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Nov 06 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ON REMAND FROM THE SOUTH CAROLINA SUPREME COURT

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

APPELLATE CASE NO 2017-001796

**MEMORANDUM ADDRESSING IMPACT OF
State v. Perry, 430 S.C. 24, 824 S.E.2d 654 (2020)**

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ATTORNEY FOR APPELLANT

MEMORANDUM

In State v. Perry, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020), decided after this Court affirmed the present case, State v. Morales, Op. No. 2020-UP-01 (S.C. Ct.App. Filed January 8, 2020), but while the petition for writ of certiorari was pending, the South Carolina Supreme Court overruled State v. Wallace, 384 S.C. 428, 434, 683 S.E.2d 275, 278 (2009), where the Court found that “A close degree of similarity establishes the required connection between the two acts and no further ‘connection’ must be shown for admissibility.” Instead, in Perry, the Court looked to the traditional Rule 404(b), SCRE, analysis found in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and other pre-Wallace cases and held that:

The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes “reasonably tends to prove a material fact in issue.” 125 S.C. at 417, 118 S.E. at 807. The State must also convince the trial court that the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes. Rule 403, SCRE. Whether the State has met its burden “should be subjected by the courts to rigid scrutiny,” considering the individual facts of and circumstances of each case. 125 S.C. at 417, 118 S.E. at 807.

Perry, 430 S.C. at 44, 842 S.E.2d at 665.

On September 23, 2020, the South Carolina Supreme Court granted the petition for writ of certiorari in this case, reversed the decision of this Court and remanded the case to this Court for reconsideration of the substantive and procedural issues in light of the decision in Perry. State v. Morales, Op. No. 2020-MO-009 (S.C. Filed September 23, 2020). On October 7, 2020, this Court requested memoranda from both parties addressing the impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020). This memorandum from Appellant Morales follows.

The trial judge abused his discretion in admitting the testimony of Witness B about alleged prior bad acts as evidence of a common scheme or plan pursuant to Rule 404(b), SCRE, when the State failed to meet its burden under rigid scrutiny to show a logical connection between the other alleged prior bad acts and the crime charged.

Under the framework of Perry, Lyle and the traditional interpretation of Rule 404(b), the testimony of Witness B about alleged prior bad acts was not logically connected to the crime charged such that the testimony reasonably proved a material fact in issue. The testimony of witness B does not serve a legitimate purpose. The testimony of Witness B does not meet the common scheme or plan exception of Rule 404(b). The trial judge erred in admitting the testimony of Witness B and the error requires reversal.

Facts.

Between December of 1999 to September of 2001, Witness A, her sister, Witness B, and another younger sister lived with their mother and Petitioner. During this time Witness A believed that Petitioner was her biological father but was later told he was not. (R. p. 139, lines 6-19). Witness B also believed that Petitioner was her father but at the time of trial it was unclear if Petitioner is Witness B's biological father. (R. p. 274, line 21 – p. 275, lines 1-25). At the time of trial in 2017, fifteen years after arrest warrants issued, Witness A was twenty-eight years of age. (R. p. 136, lines 10-11). At the time of trial Witness B was twenty- five years of age. (R. p. 267, lines 15-16).

At trial Witness A testified that in 2002, when she was thirteen years of age, she went to live with her uncle and his girlfriend and his two daughters because her mother “kicked her out of the house.” (R. p. 137, lines 7-11; p. 159, lines 14-21). Witness A testified that after living with her uncle for about a month, upon questioning by the uncle's girlfriend Michelle, she told

Michelle that Petitioner had been touching her. (R. p. 151, line 4- p. 152, lines 1-2). As a result of the disclosure by Witness A, the maternal grandmother questioned Witness B and the younger sister. (R. p. 272, lines 15-18). Upon questioning by the maternal grandmother, Witness B told “what happened.” (R. p. 272, lines 11-18). At trial Witness B admitted that she later recanted the accusation against Petitioner. (R. p. 273, lines 17-19).

Testimony of Witness A.

At trial Witness A testified that when she was four years old Petitioner rubbed his groin area against her groin area on the outside of her clothing. (R. p. 143, line 23 – p. 144, lines 1-14). Witness A testified that when she was in first grade digital penetration took place on a daily basis. (R. p. 145, lines 12-19). She said the digital penetration took place mainly at home but also in the car and at the river. (R. p. 145, lines 20-23). Witness A testified that her mom was usually not home when the touching took place and if she was home she was in the shower. (R. p. 146, lines 2-5). Sometimes her sisters would be at home and other times they would not be at home. (R. p. 146, lines 6-9).

Witness A testified that Petitioner had intercourse with her on her eleventh birthday in the bedroom Petitioner shared with Witness A’s mother. (R. p. 140, line 17 – p. 141, 142, lines 1-18). According to Witness A, the whole family was going to Carowinds for her birthday and Petitioner threatened not to take them to Carowinds unless she got in bed with him. (R. p. 141, line 2 – p. 142, lines 1-2). Witness A testified that at the time her sisters were getting ready in the room they shared and her mother was in the shower. (R. p. 142, lines 11-14). According to Witness A, Petitioner continued to have sex with her after her eleventh birthday. (R. p. 142, lines 17-19).

Witness A testified that Petitioner had sex with her in her room in the summer after she turned eleven years old. (R. p. 148, line 15 – p. 149, lines 1-3). Witness A testified that, at the time, she was in trouble, confined to her room and her mom had taken her sisters to Walmart. (R. p. 148, lines 15-21). Witness A also testified that one time when she was at home from school because she was sick Petitioner asked her to lie on the couch with him and he put his hands down her pants. (R. p. 149, lines 9-25). According to Witness A, Petitioner told her that if she told her mother, her mother would kill her. (R. p. 150, lines 16-19).

Testimony of Witness B.

On July 26, 2017, prior to trial, the State moved before Judge Henderson for a conditional ruling on the admission of testimony from Witness B, during the trial for charges involving Witness A. (R. pp.76-114). The State argued that the testimony from Witness B should be admitted as the common scheme or plan exception contained in Rule 404(b). (R. p. 81, lines 8-19). At the pre-trial hearing Witness B testified that beginning when she was three years old until the third grade Petitioner touched her in a sexual way three times. (R. p. 88, lines 1-10). She testified that the incidents took place inside the home. (R. p. 92, lines 13-25). Witness B testified that the touching stopped when she was in the third grade. (R. p. 89, lines 19-23). According to Witness B, the last time it happened she was unable to sleep and Petitioner told her to come in the room with him and watch television. (R. p. 86, lines 11-18). Witness B testified that while they were laying down on the bed he pulled her pants and underwear down and she felt his penis touch her butt. (R. p. 86, line 23 – p. 87, lines 1-14). Witness B testified that her sisters were asleep in another room. (R. p. 88, lines 21-24). According to Witness B, her mother was working when the incident took place. (R. p. 89, lines 3-10).

Witness B testified that the other two times she was sitting on Petitioner's lap and he would put his hands down her pants but there was no digital penetration. (R. p. 87, lines 15-25). She testified that when these other two incidents occurred her sisters were home but in a different room. She testified that her mother was not home. (R. p. 88, line 25 -p. 89, lines 1-18). Later, when Witness B was in the fifth grade, her grandmother questioned her, after Witness A alleged abuse, and Witness B disclosed the incidents to her grandmother. (R. p. 90, line 24 -p. 91, lines 1-15). Witness A did not testify at the pre-trial hearing.

Arguments at trial.

After Witness B testified at the pre-trial hearing, the State argued that Witness B's testimony was admissible pursuant to State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009); State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989); State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984); State v. Blanton, 316 S.C. 31, 33, 446 S.E.2d 438, 439 (Ct. App. 1994); State v. Adams, 332 S.C. 139, 143, 504 S.E.2d 124, 126 (Ct. App. 1998) and State v. Henry, 313 S.C. 106, 108-09, 432 S.E.2d 489, 491 (Ct. App. 1993). (R. pp. 101 - 105). The State argued that there were strong similarities between Witness B's testimony and the testimony the State expected from Witness A at trial. (R. p. 105, lines 15-25). Counsel for Petitioner argued that Rule 404(b) prohibited admission of the testimony from Witness B and cited State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). (R. p. 106, lines 5-15). The attorney for the State replied, "I don't believe I actually printed Lyle. We've all heard Lyle so much and to be candid I haven't read it in awhile." (R. p. 106, lines 16-18).

After Witness A testified at trial, the State sought a final ruling on the admission of testimony from Witness B. (R. p. 211, line 21 - p. 212, 213, lines 1-2). The State argued that

the similarities outweighed the dissimilarities. (R. p. 212, lines 17-21). Petitioner objected to the testimony from Witness B. (R. p. 213, lines 4-21).

Ruling at trial.

After the pre-trial hearing the judge ruled, “Again it is a conditional ruling but at this point in time I find that it would follow the guidelines set forth in Lyle’s [sic] and the other cases that have come since then. So, therefore, at least at this point, I would find it to could be admissible as common scheme or plan.” (R. p. 113, lines 15-21). It is unclear how the judge concluded that the testimony from Witness B was admissible as common scheme or plan without hearing the testimony from Witness A.

At trial, after hearing the testimony from Witness A, the judge ruled, “Okay. Well, I heard the testimony. I heard the testimony from Witness B at the hearing in Chesterfield and now that I’ve heard Witness A’s testimony, everything else aside their testimony does have a number of similarities and I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales.” (R. p. 213, line 22 – p. 214, lines 1-5). The judge allowed Witness B’s testimony. (R. p. 214, lines 9-12). The trial judge erred. The judge failed to make specific findings about how the testimony from Witness B was similar to the testimony from Witness A. The judge failed to conduct a Rule 403, SCRE, analysis.

Argument on appeal.

Appellant relies on and incorporates by reference the brief and record filed with this Court prior to the South Carolina Supreme Court’s decision in Perry and subsequent to remand. In issue two of the brief Appellant argued that the trial judge erred in admitting the testimony of Witness B., finding that the similarities to Witness A’s testimony outweighed the dissimilarities,

pursuant to State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), when such a finding is contrary to Rule 404(b) and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and the holding in Wallace should be overturned. Appellant argued, “Applying the traditional connection test of Lyle and Rule 404(b) to the testimony of Witness B in the present case, the record fails to establish a logical relevance between the allegations made by Witness B and the crimes for which Appellant stood trial.” (Brief of Appellant pp. 17-18). In issue one of the brief Appellant argued that the trial judge erred in admitting the testimony of Witness B as evidence of a common scheme or plan pursuant to Rule 404(b), SCRE, when the dissimilarities between Witness B’s testimony and the testimony of Witness A, the prosecuting witness, outweighed the similarities. Although Perry was decided after the trial and after this Court decided the direct appeal in this case, the arguments made were pursuant to Lyle and Rule 404(b), the law in effect at the time of trial. Applying the logical connection test of Lyle and Rule 404(b), as argued in the brief, this Court should reverse the convictions.

Under the framework of Perry, similarities are not enough to meet the common scheme or plan exception to Rule 404(b). “The common scheme or plan exception demands more. There must be something in the defendant's criminal process that logically connects the ‘other crimes’ to the crime charged.” State v. Perry, 430 S.C. 24, 41, 842 S.E.2d 654, 663 (2020). In the present case the State failed to show that there was something in the criminal process that logically connected the other crimes to the crimes charged.

First, as noted by the Court in Perry, while similarities between the other acts and the crimes charged may be important for the State to show in order to meet its burden for admission pursuant to Rule 404(b), the State must show more than similarities. In the present case the allegations made by Witness B were substantially different from the allegations made by Witness

A. The three instances of sexual touching between the time she was three years old until the third grade alleged by Witness B never progressed to digital penetration and always took place in the home. Witness A alleged digital penetration, starting when she was in first grade, on an almost daily basis that progressed to instances of sexual intercourse beginning when she was eleven years old. The incidents took place mainly in the home but also in the car and at the river. While both witnesses allege the abuse began when they were young, three or four years old, Witness B testified that the abuse ended when she was in the third grade. Witness testified that she was questioned about abuse when she was in the fifth grade. (R. p. 90, line 24 – p. 91, lines 1-15). Witness A testified that the abuse continued after her eleventh birthday. Appellant was a father figure to both, but the type of alleged abuse was different. The locations were different. While the State argued that Appellant used coercion in the form of his role as a father figure, (July 26, 2017, Tr. p. 28, lines 8-15), only witness A testified about a threat. Witness B testified that her mother was not home during the three alleged instances but Witness A testified that her mother was in the shower during at least one of the alleged incidents.

As noted by the Court in Perry, “Certainly, there are similarities. In addition to the general similarities discussed above, the State emphasized the specific similarity that Perry was the only father figure in the lives of each victim. There is nothing in this record, however, that amounts to “a close degree of similarity,” as Wallace purports to permit. Wallace, 384 S.C. at 434, 683 S.E.2d at 278.” Perry, 430 S.C. at 39, 842 S.E.2d at 662. As in Perry, there is nothing in the record of this case that amounts to a close degree of similarity allowed under the overruled similarities test of Wallace. A father figure with abuse starting at an early age is not sufficient. As the Court wrote in Perry, “Rather, in our significant collective experience dealing with crimes of this nature, a very high percentage of sexual crimes against children are committed just like

Perry's alleged crimes: by father figures, in the home, in a bedroom, beginning in the pre-pubescent years. The fact Perry's crimes fit this general pattern does not give Perry a 'monopoly' on his criminal method." Perry, 430 S.C. at 40, 842 S.E.2d at 662. As in Perry, in the present case there was nothing unique or even very similar about the acts alleged by witness B and the crimes charged.

Second, the State failed to show a logical connection between the acts alleged by Witness B and the crimes charged involving Witness A, as required by Perry. "The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes 'reasonably tends to prove a material fact in issue.' 125 S.C. at 417, 118 S.E. at 807." Perry, 430 S.C. at 44, 842 S.E.2d at 665. As the Court clarified in Perry, citing the concurrence in State v. Perez, 423 S.C. 491, 502, 816 S.E.2d 550, 556 (2018):

It is not enough to meet the "logical connection" standard for admission of other crimes under the common scheme or plan exception to Rule 404(b) that the defendant previously committed the same crime. "Repetition of the same act or same crime does not equal a 'plan.'" Perez, 423 S.C. at 502, 816 S.E.2d at 556 (Hearn, J., concurring) (quoting Daggett v. State, 187 S.W.3d 444, 451 (Tex. Crim. App. 2005)). When evidence of other crimes is admitted based solely on the similarity of a previous crime, the evidence serves only the purpose prohibited by Rule 404(b), and allows the jury to convict the defendant on the improper inference of propensity that because he did it before, he must have done it again. See United States v. Krezdorn, 639 F.2d 1327, 1331 (5th Cir. 1981) (reversing the district court's admission into evidence of similar forgery crimes because they "would, at best, merely demonstrate the repetition of similar criminal acts, thus indicating [the defendant]'s propensity to commit this crime. Evidence of other crimes is not admissible for this purpose"). Quoting Justice Hearn one final time from her concurrence in Perez, "the repeated commission of the same criminal offense [is] offered obliquely to show bad character and conduct in conformity with that bad character." 423 S.C. at 502, 816 S.E.2d at 556 (Hearn, J., concurring) (quoting Daggett, 187 S.W.3d at 452).

Perry, 430 S.C. at 41, 842 S.E.2d at 663.

In the present case, the admission of the testimony of Witness B, based solely on vague and general similarities, allowed the jury to convict based on the improper inference of

propensity. The State failed to show a logical connection between the acts alleged by Witness B and the charged crimes. The State failed to meet its burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b). “The State must demonstrate to the trial court that there is in fact a scheme or plan common to both crimes, and that evidence of the other crime serves some purpose other than using the defendant's character to show his propensity to commit the crime charged.” Perry, 430 S.C. at 44, 842 S.E.2d at 665. The State failed to show that the testimony of witness B served a legitimate purpose.

On the same day the Court decided the Perry case the Court also decided State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020), and State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020). In Durant, the Court citing State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984), wrote:

Because McClellan remains good law, we believe the prior acts here are admissible. Durant had a **particularly unique method** of committing his attacks common to all the girls. While there were differences in their ages and the type of sex act, the method of his attack was more than just similar; instead, evidence of the prior acts “reasonably tend[ed] to prove a material fact in issue.” Lyle, 125 S.C. at 417, 118 S.E. at 807. Durant exercised his position of trust, authority, and spiritual leadership to hold private prayer meetings with teen girls who had grown up in his church. He told them he was praying for their health and good fortune, and represented that part of this process was touching them sexually and having intercourse. Durant then warned the girls of misfortune if they refused or told anyone. Moreover, he used scripture as a means of grooming the children into performing sex acts, a striking parallel to the defendant in McClellan. Indeed, the trial court noted it was one of the more compelling cases of common scheme or plan evidence it had ever seen, and we agree. These facts demonstrate the requisite logical connection between the prior acts of sexual abuse and the one forming the basis of the crime charged.

Durant, 430 S.C. at 106–07, 844 S.E.2d at 53 (emphasis added).

The present case is easily distinguished from Durant and McClellan. There was no particularly unique method used in the present case to show a common scheme or plan as used by the defendants in both Durant and McClellan. Again, there was nothing unique or even very

similar about the acts alleged by witness B and the crimes charged. The present case is also easily distinguished from Cotton. The Court in Perry, discussing Cotton wrote:

We affirmed the admission of the evidence under the common scheme or plan exception. The similarities between the two incidents were extensive. The trial court discussed these similarities at length in its pre-trial ruling. But the “other crimes” evidence in Cotton had more than just similarity. As the State argued in its brief in that case, “Even if the similarities alone are not sufficient for admission of the testimony, the testimony clearly establishes a logical relevance to the underlying crime.” Brief for Resp't at 18, State v. Cotton, 430 S.C. 112, 844 S.E.2d 56. The State went on to explain its theory of a logical connection to a specific, disputed fact. In addition, the trial court in Cotton conducted an extensive, on-the-record analysis of the balance between the unfair prejudice that would result from the evidence against the probative value in the logical connection. “Using the new framework set forth in [this case], we [found] the admission of the second victim's testimony satisfied the requirements of Rules 404(b) and 403, SCRE,” and we affirmed. Cotton, 430 S.C. at 114, 844 S.E.2d at 57.

Perry, 430 S.C. at 43–44, 842 S.E.2d at 664 (n. #9 omitted).

In contrast in the present case, the similarities were not extensive and not discussed at length during the pre-trial hearing because the judge only heard from Witness B and not Witness A during the pre-trial hearing. At trial the judge generally discussed the similarities stating, “I heard the testimony from Witness B at the hearing in Chesterfield and now that I’ve heard Witness A’s testimony, everything else aside their testimony does have a number of similarities and I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales.” (R. p. 213, line 22 – p. 214, lines 1-5). The judge, however, failed to make specific findings about how the testimony from Witness B was similar to the testimony from Witness A. Importantly, in the present case the State failed to establish a logical connection of the alleged other acts to a specific disputed fact, as in Cotton. Finally, the judge in the present case failed to conduct an analysis pursuant to Rule 403, SCRE, as the judge did in Cotton.

Appellant submits that the analysis ends when, as here, the State failed to show that the alleged other act testimony served some legitimate purpose. If, however, the analysis continues, pursuant to Rule 403, SCRE, the probative value of Witness B's testimony is substantially outweighed by the danger of unfair prejudice. "The State must also convince the trial court that the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes. Rule 403, SCRE." Perry, 430 S.C. at 44, 842 S.E.2d at 665. The State again failed to meet its burden.

Counsel for Appellant did not waive the Lyle, Rule 404(b) issue. First, the State moved pre-trial to admit the testimony of Witness B as the common scheme or plan exception to Rule 404(b). (R. pp. 79-114). Again, Witness A did not testify at the pre-trial hearing. Counsel for Appellant argued that Rule 404(b) prohibited admission of the testimony from Witness B and cited State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). (R. p. 106, lines 5-15). At this point the State failed to meet its high burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b) when the State failed to offer the testimony of Witness A.

After Witness A testified at trial, the State again moved to admit the testimony of Witness B as the common scheme or plan exception to Rule 404(b) arguing that the similarities outweighed the dissimilarities. (R. p. 211, line 21 – p. 212, p. 213, lines 1-2). Counsel for Appellant again objected and stated:

Your Honor, since the ruling that you made in Chesterfield on a temporary basis. We heard some testimony. We haven't heard Witness B's testimony but we did hear it there that day. It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; the pattern. And I think that now I'm seeing a pattern of – I'm seeing a pattern of conspiracy. And I don't really want to call it that because it's not really legal conspiracy. But the

consortium of witnesses that are saying the same thing for the same reason. We believe it's vindication. We believe it came from – it's stemming from the grandmother. But now after hearing Witness A's testimony it appears to be clear what it is. So we think that the testimony of Witness B is – will be improper bolstering of Witness A's testimony. We think it is improper and should not be allowed.

(R. p. 213, lines 4-21). Counsel never stated that the testimony of Witness B was sufficiently similar to the testimony of Witness A to establish a common scheme or plan. Instead, counsel's reference to a pattern of saying the same thing was to both girls making general allegations against Appellant as vindication and under the influence of the grandmother. Counsel never stated that there was a logical connection between the testimony of Witness A and the testimony of Witness B. The general allegations are not sufficient to establish a connection. The State again failed to meet its high burden to establish admission pursuant to the common scheme or plan exception to Rule 404(b). While counsel did not restate the objection as specifically based on Lyle, Rule 404(b), the State moved for admission on these grounds, counsel objected on these grounds pre-trial and at trial additionally objected as improper and bolstering. The judge understood the objection as pursuant to Lyle, Rule 404(b), and ruled accordingly. The admission of the testimony of Witness B as the common scheme or plan exception was, however, error. The issue is preserved for appellate review.

In Durant the Court, discussing Perry, wrote:

The Court emphasized Lyle's “logical connection” test, whereby “[t]he State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes ‘reasonably tends to prove a material fact in issue.’ ” Id. at 30 (quoting Lyle, 125 S.C. at 417, 118 S.E. at 807). To prove a sufficient connection, the State must demonstrate that there is “something in the defendant's criminal process that logically connects the ‘other crimes’ to the crime charged.” Id. at 27. This requirement filters permissible evidence of prior acts against veiled attempts to introduce propensity evidence. When the State seeks to present this evidence, its burden is a high one, as trial courts must employ “rigid scrutiny.” Id. at 30.

Durant, 430 at 105, 844 S.E.2d at 52. In the present case the State failed to meet its high burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b). The testimony of Witness B was inadmissible propensity evidence. The State failed to show that there was a logical connection between the acts alleged by Witness B and the crimes charged involving Witness A. The State failed to prove that the testimony of Witness B reasonably proved a material fact in issue. The State failed to show that the testimony of witness B served a legitimate purpose. The trial judge erred in admitting the testimony. The error in admitting the propensity evidence requires reversal.

Based on the above argument above in addition to the arguments made in the brief previously filed, this Court should reverse the convictions and remand for a new trial.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

CERTIFICATE OF SERVICE

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 Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) in the above entitled case has been served upon William M. Blich, Jr. Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and copy of the Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) has been served on Guadalupe Guzman Morales, #373639, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 6th day of November, 2020.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT



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November 6, 2020

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SC Court of Appeals

VIA EMAIL ONLY

Re: The State v. Guadalupe Guzman Morales

Dear Mr. Blich:

Enclosed is an electronic copy of the Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

KHH/cws

Enclosure



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Wanda H. Carter, Deputy Chief Appellate Defender

November 6, 2020

Mr. Guadalupe Guzman Morales, #373639
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Morales:

Enclosed please find a copy of the Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020), which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

KHH/cws

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