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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

Respondent,

v.

CHARLES BRANDON BARHAM,

Appellant

Appellate Case No. 2019-001981

INITIAL BRIEF OF RESPONDENT

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2. Did the trial court err in admitting testimony concerning appellant's alleged participation in a prior burglary?

3. Was the cumulative effect of the trial court's errors, in combination, so prejudicial as to deny appellant a fair trial?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

1. Whether or not Judge Benjamin abused her discretion in admitting testimony that the victim was refusing to pay appellant for work he had performed because victim believed appellant had stolen his tools because it went directly to the motive for the victim's murder, was part of the *res gestae* of the crime, and was evidence of prior difficulties between the parties which are admissible in a homicide case; and, even if error, whether or not the evidence was harmless on this record?

2. Whether Judge Benjamin abused her discretion in admitting testimony concerning
appellant's participation in a prior burglary when appellant blatantly opened the door to such testimony when he directly accused the witness of lying about appellant's
participation in the prior burglary on cross-examination of an investigator and linked it to his allegation the witness was lying about his participation in this crime?

3. Whether this issue is even preserved for appellate review where it was not raised to the trial court; and, if so, if the cumulative error doctrine is applicable in South Carolina and if so whether it would apply in this case where appellant has not shown error, much less several errors, and any *alleged* errors did not interfere with appellant's right to a fair trial?

STATEMENT OF THE CASE

On September 6, 2015, Charles Kusko was murdered in Richland County. Police arrested appellant Brandon Barham and co-defendant Floyd Owen for the murder in August of 2017. Barham was indicted for murder, burglary 1st degree, conspiracy to commit murder, and possession of a weapon during a violent crime (2017-GS-40-7158,-62,-65,-66).[1] Barham proceeded to a jury trial August 26-30, 2019 before Circuit Court Judge DeAndrea G. Benjamin. At its' conclusion, the jury found Barham guilty as indicted. Barham filed a "Motion for New Trial" based on alleged error in admitting certain evidence pursuant to the "opening the door" doctrine. The State filed a response. The motion was heard and denied October 14, 2019. On November 18, 2019, Judge Benjamin sentenced Barham to 40 years for murder and burglary 1st and 5 years for conspiracy and the gun charge. Barham moved for reconsideration which was denied May 26, 2020.[2] Barham appeals raising 3 issues. This is Respondent's Initial Brief.

RESPONDENT'S STATEMENT OF FACTS

The Crimes

During the early morning hours of Sunday, September 6, 2015, the day before Labor Day, at about 5:15 a.m., while dark, Charles Kusko (hereinafter "Victim") was murdered while asleep in his bed in his home at 1710 Budon Ct. in Columbia, S.C. Victim's home was burglarized prior to his murder, but nothing was taken or stolen from Victim's home during the crimes. Victim was shot 2 times in the back of the head execution style. The shooter was picked up after the crimes by a co-conspirator in the murder, driving the co-conspirator's vehicle, who

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1 Owen was indicted for the same crimes and pled guilty as indicted before Barham's trial.

2 (Tr. 1, [indictments]); 9, 15, 19; 1180-81; Tr. October 14, 2019, 1-13; Motion for New Trial; Response to Motion for New Trial; Tr. Nov. 18, 2019, 31, [sentencing sheets]; Motion for Reconsideration of Sentence; Order Denying Reconsideration of Sentence; IBOA, p. 2)

had dropped the shooter off earlier and given him the murder weapon. The 2 men then fled the area. Because of the holiday, Victim's body was not discovered until Tuesday, September 8th.[3] (Tr. 102-68; 180-93; 228-39; 241-57; 645-752; 821-67; 869-900; 914-52; 981-96).

What led to Victim's murder

Victim's murder was the result of a months' long dispute between Victim and his nephew appellant Brandon Barham ("Barham") over non-payment by Victim to Barham for work Barham had performed as a subcontractor to Victim. This dispute only grew and became more heated as events unfolded in the months and weeks before Victim's death. It was during that time, Barham discovered Victim was selling Barham's mother's personal property and stealing from her bank account; and, a friend of Barham's, Floyd Owen ("Owen" or "Floyd Owen") inserted himself into the dispute and was threatened by Victim with the loss of Owen's children. As a result, in the early morning hours of September 6th, Barham and Owen agreed to and did, acting together, murder Victim. (Tr. 102-68; 180-93; 228-39; 241-57; 259-73; 346-467; 645-752; State's Ex. 157; Tr. 821-27; 844-846; 869-900; 914-52; 981-96).

Barham was Victim's nephew on his mother's side. Barham's mother, Karin, has brain damage, and is disabled. Her brother, Victim, was "caregiver" and held power of attorney for Barham's mother at the time of his death. This included managing her bank account containing $40,000 to $50,000 at one time, and in which her monthly social security checks were deposited. Barham and Floyd Owen were friends and had been for about 10 years at the time of Victim's death. One witness described Barham and Owen as best friends. Both men "hung out" together, talked or texted on the phone, partied together, and Owen sometimes worked for Barham in

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3 All dates set forth in this brief are in the year 2015 unless so indicated.

Barham's home restoration business. Barham drove an older model, single cab, white, Chevrolet Silverado pick-up truck, with a long bed. Owen drove a moped. Owen also knew Victim and had been friends with him about 10 years.[4] Victim worked as a general "handyman" for attorney Neal Lourie of Columbia, S.C. Victim also did home restoration work for Lourie at Lourie's residence **and** at the 1710 Budon Ct. residence, which Lourie owned, and Victim was "renting." Lourie had agreed to sell Victim the 1710 Budon Ct. residence when Victim finished the restoration work there, so Victim could flip the house and make a profit. Barham assisted Victim in these restoration jobs at Lourie's residence and at the Budon Ct. home. (Tr. 645-752; 774-81; 102-23; 258-73; 346-467; 645-752; specifically 354-57; State Ex. 157).

The events leading to Victim's murder, actually began in late 2014. In October to December of 2014, Victim and Barham restored a collapsed retaining wall at Lourie's residence. In February of 2015, Victim and Barham put siding on Lourie's residence. Then in March, Barham assisted Victim in restoring 1710 Budon Ct., where Victim lived, payed inconsistent rent, and was going to buy. Barham's mother was supposed to move in to this home once it was restored and live with Victim, but Victim changed his mind about this arrangement, decided to sell the house for a profit, and left Barham's mother where she was, with a friend or Barham's grandmother. (Tr. 102-23, 258-73; 354-57; 645-752; State's Ex. 157).

On May 28th, Barham "texted" Victim that he [Barham] needed to be paid for the work done at Lourie's residence.[5] About 1 to 2 weeks later, in June, Victim's daughter Laurin Barnes ("Laurin") had lunch with Victim at a restaurant and he was agitated and upset. Victim began

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4 Owen and Victim had been lovers in the past but were not at the time of Victim's death.

5 Barham stated in the text he was in need of cash, having just taken out an expensive insurance policy, and the "well was near dry," and even partial payment would help. Victim agreed it had been months since the work was done and he [Victim] needed to be paid too.

screaming and yelling. Patrons thought Victim was angry at Laurin, but Victim was angry at Barham. Victim yelled out: Barham stole my tools and he's going to bring them back. I'm not going to pay Barham until he returns my tools. Later, Victim told Laurin's mother the exact same thing.[6] On July 7th, Neal Lourie sent Victim a text stating he was on his way to his law office and would cut a check for Victim that day.[7] On July 27th, Barham texted Victim again about getting paid for the work at Lourie's residence asking what was going on with the situation; it had been almost a year since the work was done; and, he still had not gotten paid. Barham threatened to go to Lourie's office and speak with him directly. (Tr. 844-46; State's Ex. 138; 758-61 [proffer]; 943-52; 102-23; 258-73).

A few weeks later, in late August / early September, shortly before Victim's death, all of the following occurred: Barham came to Lourie's office asking if Lourie had paid Victim for the work on the retaining wall. Barham told Lourie that Victim owed him $2,000 for that work, and he wanted to be paid. Lourie did not accept what Barham said and stated he would have to check with Victim to see if Victim had paid Barham or not. Also, Barham and his family, including his uncle Andrew Kusko ("Andrew"), discovered Victim had withdrawn $38,000 from Barham's mother's bank account in 25 days. Barham and his family believed Victim was using the money to restore 1710 Budon Ct., not on Barham's mother. Barham also went to Andrew's home. Barham attempted to show Andrew job estimates Barham had drafted contained in a satchel, when Andrew saw a semi-automatic pistol in the satchel. Andrew reached in and pulled the gun

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6 The fact that Victim told Laurin's mother the same thing, i.e. Barham had stolen his tools and Victim was not paying Barham until Barham returned his tools, was brought out on cross-examination of Laurin by Barham. (Tr. 943-52). This fact was confirmed at sentencing by Laurin's mother. (Tr. Nov. 18, 2019, p. 9, ll. 8-10).

7 Inv. Reese testified this text occurred on May 28th; however, this was a misreading of the text. Records show this text from Lourie about cutting a check occurred on July 7th. (State's Ex. 138).

out and asked if the gun was a .40 caliber. Barham said no, it was a .45., and took the gun from his uncle and unloaded it ejecting a bullet. Andrew noticed the end of the bullet was cut off with a round hole in it; but, he did not look at the bullet long. Andrew also understood from numerous conversations with Barham, Victim owed Barham $5,000 for work performed, but Victim was refusing to pay. Barham stated he needed to find someone to "beat up" Victim, who Victim did not know. Barham also later told Andrew, after the murder but before it was discovered, someone "was" going to kill Victim.[8] Also, Floyd Owen called Andrew and informed him Victim was selling Barham's mother's furniture or disposing of it. Andrew phoned Victim and confronted him about this and told him who gave him this information. In retaliation, Victim contacted Owen and told him Victim was going to call D.S.S. and inform them of Owen's drug use, resulting in Owen losing custody of his children. Finally, Barham and Owen phoned Andrew at his garage in Ridgeville. Barham and Owen were on speaker phone. Andrew could tell the 2 men were drunk or high. Barham and Owen were ranting stating someone needed to do something about Victim. They threatened to do something to Victim but had made similar threats in the past. Andrew eventually called police and tried to have Barham picked up on an outstanding bench warrant or for the gun Barham showed him, before Barham did something stupid. (Tr. 102-23, 258-73; 645-752; 346-467; 326-27; 844-46; State's Ex. 138; 943-52).

On Friday, September 4th, the following occurred: Lourie met with Victim, and Victim stated he had paid Barham for the work done on the retaining wall and told Lourie not to pay Barham "anything." Lourie was angry with both men because someone was lying to him. As a

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8 Lourie testified the $2,000 discussed at his office was for the retaining wall, not the siding or the Budon Ct. renovation (Tr. 258-73). There were other jobs Barham and Victim worked on together. (State's Ex. 157). In addition to Andrew, Owen testified Barham told him Victim owed him $5,000 to $6,000 for work performed and would not pay. (Tr. 645-752; 346-467).

result, Lourie set up a meeting with Barham and Victim for either that weekend or Tuesday after that Labor Day.[9] That afternoon, Andrew was returning from a doctor's visit and he and his wife stopped by Victim's home to see if what Owen had told Andrew about Barham's mother's furniture was true. Andrew spoke with a neighbor who confirmed he purchased the furniture and spoke with a city worker there to pick up debris at the road. Victim saw Andrew at the road and called police, who responded and gave Andrew a no trespassing notice. Andrew and his wife left and returned home to Ridgeville.[10] According to Barham's later statement to police, on that Friday night, about 7:00 to 8:00 p.m., Barham dropped by Victim's home to chat and pick up some tools and some ladders.[11] Barham claimed he and Victim drank 2 six packs of beer. Victim told Barham he was in an argument with a bartender that week and a discussion with the bar's manager. Barham claimed he told Victim that he was broke and Victim offered him some cash, which Barham refused. Barham left about 11:00 p.m. Barham also told police he did not have a real residence and was staying with friends until he found a place.[12] He also had a bench warrant

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9 Lourie thought the meeting was for Tuesday; Lourie's investigator said Victim missed a meeting scheduled for that Labor Day weekend and that was why a welfare check on Victim was conducted Tuesday. (Tr. 102-23; 258-73).

10 Andrew was home with his wife and daughter the night of September 5th/6th. Security video at his home showed Andrew remained home the entire night. He worked on a truck for customers of his auto repair business until 2:30 a.m., because they were coming to get the truck that morning. After completing the work, he went to bed and did not get up until 9:00 a.m. when he met with the customers and they picked up truck. Floyd Owen, the shooter, also later confirmed to police Andrew was not involved in Victim's murder. Andrew was eliminated as a suspect by police. The defense conceded in closing argument its' theory was Owen drove himself to Victim's home to commit the murder. (Tr. 346-467; 317-18; State's Ex. 135; 645-752; 823-24; 1127-28).

11 It is unknown if this meeting with Victim actually occurred; if it did, whether what Barham claimed was discussed was discussed, or if Barham made up this meeting to throw suspicion off of himself and Owen, as he did throughout his recorded statement. (State's Ex. 157).

12 The record, including texts, shows Barham stayed with Owen Friday night, September 4th/5th and Saturday night, September 5th/6th. (State's Ex. 137; State's 157; Tr. 839-40). Barham told

out for his arrest for failing to pay a fine and another for not returning a customer's money. Barham was aware of this when Victim was murdered.[13] (Tr. 258-73; 102-73; 346-467; 317-18; 645-752; 823-24; 914-42; 1036-38; 1010-70; State's Ex. 135 & 157).

On Saturday, September 5th, Barham received a voice mail from Victim asking about a local barbecue restaurant and then stating, Victim had "real, real, good news" for Barham. Barham claimed in his statement he called Victim back and promised to bring a compressor and air gun by Victim's home that day. Phone records showed Barham and Owen were in touch with each other that day and evening. Around 6:30 p.m., Floyd Owen texted Victim as follows: "F_ck you, and that woman. Have fun looking over your shoulder the rest of your life." Around 7:00 p.m., Owen and Barham sat around and drank alcohol at Owen's home in Columbia. Around 10:00 p.m., Barham drove the 2 men to Jenny Baker's home off Broad River Road in Barham's white pick-up truck. Cell tower records showed both men were together in the area of Jenny's home at this time. Barham and Owen, and others, partied drinking alcohol and doing drugs. Jenny Baker ("Jenny") remembered it was meth and marijuana, Barham and Owen later said it was cocaine. *Barham* received a "nasty" text from Victim about 10:00 p.m. complaining Barham did not bring the compressor and nail gun by Victim's home on Saturday as promised, and as always Barham could not be counted on for anything. *Owen* and Victim also exchanged a series of angry texts, which all occurred while Owen and Barham were together on Saturday evening into Saturday night. Barham's last phone call that night was to Andrew. Owen also called Andrew that night. Andrew remembered talking to both men that night but not the details

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police his mailing address was his girlfriend's parent's residence. (State's 157).

13 Barham would not come in and talk to police after Victim's body was discovered until assured he would not be arrested on an outstanding warrant or warrants. This information was before the jury. (Tr. 927-30; 938-40; 917-21; 1036-38; 340-42; See also Tr. 442-43).

of the phone call or calls, but believed it would have been similar to earlier calls, about Victim. Phone records showed Barham turned his phone off around 10:00 to 11:00 p.m. Jenny went to bed around 1:00 a.m., September 6th, and Owen and Barham were still there. Around 1:30 to 2:00 a.m., Barham drove himself and Owen from Jenny's home to Owen's home. Once there, the 2 men sat in Barham's truck drinking more beer. They talked about how much they hated Victim. Barham talked about Victim mistreating his mother, stealing from her bank account and selling her furniture, and how Victim would not pay Barham the money he owed him, $5,000 to $6,000. Owen complained about Victim threatening to report him to D.S.S., which would result in Owen losing his children. Barham then said he had a gun and pulled a .45 out from under the seat of his truck. He showed the gun to Owen, and Owen examined it. The 2 men discussed and then decided to kill Victim. Owen tried to phone Victim around 3:00 a.m., but the call did not go through. A state security surveillance camera captured Victim coming home about 3:15 a.m. By the time Barham and Owen left to go to Victim's home, it was about 4:30 a.m., and they were both intoxicated and high. (Tr. 276-96; 312-13; 472-556; 645-752; 558-640; 852; 1022-26; 1036-38; 1064-65; 365-99; 1168-78; State's Ex. 157 & 138; Def.'s Ex. 5).

The Murder

Barham drove himself and Owen to Victim's home in Barham's truck. On the way, Owen checked the .45 to make sure it was loaded; it was. They parked up the street from Victim's home and approached it on foot. While Barham acted as a lookout, Owen entered Victim's home by first removing the screen from the front porch and crawling onto the porch. He then broke a pane out of a window near the front door, unlocked the window, raised it, crawled through the window, and walked to Victim's bedroom. He then shot Victim in the back of the head 2 times, with Barham's gun, while Victim slept. Owen did not steal anything during the crimes. He left

through the front door. Once outside, Owen started to panic because Barham was gone. Then, Owen found Barham parked further up Budon Ct. in a different location than where he originally parked. A state surveillance camera captured the white, older model, single cab, long bed, pick-up truck lurking in the area between 5:00-5:11 a.m. Owen got in the passenger seat, and they fled the area with Barham driving, returning to Owen's home where they spent the remainder of the night. Both men turned their phones on sometime after daylight. (Tr. 645-752; State's Ex. 122).

The after-math of the murder

During daylight hours following the murder, around 12:30 p.m., Barham drove to Andrew's home in Ridgeville. He stayed there until late that night. Andrew found this behavior unusual and suspicious because when visiting Barham would never stay all day. Andrew only realized later why Barham spent the entire day at his home. Barham returned again on Monday, and stayed all day again. Victim's body was not discovered until Tuesday, the 8th; however, Barham would not have known when Victim's body would be discovered. (Tr. 346-467).

On Tuesday, Sept. 8th, Andrew picked up Barham's mother and took her to the Columbia Police Dept. to begin legal action against Victim, telling police Victim stole $38,000 from Barham's mother and sold her furniture without permission. Police began filling out a report on Victim. The same morning, Lourie told his investigator, James Jones, to check on Victim because he failed to appear for a meeting that weekend and would not respond to phone calls. Jones drove to Victim's home and found the screen removed from the front porch and a window broken out. He also smelled a dead body. Jones called police. Police responded and Victim's body was found dead under his covers. Nothing was missing or stolen from the home. Touch DNA was found on the inside of the front door handle. The autopsy determined Victim had been shot 2 times in the back of the head. 2 fired bullets consistent with .45 caliber auto bullets were

found under Victim's head. They were fired from the same gun. The bullets were semi-wadcutters, the end or tip of the bullet is cut off. A pillow was found, which had been used as a silencer. The pathologist estimated Victim died around 5:00 to 6:00 a.m., Sept. 6th, give or take a few hours. (Tr. 102-23; 330-31; 346-467; 136; 258-73; 102-68; 180-93; 228-39; 241-57; 316).

A day after Victim's body was found, September 9th, Barham drove to Andrew's home again. While he was there, Andrew asked to see the .45 pistol Barham had shown him about a week before. Barham said he no longer had the gun. He got rid of it by throwing it in a lake. He told Andrew if anyone asked, Barham never had the gun. (Tr. 346-467; See also State's 157).

On Sept. 10th, police talked to Barham. When asked who could have killed Victim, Barham attempted to cast suspicion on anyone but Owen and himself. He named 7 possible suspects.[14] Barham denied Victim owed him any money at all. He denied there was a dispute between himself and Victim and denied he had any motive to kill Victim. He said Lourie owed him money, not Victim. He mentioned the pleasant visit with Victim on Friday night, which he said lasted 3 hours, and Victim offered him some cash. Barham did not tell police Victim had stolen $38,000 from his mother, stating only Andrew and Victim were in a financial dispute over his mother's assets. Barham told police *Andrew* held the power of attorney for his mother since February, *not Victim*. Barham did not mention Floyd Owen until asked where he, Barham, was on Saturday until early Sunday morning. Barham alibied himself and Owen for the time of the murder, stating they went to the party at Jenny's in his truck, left and went to Owen's home

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14 Barham named as possible suspects: Andrew, Victim's lover, Victim's drug dealer, a bartender, a person who threw a meth party, a person Victim met on a website, and some brick layers, stating Victim had withheld payment from the brick layers, on the Budon Ct. job, and such conduct was going to get Victim killed. Barham also stated Victim was the type of person who always had to get "the upper hand" in dealing with others. He stated Victim had swindled Barham's father out of a bunch of money 3 years before, over another house. (State's Ex. 157).

around 1:30 a.m. on the 6th, and then went to bed. He stated Owen could not have committed the crime and neither did he. He denied he and Floyd ever talked about hurting Victim to anyone. He did not mention Victim threatened to call D.S.S. on Owen or Victim owed Barham $5,000-$6,000. Barham admitted he drove an older model, white, Chevrolet Silverado, single cab, long bed, and he talked to Andrew almost every day by phone, text, or in person. He stated if he talked to Andrew on Saturday night, September 5th, he could not remember what the conversation was about. Barham denied he owned a gun, but admitted he went to Andrew's home on September 9th, the day after Victim's body was found, when Andrew stated Barham told him he had gotten rid of the .45. (Tr. 914-43; 1055-60; State's Ex. 157).

On September 13th, Victim's funeral was held. Barham and Owen did not appear at the funeral even though Barham was Victim's nephew and worked with him and Owen had known Victim for 10 years. Andrew did appear at his brother's funeral and approached an investigator there and informed him of Barham showing him the .45 shortly before the murder and that Barham told him a day or 2 after the body was found that he, Barham, had gotten rid of the gun *and* not to tell anyone Andrew saw the gun. (Tr. 314-15; 346-467; 914-43; State's Ex. 157).

The case remained unsolved for 2 years. During that time, Floyd Owen could not live with what he had done, having nightmares about the crime and not being able to sleep. Barham would not talk with Owen about what they had done, so Owen confided in his girlfriend at the time Jessica, that he had killed someone. As time went by, he revealed more details, including he killed Victim; Barham was involved, providing the gun and driving him to Victim's home to commit the murder in Barham's truck; and, Barham drove them away from the scene. Owen also confided to Jenny Baker, telling her he killed Victim. On a separate occasion in Barham's presence, Owen told her again and Barham was involved. She confronted Barham, and Barham

admitted he was involved in the murder with Owen, telling her Victim was a bad person; he deserved to be killed; and, Victim had been mistreating his mother. Jenny could not remember the specifics, but Barham told her it involved Victim stealing Barham's mother's Social Security checks or something similar. Jessica and Jenny eventually told police what Owen told them. Police confirmed Barham owned a white, older model, Chevrolet Silverado pick-up truck, with no extra-cab, and a long bed. Police found security video where a truck exactly like Barham's was lurking in the area of Victim's home at the time of his death. Police confirmed with Lourie and others, including Andrew, Victim owed Barham $2000-$5,000 for work performed and refused to pay. And, police learned Victim had taken money from Barham's mother's bank account. (Tr. 314-15; 346-467; 914-43; 645-752; 774-81; 796-820; 558-640; State's Ex. 157).

Police questioned Owen 2 years after the murder, and Owen finally confessed.[15] All Owen asked was police leave Jessica "out of it" since all she knew was what he told her.[16] Owen admitted he and Barham committed the crime together. He stated they decided to kill Victim while talking at Owen's home in the early morning hours of September 6th. Barham provided him with the gun and drove him to the scene, waited nearby, and then drove them away from the crime scene after the murder. Owen admitted he pulled the trigger and left by the Victim's front door. His confession was consistent with the crime scene and contained facts only the killer would know, i.e. Victim was shot in the back of the head 2 times with a .45; Owen's DNA matched that on the interior of the front door; and video showed Barham's truck lurking nearby. (Tr. 645-752; 297-302; 318-22; 335-37; 645-752; State's Ex. 122, 132, 133).

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15 Like Barham, Owen was initially questioned a few days after Victim's body was found, he denied involvement. He also denied involvement the morning before he confessed.

16 Jessica was not involved with Owen at the time of trial. She cut off contact 6 months earlier.

Owen pled guilty to murder, burglary 1st degree, conspiracy to commit murder, and a gun charge "straight up" the week before Barham's trial. Sentencing was withheld. Owen testified at Barham's trial consistent with his statement to police. This included he was angry with Victim because Victim threatened to report his drug use to DSS *and* Barham was angry with Victim because Victim owed him $5,000-$6,000 for work performed and would not pay, **and** Victim was stealing from Barham mother and selling her property. Owen testified neither man would have committed the crime if they had not been drinking and doing drugs. (Tr. 646-752).

Barham testified at trial. He at first denied Victim owed him any money, claiming Lourie did not pay Victim. Barham claimed he did not know $38,000 was missing from his mother's account. He claimed he had no motive to kill Victim or a grudge against him. He admitted he did not attend Victim's funeral, claiming he thought it was the 12th not the 13th.[17] He also admitted he had owned 2 .45 semiautomatic pistols at different times in the past, but claimed he did not own either at the time of the murder. He denied he or Owen did drugs the night of September 5th/6th, at Jenny's home. However when impeached on cross-examination with his recorded statement, he admitted he could have told police he did cocaine at Jenny's home, now testifying he may have done cocaine the night before Victim's murder. He also admitted on cross-examination there was a debt owed to him by Victim; there was a dispute between them over the debt; and, Victim would not pay him, claiming the debt was $1,900. He also admitted Victim had stolen $38,000 from his mother, but denied knowing about the missing money when Victim was killed. He denied showing Andrew the .45 and telling Andrew he got rid of the gun.

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17 Barham admitted he had previously been arrested for DUI and carrying a pistol, and he was in jail on September 12th for bench warrants. He admitted he had a bench warrant on him for failure to pay a fine and had a hold placed on him in jail for failure to repay a customer money given him for a construction job.

He admitted he had owned 2 .45 pistols, 1 before and 1 after the crime. He implied Owen stole his truck and committed the crime alone, but denied the truck recorded on video near Victim's home was his. He denied he confessed to Jenny. (Tr. 1010-70). The jury convicted Barham.

ARGUMENT I.

This issue is not preserved for appellate review with a timely objection to the testimony when offered before the jury and was waived by Barham's introducing similar testimony; and, if preserved, Judge Benjamin did not abuse her discretion in admitting this testimony because it was not offered to prove the truth of the matter asserted or a prior bad act, but to establish an ongoing and long running dispute between the parties, i.e. Victim would not pay Barham money owed for work performed, the *res gestae* of the crime and part of the motive for Victim's murder; and prior difficulties between the parties, to show malice, animus, and origin of the dispute; and even if hearsay, it fell under recognized hearsay exceptions; regardless, its' admission was harmless beyond any doubt on this record.

Standard of Review

The admission of exclusion of evidence is within the sound discretion of a trial judge, and an appellate court may disturb a ruling admitting or excluding evidence only upon a showing of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006); State v. Dennis, 402 S.C. 627, 742 S.E2d 21 (Ct. App. 2013).

What Occurred Below

During a break in the trial, *in camera*, Barham requested argument or proffer on the admissibility of the testimony of Victim's daughter Laurin Huffstetler Barnes ("Laurin"). (Tr. 753-57). Prior to its admission before the jury, the State proffered Laurin's testimony so Judge Benjamin could properly consider and rule on the issue. (Tr. 756-61). Laurin was asked if she was aware of any disputes between Victim and Barham. She said she was. She testified she had lunch with Victim a few months before his death, in June, at which time Victim was upset, angry, and agitated yelling out loudly in the restaurant Barham had stolen his tools and Barham was going to bring the tools back, and Victim was not going to pay Barham until Barham

returned his tools. Victim was so angry and agitated other customers were looking at them and thought Victim was angry at Laurin. Laurin had to calm her father down. (Tr. 758-762).

Judge Benjamin heard argument *in camera* regarding the admission of Laurin's testimony. Barham argued the evidence was inadmissible evidence of prior bad acts [the theft of the tools] pursuant to Rule 404(b), SCRE.[18] Specifically, he argued the evidence was irrelevant in proving motive to commit the murder because Victim stated Barham stole Victim's tools not that Victim stole Barham's tools, which would have given Barham a motive to kill Victim. However, the State pointed out it was not offering the evidence pursuant to Rule 404(b) to prove Barham stole Victim's tools but as further evidence and corroboration of the ongoing dispute, which proved malice and was part of the motive for Victim's death, i.e. Victim did in fact owe Barham money for work performed and Victim was refusing to pay Barham and this led to Victim's death. The State pointed out this evidence was connected with, and corroborated evidence already admitted through other witnesses, about the dispute over money owed Barham by Victim and Victim's refusal to pay. Those witnesses were Andrew, Lourie, and Owen. Owen testified part of the motive for the murder was Victim's refusal to pay Barham for work performed. The 2 men discussed this before leaving Owen's home to murder Victim. The State also argued even if it was 404(b) evidence, Rule 404(b) allows such evidence to prove motive. (Tr. 761-69).

Barham also objected to the admission of the statement *Barham stole my tools* based on hearsay. The State responded the evidence was not hearsay because it was admissible under recognized exceptions of a statement of a then existing mental, emotional, or physical condition, under Rule 803(3), SCRE **and** as an admission against pecuniary interest, Rule 804(3), i.e.

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18 Even though given the opportunity *in camera*, between the proffer and the witness testifying, and when the witness testified, Barham never argued the State failed to prove the prior bad act by clear and convincing evidence, an argument raised in his brief. (Tr. 753-769; 769-943; 943-951).

Victim admitted he in fact did owe a debt to Barham that he was refusing to pay. (Tr. 762-69). Finally, Barham objected to admission of the evidence based on Rule 403, SCRE. [19]

After hearing argument of both sides, Judge Benjamin ruled that the evidence was prior bad act evidence but admissible under Rule 404(b), SCRE, because the evidence was being offered **not as propensity evidence** but to **show motive** as the State contended, which is one of the permitted exceptions under Rule 404(b), SCRE, and case law, and it was relevant because similar evidence of the dispute and debt owed by Victim to Barham and Victim's refusal to pay had been offered through other witnesses during trial. She found this evidence corroborated and confirmed those other witnesses that Victim did in fact owe Barham several thousand dollars and was refusing to pay, but this evidence came directly from Victim's mouth and Victim admitted the same. As to Barham's 2nd objection, while Judge Benjamin did not admit the testimony pursuant to Rule 804(b)(3), SCRE, a statement against pecuniary interest, Judge Benjamin found the evidence was admissible under the recognized hearsay exception of a statement of a then existing physical, emotional, or mental condition, to prove state of mind, Rule 803(3), SCRE, because it proved Victim's intent, plan, motive, design, mental feeling, pain, and bodily health as allowed by that Rule. Judge Benjamin also found the testimony was admissible under Rule 403, SCRE, because its probative value was not substantially outweighed by its' prejudicial effect because the evidence established the prior dispute between Victim and Barham, motive in the case; and, it was tied to other evidence in the case about the dispute; i.e. Victim owed Barham

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19 It must be remembered, at this point, the witnesses who had testified to this dispute testified Barham was claiming to them the money was owed to him and Victim would not pay, but Victim had denied to Lourie he owed Barham anything and claimed he had paid Barham for his work. (Tr. 258-73; 346-467; 645-752). Laurin's testimony proved Victim did in fact owe Barham money and was consciously refusing to pay him and lied to Lourie about the same, on September 4th, which would have further infuriated Barham. (Tr. 758-62).

money and he was refusing to pay, and more importantly this evidence was from Victim's own mouth and supported and corroborated the earlier testimony throughout the case of a debt owed Barham for work performed that Victim was refusing to pay. (Tr. 762-69).

After the Court's ruling

Laurin was not called as a witness after the *in camera* hearing. Several other witnesses testified during the trial. (Tr. 769-943). Laurin then testified before the jury. She was asked if she was aware of any problems between her father and Barham prior to her father's death and what she knew about any dispute. She testified to her father's excited and agitated state at the restaurant in June and he blurted or yelled out: "Brandon stole my tools and he's going to bring my tools back. I'm not paying him until he brings me my tools." (Tr. 943-51). Barham did not object to the admission of any of her testimony when it was introduced before the jury. (Tr. 945-46). Barham also questioned Laurin about the theft of tools and brought out Victim later told Laurin's mother the same thing, i.e. Barham had stolen his tools, Victim wanted them back, and Victim wasn't going to pay Barham until he returned the tools. (Tr. 947-48). In its closing argument, the State only argued this testimony for the reason it was offered. It corroborated other witnesses there was a dispute between Victim and Barham over Victim's refusal to pay Barham for work done, that continued for several months, and led up to Victim's death, and was part of the motive and malice for the murder as testified to by Owen. **(Tr. 1096-1111; 1131-42)).**

Lack of Preservation or Waiver of the Issue

Barham raised his objections *in limine* and they were ruled on *in limine*. (Tr. 756-69). This issue is not preserved for appeal because several witnesses testified after the *in limine* motion and *in camera* hearing. (Tr. 769-943). In fact, there were almost 200 pages of trial transcript before Laurin testified before the jury. Thereafter, when she testified, there was no

objection to any of her testimony. (Tr. 943-51). In fact, **Barham brought out** on cross-examination Victim had told Laurin's mother the same thing he told her: Barham stole his tools, Victim wanted them back, and he wasn't going to pay Barham the money he owed him until Barham returned the tools. (Tr. 947-48). This issue is not preserved for appellate review *or* was waived based on the failure to make a timely objection when the witness testified before the jury after over 150 pages of trial transcript *and* testimony by other witnesses (Tr. 769-943; 943-51) **and** by Barham eliciting similar testimony from the same witness. (Tr. 947-48). State v. Kromah, 401 S.C. 340, 352-53, 737 S.E.2d 490, 496-97 (2013); State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009)("Generally, a motion *in limine* is not a final determination; a contemporaneous objection must be made when the evidence is introduced"); State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d. 837, 840 (2001)("There is an exception to this general rule when a ruling on a motion *in limine* is made immediately prior to the introduction of the evidence in question.'"); Wiles, 383 S.C. at 156-157, 679 S.E.2d at 175 ("This exception is based on the fact when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection."); State v. Mueller, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410-411 (1995)(noting where there is no evidence between the motion and the testimony, there is no basis for the trial court to change its ruling, so the decision is a final one).[20]

Further, Barham argues in his brief the State did not prove the prior bad act by clear and convincing evidence. This argument is not preserved for appellate review; it was not made below

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20 Respondent also submits this issue was waived or is not preserved because Barham did not exhaust his remedies below. After the court ruled *in limine*, Barham never requested a curative instruction be given the jury regarding the admission of this evidence and how it should be considered. (Tr. 758-769; 1006-1008; 1142-1166; 1072-1096). The Court would not have been required to give the instruction because of the reason the evidence was offered, but it *may have* if requested. Barham never asked. This issue is not preserved or was waived. *See* Rule 105, SCRE.

in the *in camera* hearing, after the *in camera* hearing, or when the witness testified. (Tr. 753-769; 769-943; 943-951). State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground"); State v. Patterson 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997)("Appellant is limited to the grounds raised at trial").[21]

Finally, Barham only argues on appeal Victim's statement to his daughter *"Brandon stole my tools"* is inadmissible. (BOA, pp. 2-14). He does not argue the remainder of Victim's statement to his daughter was not admissible: i.e. "He's [Brandon's] going to bring me my tools back" "I'm not paying him until he brings me my tools." (Tr. 945-46) (See BOA, pp. 2-14). Any issue with regard to these statements is not preserved and is waived and abandoned. Rule 208(b)(1)(d), SCACR; Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281, 282, n. 3 (2003); First Savings Bank v. Mclean, 314 S.C. 361, 444 S.E.2d 513 (1994)(issues not argued in the brief are deemed abandoned and will not be considered on appeal). Judge Benjamin's ruling admitting this portion of Victim's statement is also the law of the case.

The Lack of Merit of the Issue Raised on Appeal

Regardless of the basis which Judge Benjamin relied upon in admitting the evidence, it was admissible over Barham's hearsay, 404(b), and 403 objections. Barham now argues only the statement *Brandon stole my tools* was hearsay and prior bad act evidence. (IBOR, pp. 2-12).

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21 If Barham had raised this argument to exclude the evidence below, perhaps Judge Benjamin would have ruled differently under Rule 404(b); but, he never gave Judge Benjamin this opportunity. (Tr. 753-769; 769-943; 943-951). *But see* State v. Bell, 430 S.C. 449, 845 S.E.2d 514 (Ct. App. 2020)(addressing clear and convincing evidence though never raised below). This case is distinguishable because Barham had the opportunity to raise this objection 3 times, including *in camera* **and never did.** (Tr. 753-769; 769-943; 943-951).

However, nowhere in his brief does Barham give this Court the entirety of Victim's statement to Laurin or the context in which it was made, which is why it was admissible. (IBOR, pp. 2-14).

The statement was not hearsay

Barham argues the testimony *Brandon stole my tools* should not have been admitted because it was hearsay. Barham is wrong. Hearsay is an out of court statement, other than one made by the declarant while testifying at trial, **offered to prove the truth of the matter asserted in the statement**. Rule 801(c), SCRE. The definition of hearsay as stated in Rule 801(c) is consistent with prior South Carolina law, i.e., hearsay is an out of court statement which is offered to prove the truth of the matter asserted. State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006). The rule against hearsay prohibits admission of evidence of an out of court statement to prove the truth of the matter asserted in the statement unless an exception to the rule applies. Rule 802, SCRE; Price, 368 S.C. 494, 629 S.E.2d 363.

Here, as the record shows, the State did not offer Victim's statement to Laurin **to prove Barham stole Victim's tools**, *or* **when Barham returned the tools, Victim would pay him**. The statement was offered to prove the ongoing dispute between Victim and Barham, i.e. Victim had not paid Barham $2,000-$6,000 owed him and Victim was refusing to pay, which was consistent with the texts from May and July of 2015, and what Barham told Andrew, Lourie, and Owen, and which was contrary to what *Victim* told Lourie, and contrary to what **Barham** told police, and established malice and part of the motive for Victim's murder as testified to by the trigger-man Owen, i.e. Victim refused to pay Barham money he had earned and Victim stole $38,000 from Barham's mother and sold her furniture. State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978)(statement implicating defendant in alleged prior crimes, which was not offered to prove the truth of the matter asserted, that is, that defendant in fact committed the prior

crimes, but to establish motive, was not hearsay and its admission was not error); State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007)(victim's testimony she "heard [defendant] had been hitting [her] mother" was non-hearsay not offered for the truth of the matter asserted, but to show victim's state of mind that she was fearful of defendant, and did not report defendant's sexual abuse because of such fear; not that defendant had actually ever hit victim's mother); State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009)(where witness testified to statements she heard deceased victim make during a phone call with defendant's mother, that deceased victim did not have time to fix defendant's hair that particular day, such statement was not offered for the truth of the matter asserted and therefore, by definition, was not hearsay); State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001)(victim's child's statement was not offered to prove the truth of the matter asserted, but to show the impact murder had on victim's child and the rest of her family); State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996)(statement not offered for the truth of the matter asserted was not hearsay); State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002)(it was error to exclude a co-conspirator had told defendant and others that he was a former Navy SEAL, where evidence was **not offered to prove that fact**, but to prove defendant was duped into believing co-conspirator was a CIA operative and robbery was part of a CIA plan, thus eliminating criminal intent defendant needed to commit the crimes he was on trial for).[22] This is exactly what the State argued in closing argument. Laurin's testimony, along with

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22 Again, Barham fails to mention anywhere in his brief, the entirety of the statement and the context in which it was made. (BOA, pp. 2-14). Victim didn't just say: Brandon stole my tools. Victim told his daughter in an agitated state: Brandon stole my tools and he going to bring my tools back. I'm not paying him until he brings them back. Victim said: "I'm not mad at you, I'm mad at Brandon." (Tr. 945-946). Each time Laurin was questioned, whether *in camera* or before the jury, she was asked if she was *aware of any problems or disputes between Victim and*

Andrew's, Lourie's, and Owen's, proved an *ongoing dispute over money owed to Barham by Victim for work performed that Victim was refusing to pay.* **(Tr. 1096-1111; 1131-42).**

Even if the statement was hearsay, which it is not, it fell under 2 recognized exceptions. The statement was a statement against pecuniary interest of Victim. Rule 804(b)(3) SCRE. Victim admitted he owed a debt to Barham which he was refusing to pay until Barham returned his tools. Rule 804(b)(3), SCRE, provides an out-of-court statement against penal, *pecuniary* or *property* interest, made by an unavailable declarant is admissible in both civil and criminal proceedings. Victim's statement he owed Barham money and he was not going to pay Barham until he returned his tools was admissible as a statement against pecuniary interest.

And, it was a statement of the then existing state of mind of Victim. Rule 803(3), SCRE. Rule 803(3) addresses the admissibility of statements of a declarant that go to the then existing mental, emotional, or physical condition of that person, commonly referred to as the person's state of mind. Rule 803(3) reads:

Rule 803

Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

> (3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

The rationale for admission of statements under Rule 803(3) is such statements are deemed trustworthy by virtue of presenting declarant's own unique perception of his feelings at the time

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Barham and there nature. She testified to Victim's angry outburst. (Tr. 759-769; 945-46).

in question. State v. Garcia, 334 S.C. 71, 512 S.E.2d 507 (1999). Statements that may directly or indirectly show the declarant's state of mind, emotion, or physical condition are admissible. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006); Garcia, *supra*. Barham concedes (BOA, pp. 2-14) that: (1) Victim's anger with Barham expressed to his daughter and (2) his statements he was going to make Barham return his tools and he was not going to pay Barham until his tools were returned, were admissible, but the reason for his anger, i.e. "Brandon stole my tools" was not, **under this hearsay exception**. (See BOA, pp. 2-14).[23] *Under our case law interpreting Rule 803(3)*, Barham's point is well taken,[24] but the remainder of the statement would have still been before the jury, which is what the State was attempting to prove, i.e. *the dispute* between Victim and Barham over money Victim owed Barham for work performed **and** Victim's state of mind including, *not only* his anger toward Barham, **but also**, his admission he owed Barham money,

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23 Barham concedes Victim's anger toward him and the remainder of Victim's statement was admissible by only arguing: "Brandon stole my tools" is inadmissible. (See BOA, pp. 2-14). Rule 208(b)(1)(d), SCACR; Jinks, 355 S.C. 341, 585 S.E.2d 281, 282, n. 3; Mclean, 314 S.C. 361, 444 S.E.2d 513 (issues not argued in the brief are abandoned and not considered on appeal).

24 Our appellate courts, interpreting this Rule have held victim's anger or fear of defendant is admissible but the reason for the same is not. State v. Weston, 285 S.C. 286, 285-286, 625 S.E.2d 641, 644-645 (2006); State v. Garcia, 334 S.C. 71, 76, 512 S.E.2d 507, 509 (1999) (Quoting United States v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1980)). State v. Hughes, 419 S.C. 149, 796 S.E.2d 174, 178-179 (Ct. App. 2017). However, Rule 803(3) actually states: "A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)[is admissible], *but not including a statement of memory or belief* **to prove the fact remembered or believed** ..." Id. (emphasis added.); *See also* State v. Tennant, 394 S.C. 5, 714 S.E.2d 297 (2011)(statement was not admissible because it was self-serving hearsay and **not offered to prove defendant's state of mind** but was *a statement of memory or belief* **offered to prove the fact remembered or believed**); State v. Goolsby, 275 S.C. 110, 268 S.E.2d 31 (1980)(witness was permitted to testify that after hearing defendant's voice in the background, deceased victim stated, "Don't hit me ... It makes me think of the time you drug me out by the hair of my head from the Steak and Eggs." The quotation was not offered to prove to matter asserted, but rather as evidence of defendant's opportunity to commit the crime, and *the deceased's state of mind* at the apparent outset of the events culminating in the victim's murder).

his *statement of intent to* get his tools back, not pay Barham for work performed, and not pay Barham until his tools were returned. Rule 803(3), SCRE (A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as *intent, plan, motive, design, mental feeling, pain,* and bodily health) is admissible); Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)(it was proper for a witness to testify in murder of police officer, a few days before the crime defendant stated there was a warrant for his arrest and "before I let an MF, mother fucker cop take me down, police take me down I will shoot and kill one of the SOB's," such was admissible under Rule 803(3) because it was a statement of defendant's *intent* to kill a police officer if one attempted to arrest him); State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000)(testimony deceased murder victim had just completed phone conversation and stated he was going to meet defendant to sell marijuana was admissible as declarant's then existing state of mind to *his intentions or plans*); State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007)(victim's testimony she "heard [defendant] had been hitting [her] mother" was non-hearsay not offered for the truth of the matter asserted, but rather to show victim's *state of mind* that she was fearful of defendant, and did not report defendant's sexual abuse because of such fear; not that the defendant had actually ever hit victim's mother.).[25]

The statement was not offered as 404(b) evidence but res gestae of the crime

Barham next argues Laurin's testimony was improper 404(b) prior bad act evidence. The State argued below the evidence was not 404(b) evidence but evidence of the ongoing dispute between Victim and Barham, corroborated by other witnesses, that continued and eventually led

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25 Barham wants to limit the State to proving only **Victim's anger** and not **Victim's state of mind [intent] he was going to get his tools back and he was not going to pay Barham until Barham returned his tools.** The statement is admissible to prove both, because both were Victim's state of mind. Rule 803(3)(statement of declarant's intent, emotion, etc. is admissible).

to and was part of the malice against Victim and motive for his murder. The State was correct. The evidence was admissible because it was "*res gestae* of the crime" evidence. State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004)(prior CDV arrest 2 months earlier was admissible evidence of *res gestae* of the crime where it was motivation for the attack on the victim 2 months later and provided the jury with the context of the crime).

"Under the *res gestae* theory, 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." State v. Gillian, 360 S.C. 433, 601 S.E.2d 61 (Ct. App. 2004)(*citing* State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)). *See also* State v. McGee, 408 S.C. 278, 287-90, 758 S.E.2d 379 (Ct. App. 2014)(recognizing *res gestae* evidence may be necessary to complete the story of victim's murder and provide its context);[26] State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999)(*res gestae* recognizes evidence of other bad acts may be an integral part of the crime or may be needed to aid the fact finder in understanding the context in which the crime occurred.); State v. Wiles, 383 S.C. 151, 158-59, 679 S.E.2d 172, 176 (2009)(evidence of other crimes supplying the context of the crime, or is intimately connected with and explanatory of the crime, is admissible as *res gestae of the crime*); State v. Martucci, 380 S.C 232, 669 S.E.2d 598 (Ct. App. 2008)(admission of prior abuse or neglect was needed to present overall view of the facts and provide context in which crime occurred, and demonstrated culminating impact upon the child; evidence of the prior bad acts was relevant to show the

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26 The appellant in McGee argued similar to Barham the evidence in question was a prior bad act inadmissible under Rule 404(b); however, this Court did not address that argument as the evidence was clearly admissible as *res gestae* of the crime. McGee, 408 S.C. 278, 758 S.E.2d 730; *see also* State v. Wood, 362 S.C. 520, 529, 608 S.E.2d 435, 440 (Ct. App. 2004)(not addressing 404(b) because evidence admissible as *res gestae* of the crime).

complete, whole story relating to the crime); *See* State v. Bolden 303 S.C. 41, 43, n. 1, 398 S.E.2d 494 (1990) (noting *res gestae of the crime* does not fit squarely within any of the 5 categories in Lyle); State v. Smith, 309 S.C. 442, 451, 424 S.E.2d 496, 501 (1996) (Toal, J. dissenting)(although there is some overlap between *Lyle* and *res gestae*, *res gestae* of the crime is a separate method where other evidence of criminal acts can be admitted).

Barham was on trial for the murder of his uncle [Victim]. It was necessary for a full presentation of the case and for context, for the jury to understand the full nature of the relationship between Barham and Victim, including the length of the dispute between Victim and Barham, which was several months; and, what the dispute was about, i.e. over money owed to Barham for work performed; why Victim refused to pay Barham; and, what eventually led Barham to tell others about his anger and grudge against Victim and which culminated in Victim's death. Gillian, 360 S.C. 433, 601 S.E.2d 61 (*citing* Owens, 346 S.C. 637, 552 S.E.2d 745; Adams, 354 S.C. 361, 580 S.E.2d 785); King, 334 S.C. at 512, 514 S.E.2d at 582; McGee, 408 S.C. 287-90, 758 S.E.2d 379 (recognizing defendant's theft of truck in Camden was *res gestae* of the crime and was necessary to tell the full story of victim's murder and its context).

Here **the testimony** and **evidence** showed there was a long running dispute between Victim and Barham beginning as far back as 3 months before Victim's murder, which continued up to September 6th, and only grew as the weeks went by, and culminated in Victim's death. The dispute was over money Victim owed to Barham for work performed, which Victim admitted to his daughter he owed Barham and was refusing to pay. The record shows in October to December 2014, Barham and Victim repaired a collapsed retaining wall at Lourie's home. In February 2015, Barham and Victim put siding on Lourie's home. In March, Barham and Victim renovated the Budon Ct. home Victim was renting, paying inconsistent rent for, and Victim was

going to buy and flip. On **May 28th**, Barham texted Victim that he needed to be paid for the work on the retaining wall because he was broke. Victim responded he agreed and he wanted to be paid as well. Just a few weeks later, in **June**, Victim admitted to Laurin he owed Barham, but he was **not going to pay Barham** until Barham returned Victim's tools Barham had. The dispute continued into July. Lourie texted Victim on **July 7th** that Lourie was on his way to his office and would **cut a check** as soon as he got there. Lourie did not say he would cut 2 checks, 1 for Victim and 1 for Barham, but 1 check for both men. This text was to Victim only. Lourie testified he paid Victim by check. Barham then texted Victim on **July 25th** that Barham had still not been paid for the work at Lourie's and wanted to know why and threatened to go to Lourie's office and confront him about the non-payment. Just a few weeks later, at the **end of August / first of September**, a week before Victim's death, Barham did exactly as promised in the **July** text. He went to Lourie's office wanting to know if Lourie had paid Victim for the work on the retaining wall because Barham had not been paid. Lourie stated he would have to talk with Victim to see if Victim had paid Barham. On the Friday before Victim's death, **September 4th**, Lourie spoke with Victim in person and Victim was adamant he paid Barham and told Lourie not to pay Barham anything. Lourie told Barham he was going to set up a meeting with both men to get to the bottom of the dispute because someone was lying to Lourie. As all this was occurring at the end of August / first of September, Barham was telling Andrew and Floyd Owen that Victim actually owed Barham $5,000 to $6,000 for work performed and was refusing to pay.[27] At this time, Barham discovered Victim had stolen from Barham's mother's bank account

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27 The additional $3,000 - $4,000 owed by Victim to Barham was for either putting siding on Lourie's home in February, for renovating the Budon Ct. address in March, which was for Victim, not Lourie, or some other work the 2 men had done together. (See State's 157, Barham's statement). Victim was originally supposed to move Barham's mother into the Budon Ct. home; but, Victim changed his mind and decided to buy the house from Lourie and flip it for a profit.

$38,000-$39,000. Around the same time, Owen inserted himself into the situation by telling Andrew and Barham that Victim was selling or getting rid of Barham's mother's furniture. Victim in turn threatened Owen with losing Owen's children. Owen and Barham called Andrew intoxicated or high, and Barham and Owen were ranting about Victim, stating someone needed to do something about Victim and threatened to do something. Owen testified all of these factors led to Victim's murder on September 6th. He and Barham murdered Victim because Victim owed Barham money for work performed and refused to pay; Victim was also misusing Barham's mother's funds on himself, and finally Victim threatened Owen with the loss of his children. This was all discussed before the 2 men left Owen's home to commit the murder. As a result, the evidence of the dispute between Victim and Barham, even in June, was admissible as "*res gestae* of the crime," especially where Victim admitted to his daughter he owed Barham the money and was refusing to pay, and in Barham's statement to police, **Barham denied there was any dispute** at all **with Victim.** Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (evidence of other crimes is admissible when it furnishes the context of the crime **or** is necessary for a full presentation of the case and is necessary to complete the story of the crime on trial by proving its context); Sweat, *supra* (prior act of CDV gave victim opportunity to escape defendant; as a result she moved out; he spent time in jail; he was upset, and 11 days after his release, the crimes he was tried for occurred; the October abuse and events that followed provided the jury with an appropriate context in which to place the later December attack).

The evidence was also admissible as evidence of prior difficulties between the parties

As an additional sustaining ground, as argued by the State below, the evidence was admissible as more, confirming, evidence of prior difficulties [a prior dispute] between the parties, which has long been recognized are admissible in a homicide case to show animus

between the parties, malice, and motive. State v. Cooley, 342 S.C. 63, 536, S.E.2d 666 (2000); Sweat, 362 S.C. 117, 606 S.E.2d 508.[28] Here the evidence showed there was a dispute between Victim and Barham as far back as 3 months before Victim's murder, that continued up to September 6th, and only grew as the weeks went by, and culminated in Victim's death, over money Victim owed Barham for work performed, which Victim admitted to his daughter he owed Barham and was refusing to pay. Sweat (prior CDV 2 months before murder was not too remote and was admissible); State v. Brooks, 79 S.C. 144, 60 S.E. 518 (1908)(prior difficulties 8 months before murder were admissible); State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000)(4 months between statement or threat and the crime went only to the weight of the evidence not its admissibility); State v. Glenn, 328 S.C. 300, 492 S.E.2d 393 (Ct. App. 1997)(1 year before incident); State v. Atkins, 303 S.C. 214, 399 S.E.2d 760 (1990)(prior disputes admissible to prove motive). The prior ongoing dispute is exactly what the State argued in closing argument:

> So almost everything in this case that the State relies on is confirmed and corroborated in multiple ways. Brandon was owed money by Charlie [Victim]. Laurin said it. Floyd [Owen] said it. Neal Lourie definitely said it y'all. Think back to what Mr. Lourie said on the stand about that money. He said that up to and after Charlie's death, they were still back and forth about the money. And he [Neal] said to them, One of y'all is lying. I have got to get both of you in here to talk to you.
>
> Why did Brandon tell police he [Victim] didn't owe any money? Why is he [Brandon] still trying to make it sound like on the stand that he [Victim] didn't owe him [Brandon] money? At least Andrew admitted to all of this [sic] ["his"] problems with the victim. Why did Brandon do that?

(Tr. 1099, ll. 6-20). There is no *other* mention in the State's closing arguments of Laurin's testimony, at all. There is no mention about any theft of tools or that Victim believed Barham

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28 South Carolina has long recognized evidence which is "logically relevant to establish a material element of the offense charged is not to be excluded merely because it *incidentally* reveals the accused's guilt of another crime." State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74 (1973); (emphasis added); State v. Thomas, 248 S.C. 573, 151 S.E.2d 855 (1966); State v. Brooks, 235 S.C. 344, 111 S.E.2d 686 (1959)

stole his tools. The only thing argued is the reason the testimony was admitted, to show the ongoing dispute between Victim and Barham, i.e. Victim owed Barham money for work performed and Victim was refusing to pay, which continued for months and led up to Victim's death, was part of the motive for the murder as testified to by the shooter, and proved malice toward Victim. **(Tr. 1096-1111; 1131-42).** Sweat (prior CDV arrest 2 months before assault was admissible as prior difficulties between the parties w/o addressing Rule 404(b) claim).[29]

The Evidence falls within a recognized exception of Rule 404(b)SCRE

Barham's second argument is the evidence was improperly admitted under Rule 404(b). Barham argues the evidence was prior bad act evidence offered to show he acted in conformity therewith. The record shows this argument has no basis in fact. Judge Benjamin did not abuse her discretion. As Judge Benjamin properly found, the State was not offering the evidence as propensity evidence, i.e. that because Barham allegedly stole Victim's tools several months earlier he acted in conformity therewith by murdering Victim. Such an argument by the State would make absolutely no sense on this record, and simply was not made. Victim was executed in his bed while asleep. Nothing taken from Victim's home. The trigger-man, Owen, testified the motive for the murder was not theft but Owen's and Barham's hatred of Victim for various things Victim had done to each of them. Victim was murdered because he threatened to report Owen to DSS **and** because he was refusing to pay Barham several thousand dollars he owed him for work done *and* had stolen $38,000 from Barham's mother's bank account. Once Owen shot Victim twice in the back of the head, Owen left Victim's home and no theft took place. The

29 As stated, when Laurin testified, whether *in camera* or before the jury, she was asked if she was aware of **any problems or disputes** between Victim and Barham and the nature of the dispute. She responded by testifying to Victim's angry outburst in June. (Tr. 759-769; 945-46).

argument Barham alleges the State was making, simply was not made. **(Tr. 102-68; 180-93; 228-39; 241-57; 645-752; 821-67; 869-900; 914-52; 981-96; 1096-1111; 1131-42 [Trial Transcript] See Tr. 1099 [Closing Argument).**

As the Solicitor stated below, even if this was 404(b) evidence as the defense argued, it was admissible pursuant to 1 of the recognized exceptions of Rule 404(b), SCRE, i.e. to prove and did prove motive; and, it was admissible to prove intent/malice. State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985)(evidence of prior bad act admissible to prove motive to murder victim); State v. Thomas, 248 S.C. 573, 151 S.E.2d 855 (1966)(evidence of prior bad act admissible to prove motive to rape and murder victim); State v. Sharpe, 239 S.C. 258, 122 S.E.2d 622 (1961)(prior conviction was admissible for the purpose of showing motive, intent and identity, where defendant was accused of raping a woman who was a witness in a prior case for which defendant was convicted); State v. Hughes, 160 S.C. 474, 158 S.E. 833 (1931)(evidence was admitted murder victim had sworn-out an **arrest warrant** on defendant for violation of prohibition law, to show motive in the killing); Sweat (evidence victim had defendant arrested for CDV, he spent 45 days in jail, and 11 days after being released burglarized victim's home, brandishing a knife and attacking victim's boyfriend, was admissible under several different basis: (1) **motive** and **intent** for the crime being prosecuted; (2) **malice** on the ABWIK; (3) **prior difficulties** between the parties; (4) ***res gestae* of the crime**); State v. Maxey, 218 S.C. 106, 62 S.E.2d 100 (1950)(prior bad act admissible to show motive and intent); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978)(that victim was a witness against defendant for certain crimes was admissible to show defendant's motive for murder of such witness); State v. Good, 308 S.C. 308, 417 S.E.2d 640 (Ct. App. 1992), *affirmed*, 315 S.C. 135, 432 S.E.2d 463 (1993).

The evidence from Laurin showed Victim *believed* Barham had stolen or taken his tools and as a result, **Victim was refusing to pay Barham the money he owed Barham for work Barham had completed.** This corroborated other witnesses Barham was complaining and angry with Victim for refusing to pay Barham $2,000-$6,000 for work he had performed. This testimony also showed Victim was conscious of the debt owed to Barham, and Victim lied to Lourie when he told him he had paid Barham. This would have further angered Barham. This evidence showed Victim was wrongfully refusing to pay Barham for work performed, thus giving Barham reason to be angry with and murder Victim, as testified to by Owen, i.e. motive and malice. State v. Jennings, 160 S.C. 348, 158 S.E. 687 (1931)(killer was permitted to testify he and defendant were engaged in making liquor; defendant induced him to murder victim, because victim had reported the still operation to officers, who destroyed it; such testimony was competent to prove motive of defendant, to show **he had a grudge** against victim); State v. Pittman, 137 S.C. 75, 134 S.E. 514 (1926)(evidence defendant had been engaged in running blockade distilleries and had distinctive method of operating a distillery, etc. was admissible to show motive and identity where: (1) defendant had **a personal grudge** against deceased constable, because of his attitude on liquor and interference with defendant's liquor operations; (2) defendant's motive for killing victim was the composite product of **that grudge** and self interest in eliminating a dangerous witness and active disturber of his operation; and (3) defendant's distinctive method of conducting a stilling operation and similarity between a former distilling outfit and one where victim was killed could be proved as a relevant circumstance tending to show defendant owned and operated distillery where homicide occurred).

The murder in this case was an execution style murder with nothing taken or stolen from Victim's home. The killer broke into the home at around 5:00 a.m., went straight to Victim's

bedroom, and executed him by shooting him 2 times in the back of the head. Nothing was taken or stolen from the house. The killer then left the home, and Barham picked him up in his truck and the 2 men left the area. The challenged evidence admitted was not propensity evidence because stealing or theft had nothing to do with Victim's murder. The evidence established part of Barham's motive for the murder, **his grudge** against Victim for not paying him for work he had performed, which Owen testified they discussed before going and murdering Victim. Rule 404(b), SCRE; Jennings, 160 S.C. 348, 158 S.E. 687 (evidence of prior bad act admissible to show **defendant had a grudge against the victim**); Pittman, 137 S.C. 75, 134 S.E. 514 (evidence defendant **had a personal grudge against deceased constable,** because of his interference in defendant's illegal still operations; the motive for killing constable was **the composite product of that grudge and of self-interest**).

Barham argues there was no clear and convincing evidence of the prior bad act. However, this argument was not made below; even though proffer and argument took place *in camera.* He did not raise this argument between the *in camera* hearing and when the witness testified. He did not raise this objection when the witness testified. Further, he did not request a curative instruction be given regarding this evidence. Finally, he brought out similar evidence from Laurin on cross-examination which was consistent. As a result, this basis for excluding the evidence it is not preserved for appellate review. Dunbar, 356 S.C. 138, 142, 587 S.E.2d at 694 (A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear the argument has been presented on that ground); Patterson 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial").[30]

30 If Barham had raised this argument or basis to exclude the evidence below, perhaps Judge Benjamin would have ruled differently; but, he never gave Judge Benjamin this opportunity.

What Barham argued below and continues to argue here is the evidence did not prove motive because if Barham stole Victim's tools then that would give Victim reason to murder Barham not reason for Barham to murder Victim. Barham misses the point of the reason the evidence was offered. It was offered to show further and corroborating proof **of the ongoing dispute** between Barham and Victim **over Victim's refusal to pay Barham for work performed**, which **Victim acknowledged** to his daughter. The statement proved Victim's refusal to pay Barham for work performed, out of Victim's own mouth, something which Victim denied to Lourie; and, that refusal to pay Barham was part of the motive for Victim's murder, as testified to by Owen. Further, Barham claimed in his statement to police [admitted in evidence], and on direct examination, there was no dispute with Victim over refusal to pay Barham for work performed. Evidence is relevant and admissible if it tends to establish or make more or less probable a fact in issue or a matter in controversy. Rule 401 & 402, SCRE; State v. Wiles, 383 S.C. 151, 158-59, 679 S.E.2d 172, 176 (2009). The evidence was relevant, because it made more or less probable a fact in issue or a matter in controversy, i.e. the dispute between Victim and Barham, which was part of the motive and malice for the crime, as testified to by Owen.

Barham argues State v. Bell, 430 S.C. 449, 845 S.E.2d 514 (Ct. App. 2020).[31] However, this case is distinguishable from Bell. The challenged evidence here was not offered to prove Barham stole Victim's tools, but that there was a dispute between Barham and Victim over non-payment by Victim of money owed Barham for work performed. Victim admitted to his daughter he owed Barham money and admitted he was refusing to pay Barham and told her the reason he was refusing to pay. Barham repeatedly ignores this in his brief, including **failing to mention**

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31 In Bell, this Court found reversible error in admitting a victim's statement to family members before her death that she believed defendant stole her panties. Victim's body was discovered behind an abandoned house with a plastic bag containing her panties next to her brutalized body.

anywhere the substance of the entire statement of Victim to his daughter. (BOA, p. 2-14). And, Barham ignores that Floyd Owen, the trigger man, testified part of Barham's motive for committing the murder **was** Victim's refusal to pay Barham for work performed. Barham also ignores Victim told Lourie he had paid Barham, and Barham told police, **there was no dispute at all** with Victim. Barham also fails to mention he brought out on cross-examination Victim had told Laurin's mother the exact same thing. Finally, in this case, the State did not try to present or prove Barham was a pervert, or a thief, as in Bell, and there was no bag of tools found next to Victim's body, as there was a bag of panties next to the victim in Bell. Here, the State argued 4 different witnesses testified and proved there was an ongoing *dispute* between Victim and Barham over non-payment of money for work performed. **(Tr. 1096-1111; 1131-42).**

Barham also argues the prior bad act was too remote. It was not on the facts of this case where the dispute leading to Victim's death began 3 months before and continued up to the murder, and was part of the motive and malice for the murder. Sweat, (prior CDV 2 months before murder was not too remote and was admissible); *See* Glenn, 328 S.C. 300, 492 S.E.2d 393 (statements by defendant 1 year before, were relevant where the defendant was accused of injuring victim in the same manner); Beck, 342 S.C. 129, 536 S.E.2d 679 (statement 4 months prior to crime – was highly probative as to a manifestation of an intent to commit a fatal attack upon victim; the evidence bore directly on defendant's identity as the killer as well as the establishment of motive, and was therefore admissible under Rule 401; the temporal attenuation between the defendant making the statement and the crime being committed, was of no moment in assessing its admissibility, and at most, 4 month lapse was a matter of weight of the evidence, which was for the jury). State v. Good, 308 S.C. 308, 417 S.E.2d 640 (Ct.App.1992), *affirmed*, 315 S.C. 135, 432 S.E.2d 463 (1993)(upholding admission of evidence relating to defendant's

burglary of his grandmother's home, which occurred less than 4 months of her murder, for which he was on trial); *See* State v. Lynch, 327 N.C. 210, 393 S.E.2d 811 (1990)(defendant's surreptitious entry into victim's home 1 month prior to her murder was admissible to show defendant's intent toward victim, and hence, his identity as the assailant); Masters v. State, 186 Ga. App. 795, 368 S.E.2d 557 (1988)(prior burglary 5 years earlier was admissible to prove intent and bent of mind in accused's trial for burglary and criminal damage to property). The facts of each murder case are different. Some cases arise out of facts occurring on the same day. In other cases, the murder arises out of a dispute that began long before the day of the killing. The evidence in this case was not too remote. *See* State v. Lemacks, 98 S.C. 498, 82 S.E. 879 (1914) (it was proper for the defendant to show how the quarrel arose.); Brooks, 79 S.C. 144, 60 S.E. 518 (prior difficulties between parties 8 months before crime admissible).

Finally, Barham's Rule 403 objection is without merit. This Court reviews a trial court's decision under Rule 403 pursuant to an abuse of discretion standard. State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009). "A trial [court's] balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise due to a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." Id., *quoting* State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-94 (Ct. App. 2001).[32] The trial court's determination should be reversed only in exceptional circumstances. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593. The determination of whether the danger of unfair prejudice substantially outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case. State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). The probative value of bad act evidence

32 *Overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

may be shown by whether a real connection can be drawn between the 2 incidents, and whether the evidence is relevant to a material issue. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). Given the entirety of the statement of Victim to his daughter, and its context, the prejudice, if any, was minimal. The jury knew Victim and Barham worked together, and as pointed out by the defense, Barham could simply have picked up Victim's tools by mistake. As the court correctly found, under Rule 403, SCRE, the probative value outweighed any prejudice because the statement proved the dispute between Victim and Barham, was connected to and corroborated other witnesses' testimony and text messages to the dispute; and, in this statement Victim himself admitted he owed Barham money but was refusing to pay for Victims own reasons. Owen testified this dispute was part of the reason Victim was murdered. The statement proved both malice and motive. Additionally, Victim told Lourie he had paid Barham, but Barham told others [Andrew, Jenny, and Owen], Victim refused to pay him. Further, Barham denied to police and on direct examination there was any dispute with Victim, making the evidence even more probative. Finally, there was extensive un-objected to testimony of Barham's bad character, as discussed below. Judge Benjamin correctly ruled the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. Holland, 385 S.C. 159, 682 S.E.2d 898. Barham has failed to show an abuse of discretion in admitting this evidence. Id.

Harmless Error

Regardless, even if the trial judge erred in admitting this limited testimony, it was harmless beyond a reasonable doubt where it's effect was minimal given the entire record and it was cumulative to other testimony of Barham's bad character testified to *over and over again* **without objection**. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445, 488 (2003)(stating

erroneous admission of prior bad act evidence is harmless beyond a reasonable doubt if its' impact is minimal given the entire record.); State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006)(admission of prior bad act is harmless where its' admission was minimal, it is dissimilar to the crime for which defendant is on trial, and other bad acts of defendant were admitted without objection); State v. Broaddus, 331 S.C. 534, 605 S.E.2d 549 (Ct. App. 2004)(any error in admission of prior bad act testimony is harmless where it is cumulative to other objected to testimony properly admitted); State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006)(detective's testimony was based solely on informants statements; such was hearsay, and not admissible under any exception. Although improperly admitted, defendant has not demonstrated reversible error, there being no prejudice, where other witnesses testified to same or similar facts).

Here, the testimony was not offered or argued by the State to prove Barham actually stole Victim's tools, but that there was a dispute between Victim and Barham over money owed Barham for work performed, and Victim acknowledged to his daughter he owed a monetary debt to Barham that Victim was refusing to pay. (Tr. 1096-1111; 1131-42). Further, Barham brought out on cross-examination that Victim told the witness' mother the same thing, i.e. Barham had stolen his tools and Victim was not paying Barham the money Victim owed him until Barham returned the tools. This testimony was before the jury without objection and was elicited by Barham. Further, as the defense pointed out, and the record shows, Victim and Barham worked together on numerous construction jobs, so Barham could easily have picked up Victim's tools by accident or had them because the 2 men worked together and Victim wrongly or mistakenly believed Barham stole his tools. The jury would have understood this. Finally, the remainder of Victim's statement to Laurin would have been before the jury: Barham was going to bring Victim's tools back and Victim was not going to pay Barham until he did. The impact of the

testimony "Brandon stole my tools" was minimal to the entire case. What was important was the dispute, which was testified to by numerous witnesses, and to which Barham now admits in his brief. (BOA, pp. 2-14). And, the State never argued *Brandon stole my tools* as propensity evidence in its closing argument. It only argued Laurin's testimony corroborated other witnesses' that Victim owed Barham money for work performed and was refusing to pay, part of Barham's motive and malice for committing the crime. (Tr. 1096-1111; 1131- 42). Haselden, 353 S.C. 190, 577 S.E.2d at 488 (erroneous admission of prior bad act evidence is harmless if its' impact is minimal given the entire record.); Broaddus, 331 S.C. 534, 605 S.E.2d 549 (any error in admission of prior bad act testimony is harmless where it is cumulative to other testimony properly admitted); *see* State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1990)(finding harmless court's admission of prior bad act evidence where it was minimal).

The prior bad act which Barham complains off, "Brandon stole my tools," is also *dissimilar* to the crime for which he was on trial. Nothing was taken or stolen from Victim's residence. Victim was shot in the back of the head execution style. The murder was not theft or robbery related. Someone simply wanted Victim dead. There was no testimony Barham committed the murder because Victim accused him of stealing his tools, but all the testimony was Barham committed the murder because Victim would not pay Barham for work Barham had performed and Victim was abusing his mother's assets. Pagan, 369 S.C. 201, 631 S.E.2d 262 (where prior crime or bad act is dissimilar to crime for which defendant is on trial, prejudicial effect is not enhanced and admission is harmless) *comparing* State v. Brooks, 342 S.C. 57, 62-63; 533 S.E.2d 325, 328 (2000)(where bad act is similar to one on trial, prejudice is enhanced).

Further, the challenged testimony was cumulative to other testimony of Barham's bad character testified to *over and over again.* One witness testified Barham was always getting in

trouble, but he got out of trouble by keeping his mouth shut. Another witness testified she was with Barham and Owen the night before the murder and Barham was doing drugs, meth and marijuana. Barham admitted in his recorded statement he was doing cocaine the night before Victim's murder. Jenny Baker testified Owen and Barham bragged they had beat up a witness who knew they were connected to Victim's murder. Owen testified to Barham doing drugs the night before Victim's murder, and it was cocaine. Owen testified to a prior burglary and larceny he and Barham committed. Barham admitted he was arrested in 2007 for burglary. Owen also testified he stayed away from Barham and Victim for several years because he, Owen, was trying to straighten out his life. Barham told police and testified his fellow family members accused him of mismanaging or stealing from his mother's bank account and as a result the power of attorney was taken from him and given to another. Barham admitted in his statement he did drugs when the opportunity presented itself and he had previously been arrested for DUI and a gun charge. Jenny testified that on 1 occasion, she had money stolen from her purse in her bedroom and her internal security cameras showed it was Barham and Owen who went in her room at the time the money was stolen. There was testimony Barham was arrested on a bench warrant for failure to pay a fine. An investigator testified *and* Barham admitted he was also in jail due to an allegation he had not returned funds belonging to a customer of his business. Andrew testified that 1-2 weeks before Victim's death, Barham and Owen called him threatening to harm Victim and both men had been drinking and doing drugs at the time of the phone call. Inv. Reese testified he interviewed several witnesses who only had negative or derogatory things to say about Barham or nothing at all. Andrew left a voice mail on Barham's phone reminding Barham that Barham and his friend Mike had swindled Andrew out of money on a prior occasion. Finally, Barham elicited similar testimony from Laurin, i.e. Victim had told Laurin's

mother Barham stole his tools and Victim was not going to pay Barham until he returned them. As a result, the admission of Victim's statement to his daughter, that *Barham stole his tools*, if error, was harmless beyond a reasonable doubt.[33] Pagan, 369 S.C. at 212, 631 S.E.2d at 267-68 (erroneous admission of prior bad act evidence had minimal impact "when numerous other bad acts ... were properly admitted."); Broaddus, 361 S.C. 534, 605 S.E.2d 579 (improper 404(b) evidence, not part of the *res gestae* of the crime or motive, was harmless given other evidence of bad acts or bad character of defendant admitted without objection and properly in evidence.); State v. Richardson, 358 S.C. 586, 596-97, 595 S.E.2d 858, 863 (Ct. App. 2004)(if testimony constituted "improper character evidence," any error in its admission was harmless given it was cumulative to other similar testimony admitted without objection);[34] Price, 368 S.C. 494, 629 S.E.2d 363 (improper hearsay was not prejudicial or reversible, others testified similarly).

Moreover, other competent evidence established Barham's guilt beyond a reasonable doubt including the testimony of the trigger-man Floyd Owen, the trigger-man's former girlfriend Jessica James, Jennifer Baker, Barham's uncle Andrew Kusko, Neal Lourie, the security video which captured Barham's truck lurking in the area at the time of the crime, and Barham's statement to police attempting to cast suspicion on anyone but he and Owen and denying any grudge or dispute with Victim. Pagan, 369 S.C. at 212-13, 631 S.E.2d at 268.

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33 The facts set forth in this paragraph are contained at the following trial transcript pages and in the following exhibits: **(Tr. 450; 567-74, 627-28; 914-43; State's Ex. 157; 601-05; 634-35; also 584-88 [proffer]; 981-96; 649; 1041-42; 1053-54; 604-05; 1039-40; 342-43; 1038; 461-62; 467; 865, ll. 9-18; Def.'s Ex. 4).**

34 *See also* State v. Kirton, 381 S.C. 7, 37-38; 671 S.E.2d 107, 122-23 (Ct. App. 2009)(same or similar); Martucci, 380 S.C. at 260-62; 699 S.E.2d at 613-614 (same); State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 555 (Ct. App. 2001)(similar).

ARGUMENT II.

The court correctly held Barham "opened the door" to admission of the testimony of a prior burglary Barham and witness Owen committed together where Barham in questioning a detective specifically accused witness Owen of lying about Barham 10 years earlier when Owen implicated Barham in the prior burglary to police and Barham connected the accusation to Barham's current accusation Owen was doing the same thing in the present case in implicating Barham in this murder.

What Occurred Below

As discussed, Floyd Owen was the trigger-man and testified at Barham's trial. On direct examination, the State did not bring out Owen's prior conviction for burglary in 2006/2007. On *cross-examination of Owen*, Barham chose **not to ask** Owen about his prior burglary conviction either, and Barham also **did not** lay an accusation that Owen was lying about Barham now, *like he [**allegedly**] lied about Barham 10 years ago* in the prior burglary case.[35] Owen's testimony was completed, and he was excused as a witness. **(Tr. 645-752).**

Later in the trial, during the cross-examination of Inv. Reese, Barham *specifically alleged* Owen was lying about Barham's involvement in the present murder just like Owen had [allegedly] lied about Barham's involvement in a prior burglary in 2007/2008. **(Tr. 891, ll. 3-18).** This was a false allegation.[36] Barham specifically alleged on cross-examination of Inv. Reese,

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35 Barham could have asked Owen the same questions he later asked Inv. Reese; but that would have given Owen the opportunity to respond to and rebut the false allegation. Barham made the accusation after Owen testified and to Inv. Reese in hopes no one would be able to respond to or rebut it. (See Tr. 645-752). Barham did not anticipate the State would recall Owen after the accusation was laid, or simply did not care. (Tr. 901-12; 952-64; 964-81).

36 Owen was arrested for the prior burglary based on his DNA and gave police a full written statement implicating himself and Barham in the burglary. The apartment and complex that was burglarized was *Barham's former residence*, not Owen's. The property Barham and Owen were trying to recover during the burglary *was Barham's* not Owen's. Owen pled guilty to the

that in 2007/2008, Owen committed a burglary and falsely told police Barham was involved to save Owen's own skin, and Barham was in fact innocent of that burglary and Owen was doing the same thing again in this case, trying to implicate Barham in a crime he had no involvement in. (Tr. 891, ll. 3-18)(See Tr. 886-90). The following is the relevant cross-examination:

> Q: Yes Sir. And **this isn't the first time that Floyd Owen has tried to bring Brandon's [Barham's] name into something is it**?
>
> A: I don't know about his past. I know about what he may have said to me, Floyd Owen, during his interview.
>
> Q: In fact, back in 2007, 2008, Floyd got charged with a burglary charge. Your familiar with that right?
>
> A: I don't know the entire case, or the particulars of it, but I do recall information like that, yes.
>
> Q: And at that point, he tried to bring Brandon's name into it, and **there was no credibility to that case either**?
>
> A: I don't know whether there was credibility or not. It was not my case.

(Tr. 891, ll. 3-18)(emphasis added). Leading up to this exchange, Barham also implied Owen was falsely bringing his name into something he had nothing to do with. (Tr. 886-90). The State had not brought out the prior burglary, staying away from the issue, and was not going to introduce anything about it, including Barham's involvement. (Tr. 102-869). However, because of *the accusation* **Barham made** cross-examining Reese, long after Owen had testified, that *Owen was lying now just like he had lied 10 years earlier, bringing Barham into something he did not do*, the State informed the Court it wished to recall Owen to rebut the accusation since Barham "opened the door" to this evidence by creating a false impression with the jury. (Tr. 900-12). The Court heard argument on the matter, reviewed the relevant case law, and a proffer of

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burglary but the Solicitor assigned the case chose not to proceed against Barham, for unknown reasons. (Tr. 891, 901-12; 952-81). The investigator being cross-examined had no knowledge of why the burglary charge against Barham was dismissed. (Tr. 891, ll. 3-18). The Solicitor who dismissed the case was not called as a witness in this case by Barham. (See Trial Transcript).

Owen's testimony relevant to this issue was taken. The Court then ruled Barham had "opened the door" to the admission of this evidence and it was admissible pursuant to State v. Young, 378 S.C. 101, 661 S.E.2d 387 (2008) and State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984). (Tr. 901-12; 952-64; 964-81). Thereafter, to rebut *the specific accusation* made by Barham of *Owen lying in the past about Barham's involvement in another crime just like he was doing in the present case*, Owen testified consistent with his proffer. He did not falsely accuse Barham in the past, but told the truth, and explained why the accusation of Barham's counsel was false.[37]

The post-trial motion

This issue was raised again in a post-trial motion for a new trial. The parties briefed the issue, and Judge Benjamin carefully reviewed the briefs, the relevant case law, and heard argument on October 14, 2015.[38] At the hearing's conclusion, Judge Benjamin ruled Barham had,

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37 Owen explained he and Barham did burglarize an apartment in 2007/2008 where *Barham had previously lived.* Owen had no reason to break into the apartment; they went there solely to get Barham's things Barham had left behind. He and Barham were friends, and one night were out drinking. Barham was driving and explained they were going to Barham's old apartment to pick up some things he had left there. Owen did not expect a burglary to occur. When they arrived, they parked and walked to Barham's former apartment. Barham could not open the door because the lock had been changed. They both decided to break in and did, and found the apartment empty. The property had already been moved. Barham told Owen about a storage room near the complex office. Barham had to show Owen where the room was because Owen had never been there. Owen actually broke the window cutting his hand. Barham's stuff was not there either. Barham stole a computer from this room as they left. Months later Owen was arrested. His DNA led to his arrest. When told of the charges, in a written statement, Owen immediately told police the truth about his and Barham's role in the crimes. Owen pled guilty because he was guilty. Barham was arrested for the burglary but never prosecuted. Owen did not know why that charge was dismissed, but he did not lie about his or Barham's role. He explained he had told the jury the same thing he told police when arrested for the apartment burglary. He was not lying then and he was not lying now; Barham was involved in both crimes, the burglary and this murder. (Tr. 981-996; See also Tr. 901-12; 952-64; 964-81).

38 As at trial, Barham misstated at the post-trial hearing what occurred at trial arguing when Owen testified the 1st time, Barham *merely impeached Owen with his prior burglary conviction,*

under our case law, opened the door to the admission of the prior burglary testimony, by his questioning and accusation on cross-examination, accusing Owen of trying to frame Barham in 2006/2007 *and* Owen was allegedly doing the same in the present case. As a result, it was proper for the State to re-call Owen to rebut the allegation made by Barham. As a result, Judge Benjamin held Barham was not entitled to a new trial on this basis. (Tr. Oct. 14, 2015, 1-13).

Standard of Review

Whether an attorney opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge. State v. Page, 378, S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). A trial court's decision to admit evidence pursuant to the doctrine of "opening the door" is reviewed for an abuse of discretion. State v. Simmons, 430 S.C. 1, 841 S.E.2d 845 (2020)(citation omitted).

The Law

As a matter of law, a party cannot complain as to matters brought out in response to his questions, where such prejudicial comments were solicited by his questioning, thus "opening the door" for the witness to then answer the question. State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991); State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008). "It is firmly established, that otherwise inadmissible evidence, may be properly admitted when opposing

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and for that reason he did not "open the door" to admission of the facts of the prior burglary. But, the record shows Barham never asked Owen about his prior burglary conviction the 1st time he testified nor did the State. Barham also mistakenly argued Judge Benjamin ruled on the admissibility of Owen's testimony about the prior burglary before Owen testified the 1st time. In fact, it was only after Barham opened the door *on cross-examination of Inv. Reese*, accusing Owen of attempting to frame Barham in present case just like he had [allegedly] done in 2006/2007 in the prior burglary, that the court ruled Owen could be re-called to testify a 2nd time, in rebuttal to the accusation by Barham. It was the State who explained what actually occurred at trial. (Tr. Oct. 14, 2019, 1-13; See Tr. 645-753; 891, ll. 3-18; 901-12; 952-64; 964-96).

counsel opens the door to that evidence." State v. Page, 378, S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008). Our Court has held "[w]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. Jackson, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005). "A party may introduce inadmissible evidence in rebuttal, when the opponent places a fact in issue." Simmons, 430 S.C. at 14, 841 S.E.2d at 852. Further, "[o]nce the defendant opens the door, the solicitor's invited response is appropriate, so long as it ...does not unfairly prejudice the defendant;" the solicitor's response must be proportional. Simmons, 430 S.C. at 14-15, 841 S.E.2d at 852, *quoting* Ellenburg v. State, 366 S.C. 66, 69, 635 S.E.2d 224, 226 (2006). But, the Court will not condone a thinly veiled attempt to show propensity by the open the door doctrine. State v. Heyward, 426 S.C. 630, 637, 828 S.E.2d 592, 595 (2019). *See* Bowman v. State, 422 S.C. 19, 42, 809 S.E.2d 232, 244 (2018)(affirmed in part because the State responded proportionally when defendant "opened the door."). However, the Court will allow introduction of evidence through the "opening the door" doctrine to rebut a false impression conveyed to the jury. State v. Northcutt, 372 S.C. 207, 221, 641 S.E.2d 873 (2007).

Analysis

Barham did not just "open the door" to this evidence, he "busted the door down." He cannot now complain. Robinson, 305 S.C. 469, 409 S.E.2d 404; Culbreath, 377 S.C. 326, 659 S.E.2d 268. As Judge Benjamin found, this case is strikingly similar to Stroman, 281 S.C. 508, 316 S.E.2d 395. There the defense in seeking to impeach a key state's witness asked him about prior thefts he had committed. He testified he had been involved in several burglaries. The State sought to bring out from the witness Stroman was involved in several of those. The trial court held Stroman opened the door to his participation in the prior burglaries by asking the witness

about his prior thefts. The Supreme Court agreed finding Stroman opened the door to admission of the details of the prior thefts including his participation in the prior burglaries by questioning the witness about his prior thefts. Stroman, 281 S.C. at 512-13, 316 S.E.2d at 398-99. The Court held: "Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially." Id. at 513, 316 S.E.2d at 399. *See also* Culbreath, *supra* (finding where the defense asked witness if drugs he sold before were fronted to him and he replied by defendant. When they further asked him if he had checked the drugs received from defendant, and if not, why, the witness stated he had dealt with defendant before, and never had to check them. The defense "opened the door" on this issue by its cross-examination of the witness on the subject); Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017)(where defense stated in opening and during cross-examination, victim had been told what to say, it was proper for the State to address the issue of witness-coaching during the forensic interviewer's testimony. When the defense raises coaching of a witness, testimony addressing the absence of witness coaching, although normally deemed to be improperly bolstering of a witness' credibility, is admissible); State v. Bryant, 356 S.C. 485, 589 S.E.2d 775 (Ct. App. 2003), *reversed on other grounds*, 369 S.C. 511, 633 S.E.2d 152 (2006)(where defense attacked a bouncer's credibility he kept a close eye on defendant the night of the murder, it was permissible to elicit on re-direct, in a prior incident, defendant threatened the bouncer, to explain why the bouncer kept a close eye on defendant the night of the murder to rehabilitate witness).

Here, Barham did not just "open the door," he busted it down. On cross-examination of Inv. Reese, Barham specifically *accused* Owen of trying to bring Barham into something he did not do, the present murder, just like Owen had [*allegedly*] done 10 years earlier in a burglary, to

save Owen's own skin. The accusation had to be rebutted by the State. Owen was the key witness in the case and the only witness to the agreement and conspiracy to commit murder. The only way the accusation could be rebutted was to recall Owen to the stand to testify to what actually happened 10 years earlier, and to explain to the jury he did not lie in implicating Barham in 2006/2007, because Barham was involved, and Owen had no motive to go to Barham's apartment in the first place. It was Barham's property they went there to retrieve. Owen did not even know about the storage room near the complex office and Barham had to show him where it was. This response was proportional to the accusation laid by Barham on cross-examination of the investigator. Simmons, *supra*. There was no abuse of discretion. Simmons.

Harmless Error

Barham alleges admission of the prior burglary was not harmless because he had to testify to rebut the same and the jury convicted him based on his testimony. (BOA). This argument is spurious. First, it was Barham who brought up the prior burglary. The State **had not mentioned it** or try to admit any evidence about it. **Barham brought the burglary into the case intentionally,** *in an attempt to disparage Owen's credibility* when Owen could not respond or rebut the allegation. And it was Barham who laid *the accusation Owen was lying now just like he lied back in 2007/2008.* Barham put the prior burglary before the jury, not the State. Second, there is no evidence Barham testified to rebut the prior burglary, he brought up. Barham was questioned by the court about his decision to testify. He did not indicate he was testifying because Owen testified about the prior burglary. And, Barham told the jury he testified for a different reason, not to rebut the prior burglary. And, his testimony about the prior burglary took up only 1 of 60 pages of his testimony, dealing with numerous other issues in the case, and was brief. And, 1 page of testimony, he cast further aspersions on Owen. Further, if Barham was

convicted on his own testimony, it was because he was not credible and was guilty of the crimes, not because of his denial of the prior burglary. Finally, purported juror interviews after trial cannot be the basis for appellate relief. Regardless, Barham testified he was not involved in the prior burglary and Owen had falsely accused him of being involved in the same, just like the present case. Barham testified he was arrested for that charge but it was ultimately dismissed because [allegedly] there was no evidence against him. The prior burglary was a swearing contest between Owen and Barham. The jury could determine who they believed, if either, about this tangential issue. The jury believed Owen that Barham was involved in the present murder, which is the only relevant issue. The admission of Owen's testimony about the burglary, Barham brought into the case by accusing Owen of lying about him in the past, was harmless. (Tr. 102-891; 1001-04; 1008-09; 1045; 1041-42; 1010-70). This issue has no merit.

ARGUMENT III.

This issue is not preserved for appellate review; and, even if it was, South Carolina has not formally recognized the cumulative error doctrine; and Barham has not shown error, much less cumulative errors, or that they denied him a fair trial.

This issue not preserved. Barham did not raise cumulative error to the trial court. State v. Durant, 430 S.C. 98, n. 3, 844 S.E.2d 49, n. 3 (2020)(since defendant did not raise cumulative error doctrine to the trial court, the issue is unpreserved for appeal); State v. Heyward 432 S.C. 296, 852 S.E.2d 452 (Ct. App. 2020)(same); State v. Beekman, 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013)(same). This issue is not preserved for appellate review and must be denied.

Also, our courts have not applied the cumulative error doctrine. Beekman, 405 S.C. at 238, 746 S.E.2d at 490 (our courts do not apply the plain error rule and refusing to allow a defendant to argue cumulative effect of several unpreserved matters deprived him of a fair trial); State v. Daise, 421 S.C. 442, 466, 807 S.E.2d 710, 722 (Ct. App. 2017), *citing* Beekman, *supra.*

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing a party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." Daise, 421 S.C. at 466, 807 S.E.2d at 722, *quoting* Beekman, *supra*. Even if the cumulative error doctrine was recognized, Barham must show more than 1 error; he must show several. Durant, 430 S.C. 98, 111, n. 6, 844 S.E.2d 49, 55 n. 3; State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1998)(under cumulative error doctrine, more than 1 error must be shown, multiple errors must be shown and the cumulative effect was prejudicial to defendant such that the outcome of the trial was affected). Barham must show more than errors under the cumulative error doctrine. He must show the errors adversely affected his right to a fair trial. Durant, 430 S.C. 98, n. 3, 844 S.E.2d 49, n. 3; Johnson, 334 S.C. at 93, 512 S.E.2d at 803; Daise, 421 S.C. 442, 807 S.E.2d 710. Barham has not shown error much less cumulative errors. Where appellant shows no errors, his cumulative error argument has no merit. State v. Tillman, __S.E.2d__, 2021 WL 609089 (Ct. App. 2021); State v. Thompson, 420 S.C. 386, 803 S.E.2d 44 (Ct. App. 2017). And, he has not shown any errors affected his right to a fair trial. This ground has no merit and must be denied.

CONCLUSION

For the above stated reasons, Barham's convictions and sentences must be affirmed.

Respectfully submitted,

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May 5, 2021

RECEIVED
May 05 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

Respondent,

v.

CHARLES BRANDON BARHAM,

APPELLANT.

Appellate Case No. 2019-001981

CERTIFICATE OF SERVICE

I, Donna D'Alessio, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Initial Brief of Respondent, Designation of Matter, and Certificate of Service has been forwarded to Appellant's counsel, Jack B. Swerling, Esq., via email today, May 5, 2021 to jacklaw@aol.com, and also to Katherine C. Goode, Esq. at kcg@carruthgoode.net

I further certify that all parties required by Rule to be served have been served.

This 5th day of May, 2021.

Donna D'Alessio,
Legal Assistant to J. Anthony Mabry
Senior Assistant Attorney General

Donna D'Alessio

From: Donna D'Alessio
Sent: Wednesday, May 5, 2021 4:17 PM
To: 'jacklaw@aol.com' (jacklaw@aol.com); kcg@carruthgoode.net
Cc: Anthony Mabry
Subject: Barham, Charles B. - Appellate Case No. 2019-001981 - Initial Brief of Respondent, Designation of Matter and Certificate of Service
Attachments: Barham, Charles Brandon - Appellate Case No. 2019-001981 - Initial Brief of Respondent, etc. 5-5-21 (02562652xD2C78).pdf

Dear Mr. Swerling and Ms. Goode:

Attached is a scanned copy of the Initial Brief of Respondent, Designation of Matter, and Certificate of Service regarding the above matter. The Initial Brief of Respondent and supporting documents are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well, and thank you.

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