged where the evidence was irrelevant, an impermissible prior bad act, and its probative value was substantially outweighed by the danger of unfair prejudice?

## STATEMENT OF THE CASE

Appellant was indicted by the Greenville County grand jury for murder, first-degree burglary, attempted armed robbery, conspiracy and possession of a weapon during the commission of a violent crime. R. *. Appellant had two codefendants who were also charged with these same offenses, Connell Wells and William Brown.

Appellant and Brown were jointly tried before the Honorable Robin B. Stilwell and a jury from August 12 – 16, 2019. Tr. 1. Appellant was represented by Sarah Henry. Tr. 1. Brown was represented by Scott Robinson. Tr. 1. The state was represented by Katryna Owens and Elizabeth Gary. Tr. 1.

The jury found Appellant and Brown both guilty on all counts. Tr. 859, ll. 10 – 24. Appellant was sentenced to life without parole pursuant to S.C. Code Ann. § 17-25-45. Tr. 860, l. 16 – 861, l. 25; tr. 867, ll. 5 – 21.

This appeal follows.

## STANDARD OF REVIEW

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

## STATEMENT OF FACTS

On December 8, 2016, James Moss went to sleep in his bedroom at around 1:00 a.m. Tr. 149, ll. 1 – 4. Moss was living with a lady named Tracie and he was also letting another man whose name he did not know sleep on his couch. Tr. 147, l. 18 – 148, l. 17. About an hour later, Moss heard someone kick in his door and yell "[m]other fucker, you got my money?" Moss recalled seeing a man who was "about five-foot something" with a hood on and a gun in his hand. Tr. 151, ll. 8 – 13. Moss then heard several gunshots and he went and hid in his closet. Tr. 149, ll. 4 – 15. After the commotion stopped, Moss called the police and left his house. Tr. 151, l. 18 – 152, l. 8.

Joshua Shaw with the Greenville County Sheriff's Office responded to Moss's house at 3:13 a.m. Tr. 179, l. 8 – 180, l. 10. When Shaw arrived, he saw that the front door of the house had been kicked in. He entered the house and found the victim lying on the floor deceased. Tr. 180, l. 18 – 181, l. 21. The victim was identified as Clinton Pearson and he was killed as a result of sustaining three "medium caliber" gunshot wounds to the chest. Tr. 227, l. 9 – 233, l. 15. Police found three .40 caliber shell casings outside of the front door of Moss's house. Tr. 204, l. 14 – 205, l. 7.

On the same morning of the murder, Ryan Weeks with the Greenville City Police Department responded to an apartment complex at 5:14 a.m. in response to a person being shot in the leg. Tr. 236, l. 18 – 239, l. 5. That person was identified as Connell Wells, one of Appellant's codefendants. Tr. 239, ll. 6 – 9. Weeks testified that William Brown, Appellant's other codefendant, and Nakia Sims were also on the scene with Wells. Tr. 239, ll. 10 – 16; tr. 249, ll. 13 – 25.

Weeks located a red Crown Victoria that was registered to Wells parked directly in front of the apartment where he was found. Tr. 250, ll. 1 – 16. Weeks recalled seeing "a large amount of what appeared to be blood in the back seat" of the car. Tr. 252, ll. 12 – 17. When the Crown Victoria was searched, police found "a brown stocking mask with eyeholes . . . a black hoodie with a red bandanna in the pocket, a cell phone . . . [and] a black gym bag." Tr. 388, ll. 15 – 18.

Christopher McCalmont, who was the lead investigator, testified that he identified Appellant and Brown as possible suspects in the case. Tr. 338, ll. 5 – 23. McCalmont assisted in executing a search warrant at a house occupied by Deashia Babb, a relative of Appellant,[1] and found a bolt-action shotgun[2] with a sawed-off stock. Tr. 338, l. 24 – 339, l. 25; tr. 346, l. 17 – 23.

The state called Damean Wideman as a witness. Wideman claimed that he knew Appellant, Brown, and Wells. Tr. 404, l. 8 – 409, l. 25. Wideman admitted that he met with police on December 14, 2016 and told them that he had been receiving threats from Appellant. Tr. 411, l. 7 – 412, l. 24. Wideman denied telling the police that Appellant threatened him because he was "telling people" about the attempted robbery and murder of Pearson. Tr. 413, l. 20 – 414, l. 1. Wideman also denied telling police that Appellant invited him to participate in the robbery. Tr. 414, ll. 2 – 5. However, Wideman later testified that Appellant threatened to kill him because "[Appellant] said it had come back to him [that Wideman] was spreading rumors on him." Tr. 416, ll. 1 – 8.

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1 It is unclear from the record how Appellant and Deashia Babb are related. This search warrant was directed at a man named Shyheim Looper who was living with Deashia Babb. Looper was a suspect in an unrelated robbery case. After the shotgun was found, Looper claimed that he received the shotgun from Appellant.

2 Bolt-actions are more commonly seen in rifles and are rare for shotguns. Tr. 347, l. 1 – 348, l. 8.

Upon further questioning by the assistant solicitor, Wideman said that he told the police that he had overheard someone else say that Appellant, Brown, and Wells were involved in the attempted robbery and murder of Pearson. Tr. 416, l. 1 – 417, l. 19. Wideman also agreed that he told police that Appellant shot Wells in the knee with a shotgun during the attempted robbery of Pearson. Tr. 418, l. 25 – 419, l. 7.

Wideman then testified that his statement to the police was coerced by threats from law enforcement officers and that members of the Solicitor's office had threatened him into testifying at the trial. Tr. 426, l. 21 – 429, l. 2. On cross-examination, Wideman admitted that the information he had given to the police was based on "rumors" and that he signed an affidavit in 2017 recanting his statement to the police. Tr. 431, l. 22 – 435, l. 3; R. * (Defendant's Exhibit 1).

The state then introduced an audio recording of Wideman's interview with police in which Wideman claimed to have seen Appellant, Brown, and Wells preparing for the robbery of Pearson. Tr. 474, ll. 15 – 16. Wideman also claimed to have been threatened by Appellant afterwards for spreading rumors that Appellant was involved in Pearson's murder. See State's Exhibit 39 (audio of Wideman's interview on file with this Court).

The state also called Shyheim Looper to testify that he received a shotgun from Appellant after the murder occurred. Tr. 534, ll. 5 – 25. However, Looper instead testified that he found the shotgun in an abandoned house and that he did not receive it from Appellant. Tr. 536, ll. 20 – 24. Law enforcement found the shotgun in Looper's house while executing a search warrant regarding an unrelated case. Tr. 536, l. 25 – 538, l. 17. Looper admitted that he had previously told police that he received the shotgun from Appellant but that he only told them this because

they threatened to charge him with the murder if he did not say that the shotgun belonged to Appellant. Tr. 544, l. 10 – 546, l. 9.

Appellant and Brown both presented alibi defenses. Appellant called his boss, Kathy Taylor who testified that Appellant worked for her at her wedding planning business called "Masquerade by Usry." Tr. 668, ll. 1 – 12. She testified that Appellant was working for her in Allentown, Pennsylvania on the date of the murder. Tr. 670, l. 19 – 671, l. 21.

Appellant also called his direct supervisor from his job, Cecelia Perez. Perez testified that she was Taylor's assistant and Appellant's supervisor. Tr. 695, l. 7 – 696, l. 10. Perez explained that she was responsible for tracking Appellant's work hours and paying him each week. Tr. 699, l. 11 – 700, l. 13. Perez said Appellant was always at work on time and that he was at work in Pennsylvania on the day of the murder and the day after the murder. Tr. 701, l. 20 – 702, l. 21.

## ARGUMENT

1.

The trial judge erred in allowing the state to introduce a video which showed numerous bullet holes in the exterior of the victim's house where the solicitor admitted that the bullet holes were from unrelated crimes making the video irrelevant, confusing, and unfairly prejudicial.

**Relevant Facts**

Defense counsel objected to the crime scene video taken by law enforcement because it showed numerous bullet holes in the exterior of the victim's house which were completely unrelated to the crime for which Appellant was on trial. Tr. 190, l. 19 – 191, l. 16. The assistant solicitor argued that the video was being offered to show "this home in the state in which the forensics officers found it." Tr.191, ll. 22 – 24. The solicitor further argued that the video would show that law enforcement did not alter or tamper with the scene. Tr. 191, l. 24 – 192, l. 1.

The assistant solicitor admitted that the bullet holes on the exterior of the house were unrelated to this case but stated that the officer would explain to the jury that he was able to connect the bullet holes to different cases. Tr. 192, ll. 1 – 17. Defense counsel argued that showing the video of numerous unrelated bullet holes in the victim's house was "a very serious 403 issue." Tr. 192, ll. 18 – 21. The judge ruled that he would allow the video to be introduced. Tr. 192, ll. 22 – 25.

The video of the exterior of the victim's house was marked as State's Exhibit 5 and admitted over counsel's renewed objections. Tr. 201, ll. 1 – 12; State's Ex. 5 (video of exterior of victim's house on file with this Court). The video was then published to the jury. Dustin Kretschmar, a forensic technician with the Greenville County Department of Public Safety,

testified that none of the bullet holes shown in the video were associated with this case. Tr. 201, ll. 14 – 18. Kretschmar continued:

> The ones on the side of the house had partial pieces of our scale tape already attached to the residence when we got there. So, to verify where those came from, we contacted our office, our records and found a previous record earlier, I believe that year, one of our officers had responded out to that same residence for a shooting that was in a different case.

Tr. 201, ll. 18 – 24. Kretschmar testified that he was able to account for every bullet hole in the residence and none of them were connected to Appellant's case. Tr. 201, l. 25 – 202, l. 5.

**Discussion**

Under Rule 403 of the South Carolina Rules of Evidence, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

The trial judge erred in admitting the video which showed numerous bullet holes in the victim's house. It was plainly acknowledged by the solicitor that *none of the bullet holes* shown in the video were related to Appellant's case. Therefore, there was zero probative value in showing them. Furthermore, allowing the officer to explain that the bullet holes in the victim's house were from other unrelated cases exacerbated the unfair prejudice.

In State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986), the Supreme Court held that evidence of .22 and .25 caliber bullets, a .22 caliber pistol, and a photograph showing a bullet hole in the window of an apartment were inadmissible where the alleged murder weapon was a .357 caliber pistol. In McConnell, the defendant had invited the decedent to his apartment after a Christmas party and the defendant allegedly shot and killed the decedent outside of the apartment. Id. at 279, 350 S.E.2d at 179-180. Police found a .22 caliber bullet in a wall and

another in the ceiling of the defendant's apartment. Id. Police also found two .25 caliber bullets in an outdoor air conditioning unit. Id. at 280, 350 S.E.2d at 180.

The McConnell Court held that "these items should not have been admitted because there were not properly connected with the incident, irrelevant, incompetent, and raised spurious inferences of prior bad acts." Id. The Court further held that "[t]here was insufficient connection between the evidence and the crime with which appellant was charged, and the cumulative prejudicial effect of the enumerated evidence far outweighed its probative value." Id.

Much like in McConnell, the video showing the numerous bullet holes in the victim's house was irrelevant and not connected to the crime Appellant was accused of. What the state was showing with the video was that the victim's house had been the subject of apparently relentless gun violence on previous occasions. The video also clearly showed where evidence tape had been placed and removed from the house next to the bullet holes from prior cases. In other words, the video showed that crime scene investigators had previously responded to this residence and documented these bullet holes. Even the state's witness acknowledged the presence of the evidence tape in the video and admitted that the evidence tape was not from Appellant's case but from previous shootings at the victim's residence.

In State v. Lee, 399 S.C. 521, 527-528, 732 S.E.2d 225, 228 (Ct. App. 2012), this Court found that the admission of photographs showing nudity which were taken seven months after the last alleged incident of child abuse against the defendant was erroneous under Rule 403, SCRE. The state argued in Lee that the photographs "portrayed an ongoing course of conduct directly related to Victim's testimony of events as alleged in the indictment." Id. at 526, 732 S.E.2d at 228. This Court found that the photographs had minimal probative value because they were taken seven months after the allegations against the defendants and therefore were not

indicative of events which occurred during the period for which the defendant was indicted. Id. at 529, 732 S.E.2d at 229.

In Lee, the Court at least found that the photographs "may have been relevant to the Victim's testimony about conduct in Lee's home during the time she lived there." Id. Here however, the bullet holes shown in the video had no relevance to Appellant's case whatsoever. The probative value was zero.

This Court considered whether testimony by a social worker as to the "wretched condition of the home" where the defendant and victim lived in a criminal sexual conduct case was admissible in State v. Smith, 309 S.C. 48, 419 S.E.2d 816 (Ct. App. 1992). The Smith Court held:

> The testimony as to how the defendant lived is wholly irrelevant to the question of whether he is guilty of the crime with which he is charged. The fact that a person lives in abject squalor or in great splendor has nothing whatever to do with whether the person is guilty of having committed a crime. Criminality is not the exclusive province of any particular lifestyle. Crime happens in the suites as well as in the streets. Thus, the law wisely recognizes that a defendant has the right to be found guilty or not guilty based on the evidence of what the defendant has done, not how the defendant lives.

Id. at 49, 419 S.E.2d at 816–17. In this case, the evidence showing that the victim lived in a bullet-riddled house was "wholly irrelevant" to the question of Appellant's guilt. As in Smith, it was error for the trial judge to allow evidence showing that the victim's home had been subjected to prior shootings unrelated to Appellant's case.

The trial judge here erred by allowing this totally irrelevant evidence to be shown to the jury given that the unfair prejudice was so extreme. The jury was shown a video and allowed to hear testimony that the victim's house had been previously shot at on possibly multiple different occasions where law enforcement responded and documented evidence. A juror would easily be

influenced by such evidence to presume that the house is generally a bad place and the location of violent crime on a regular basis. This was totally improper evidence to put before the jury as it had absolutely no relevance to Appellant's case and would permit the jury to render a verdict based on improper considerations such as emotion. Appellant's convictions should be reversed. See State v. Smith, 309 S.C. 48, 419 S.E.2d 816 (Ct. App. 1992); State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986).

2.

The trial judge erred in denying Appellant's motion to suppress evidence regarding a shotgun which was evidence of a distinct crime against Appellant for which he was not charged because the evidence was irrelevant, an impermissible prior bad act, and its probative value was substantially outweighed by the danger of unfair prejudice.

**Relevant Facts**

Defense counsel made a pretrial motion to exclude "any evidence related to the shotgun" because such evidence constituted a prior bad act. Tr. 45, ll. 8 – 23. The state's theory of the case was that during the commission of the home invasion, Wells was shot in the leg with a shotgun. Tr. 46, ll. 1 – 6. According to the assistant solicitor, Wells was transported back to his apartment after the murder took place with a gunshot wound to his leg. Tr. 46, ll. 5 – 8. Police responded to Wells apartment after receiving a 911 call of a gunshot victim. When the police arrived at Wells' apartment, they found Wells with a shotgun wound to his leg and Brown was with him. Tr. 46, ll. 8 – 19.

Two weeks after the murder of Pearson, the Mauldin Police Department was executing a search warrant on Shyheim Looper's house regarding an unrelated robbery case. A bolt-action shotgun was recovered during the search of Looper's house and Looper claimed that he had received the shotgun from Appellant. Tr. 46, l. 25 – 47, l. 13. According to the solicitor, Wells told law enforcement that he was shot with a bolt-action shotgun. Tr. 47, ll. 14 – 25. However, Wells did not testify to this information before the jury. Tr. 273, l. 20 – 274, l. 13.

The state argued that the shotgun evidence was probative of Appellant's involvement because Appellant was allegedly armed with a shotgun during the murder of Pearson and then was connected to a shotgun "just a few days later." The state further argued that the shotgun,

being a bolt-action shotgun, was particularly unique. Tr. 48, ll. 3 – 8. However, ultimately there was no evidence introduced before the jury that Wells was shot with a bolt-action shotgun.

Defense counsel responded that the shotgun collected by law enforcement was never tested in any way or compared to the wound to Wells leg, nor was there any evidence that a shotgun was ever fired at Pearson's house which was the crime scene. Tr. 48, ll. 12 – 25. Counsel maintained that any evidence related to the shotgun or the allegation that Appellant shot Wells in the leg was a bad act not associated with this crime and therefore inadmissible. Tr. 49, ll. 1 – 7. The judge instructed defense counsel to make contemporaneous objections and that he would rule when the evidence came up during trial. Tr. 49, l. 21 – 50, l. 13.

During Officer Weeks' testimony, the assistant solicitor asked if he had personally viewed the injury to Wells' leg when he responded to Wells' apartment. Tr. 239, ll. 20 – 22. Defense counsel objected and, outside the presence of the jury, argued that any evidence related to the shotgun and the shooting of Wells was inadmissible as a prior bad act. Counsel further argued that it was undisputed that Appellant was not the shooter of Pearson, the victim in this case, and that there was no evidence that Wells was shot with a shotgun at Pearson's house. Tr. 240, l. 20 – 241, l. 25.

The state argued that the shotgun evidence was not a prior bad act because Appellant allegedly shot Wells during the commission of the robbery and murder of Pearson. The solicitor maintained that the shotgun evidence was being used to show Appellant's identity. Tr. 242, l. 6 – 243, l. 6. The judge overruled counsel's objection finding that it was not a prior bad act. Tr. 243, l. 21 – 244, l. 18. Weeks ultimately testified that Wells had a gunshot wound to his leg that appeared to be from a shotgun due to the presence of shotgun pellets and a shotgun wad, both of

which were contained within the bandage Wells had covering the wound. Tr. 245, l. 7 – 246, l. 12.

Christopher McCalmont, the lead investigator on this case, testified over counsel's renewed objection that he found a bolt-action shotgun with a sawed-off stock while executing a search warrant at a house occupied by Deashia Babb, a relative of Appellant, and Shyheim Looper. Tr. 338, l. 24 – 339, l. 25; tr. 346, l. 17 – 23. The state also introduced the shotgun into evidence over counsel's renewed objection. Tr. 554, l. 23 – 555, l. 22.

Shyheim Looper was called as a witness by the state.[3] Looper testified that he had a child in common with Deashia Babb and was living with her in December 2016. Tr. 535, ll. 11 – 24. Looper denied receiving a shotgun from Appellant and instead testified that he found the gun in an abandoned house. Tr. 536, ll. 20 – 24. When asked, Looper stated that he did not recall telling police when he was previously interviewed by them that he received the shotgun from Appellant. Tr. 538, ll. 3 – 539, l. 23.

Chad Maltby with the Greenville County Sheriff's Office testified that when he interviewed Looper, Looper claimed that he received the shotgun from Appellant. Tr. 553, ll. 23 – 25; tr. 557, ll. 18 – 21. A portion of Looper's recorded interview was also played for the jury in which Looper told investigators that he received the shotgun from Appellant. State's Exhibit 42 (video recording of Looper's interview on file with this Court).

**Discussion**

Rule 404(b) of the South Carolina Rules of Evidence provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the

3 Looper was in prison serving a thirteen-year sentence for armed robbery and other related crimes at the time of his testimony. Tr. 534, ll. 5 – 25.

existence of a common scheme or plan, the absence of mistake or accident, or intent." "It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual." State v. Gillian, 360 S.C. 433, 443, 602 S.E.2d 62, 67 (Ct. App. 2004). Furthermore, in order to be admissible, "[t]he bad act must logically relate to the crime with which the defendant has been charged." Id.

If the prior bad act which the state seeks to introduce against the defendant is not the subject of a criminal conviction, then "evidence of the bad act must be clear and convincing." State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009). Prior bad character evidence that is otherwise admissible under Rule 404(b) is still subject to the balancing test under Rule 403. Id. Under Rule 403 of the South Carolina Rules of Evidence, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

Here, the judge erred in admitting the evidence regarding the shotgun. At best, the evidence presented by the state showed that Wells was shot with a shotgun and that Appellant gave Looper a shotgun. Despite the assistant solicitor going to great lengths to demonstrate that the shotgun found at Looper's house was a bolt-action shotgun, which was a rare kind of shotgun, there was no evidence presented that this particular bolt-action shotgun was used to shoot Wells. Therefore, the shotgun evidence did not establish Appellant's identity, nor did it connect him to the scene of the murder. See State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) (holding that evidence of a subsequent shooting was admissible to show identity where the defendant was on trial for a prior shooting in which the victims could not identify their attacker but the victims in the second shooting were able to identify Stokes and the gun that

police found on Stokes when he was apprehended was positively matched to bullets from both shootings); State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) (holding that evidence of defendant's subsequent failure to stop for a blue light was inadmissible in murder prosecution because the failure to stop for a blue light did not aid in identifying the defendant as the murderer).

There was no evidence found at the victim's house suggesting that a shotgun was fired there. Tr. 213, ll. 11 – 13. The only evidence presented showed that three .40 caliber shells were found on the outside of the victim's house, suggesting that a .40 caliber pistol was fired outside the victim's house. The state's forensic pathologist also confirmed that the victim died from three medium caliber projectiles consistent with a .40 caliber pistol, i.e., not a shotgun. The shotgun evidence did not establish Appellant's identity because there was no connection ever made between the shotgun that was allegedly used to shoot Wells and the shotgun that Looper received. No tests were ever performed to match one gun to the other and there was no physical evidence showing a shotgun was fired at the victim's house.

Furthermore, referring to the shotgun as a "sawed-off shotgun" itself was unfairly prejudicial. A sawed-off shotgun is commonly understood to be an illegal type of firearm which added significantly to the unfair prejudice against Appellant. The jury may well infer guilt from a defendant's mere possession of a sawed-off shotgun. Admission of the shotgun evidence and the shooting of Wells was extremely and unfairly prejudicial to Appellant because it allowed the jury to convict on an improper basis. "Under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than prior criminal or immoral acts." State v. Gore, 283 S.C. 118, 120, 322 S.E.2d 12, 13 (1984).

In State v. Douglas, 302 S.C. 508, 397 S.E.2d 98 (1990), the defendant, who was on trial for murder, was alleged to have pointed a gun at, and threatened to kill, an associate of his the night before the murder while he and the associate were "horseplaying." The Supreme Court found that this bad character evidence was not admissible to show intent on the part of the defendant because the state showed no logical relation between the two incidents. Much like in Douglas, here, the alleged bad act was directed at a person different from the alleged victim.

Furthermore, the testimony was not admissible under the theory of res gestae as enunciated in State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996). Evidence of Appellant's alleged shooting of Wells, who was not the alleged victim in the case for which Appellant was on trial, was not necessary in order to give a full presentation of the case against Appellant. While the incidents were in close temporal proximity to one another, the act for which Appellant was on trial was finished at the time he allegedly shot Wells. This improper bad character testimony only served to confuse the real issue by allowing the jury the opportunity to make the impermissible inference that because Appellant shot Wells and gave a shotgun to Looper, that Appellant was generally a bad person deserving of punishment. Therefore, Appellant's convictions should be reversed.

## CONCLUSION

By reason of the foregoing argument, Appellant's conviction should be reversed, and this case remanded to the Greenville County Court of General Sessions for a new trial.

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of September, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CURTIS ALLEN BABB, JR.

APPELLANT

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CERTIFICATE OF SERVICE

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Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter has been served upon opposing counsel this 23rd day of September, 2020 by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Curtis Allen Babb, #381126, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender
ATTORNEY FOR APPELLANT