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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KAYLA MARIE COOK,

APPELLANT

APPELLATE CASE NO. 2019-001417

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge err by failing to grant a mistrial when the lead detective informed the jurors that Appellant's older child, who did not testify, provided evidence that "reinforced" that Appellant caused the death of Minor?

II. Did the trial judge err by allowing the state to introduce evidence that Minor suffered an injury to her arm two-to-four weeks prior to her death where (1) the evidence was irrelevant, (2) the evidence was inadmissible character evidence, and (3) the probative value of the evidence was substantially outweighed by its prejudicial effect?

STATEMENT OF THE CASE

On June 20, 2019, a Lancaster County grand jury indicted Appellant for homicide by child abuse (2018-GS-29-1659). R. 897-898. The state, represented by Luck Campbell and Melissa Dawn McGinnis, called the case to trial before the Honorable R. Lawton McIntosh and a jury on August 12, 2019. R. 1. Ross Alan Burton and Devon Nielson represented Appellant. R. 1. During deliberations, the jury requested to be instructed again on the elements of homicide by child abuse "including the definition of extreme indifference." R. 874, ll. 19-22; R. 895. Thereafter, the judge re-instructed the jury on the offense of homicide by child abuse. R. 875, l. 8 – R. 876, l. 1. The jury found Appellant guilty as charged. R. 877, ll. 17-22. Judge McIntosh sentenced Appellant to life imprisonment without the possibility of parole. R. 890, ll. 3-4; R. 899.

On August 20, 2019, Appellant served her notice of appeal. This brief follows.

STATEMENT OF FACTS

Appellant met Timothy Scott "Scotty" Schroeder online in March 2017. R. 684, ll. 17-25. Approximately, two months later, Appellant and her two children moved in with Appellant and his daughter, Minor. R. 685, ll. 18-20; R. 686, ll. 12-14. After moving around a little initially, they settled in a house in Lancaster in November 2017. R. 45, ll. 8-13; R. 689, ll. 2-12.

On Sunday, December 17, 2017, Appellant and Scotty got into an argument that turned into a physical fight. R. 700, ll. 11-21. Thereafter, Appellant called her sister, Kerrin Cook, because Scotty[1] slammed her against the wall while the two fought. R. 497, ll. 11-23; see also R. 536, ll. 14-24; R. 700, ll. 22-24; R. 702, ll. 15-23. While visiting with her sister, Kerrin cut Minor's hair. R. 498, l. 18 – R. 499, l. 2; R. 703, ll. 13-20. Later that night, Appellant took her older child to her parents' house for an upcoming trip to Disneyworld. R. 504, l. 20 – R. 505, l. 9; R. 540, l. 24 – R. 541, ll. 14; R. 543, ll. 19-20; R. 544, ll. 7-12; R. 705, ll. 19-24; R. 707, ll. 6-9. Minor was unable to go because she used the bathroom on herself just before they were leaving. R. 705, ll. 19-24. Prior to Appellant's departure, she saw Scotty whipping Minor with a belt as punishment for soiling herself. R. 706, ll. 14-16. Appellant comforted Minor. R. 706, ll. 16-18. When Appellant left with her two children, Minor was alone with Scotty for several hours. R. 505, ll. 10-12; R. 708, ll. 5-7.

[1] On the day that Minor died, Scotty Schroeder had a scratch on his face presumably from the fight he had with Appellant. R. 536, ll. 4-7; R. 557, ll. 13-16; R. 702, ll. 2-6. However, he initially told police that a piece of metal from a saw scratched his face. R. 557, ll. 15-21. Scotty told the jurors that he lied to the police because he feared he would be arrested for domestic violence because he "put [his] hands on" Appellant during the fight. R. 557, l. 22 – R. 558, l. 3. Additionally, Scotty initially lied to the police about a hole that was in one of the interior doors. R. 560, ll. 6-12. At trial, he claimed that he and Appellant "were kind of arguing" and that when Appellant slammed the door, he stuck his foot out, which went through the door. R. 560, ll. 13-16. Later, he admitted he kicked the door because he was mad at Appellant. R. 568, ll. 17-24.

The following morning, Appellant woke Minor and instructed her to use the bathroom, which she did. R. 712, ll. 3-9. When Appellant checked on Minor, she realized Minor had defecated on herself prior to using the bathroom. R. 712, l. 19 – R. 713, l. 10. Appellant ran a bath for Minor. R. 713, ll. 6-7. Appellant also noticed a bruise on Minor's abdomen. R. 714, ll. 20-22.

While Minor was in the tub, Appellant began re-arranging the bedrooms for the children to accommodate a new toddler bed for her son. R. 715, ll. 10-15. Appellant heard a "thud," which she assumed was the dog jumping off the couch. R. 715, ll. 16-20. Her son then started pulling on her. R. 715, ll. 22-25. Appellant realized she had not checked on Minor in a while. R. 715, ll. 20-22. When Appellant checked on Minor, she found Minor on her back in the tub. R. 716, ll. 4-14. Appellant picked Minor up and wrapped her in a towel. R. 716, l. 21 – R. 717, l. 1.

Then, around mid-morning, Appellant's neighbor, Myrica Jenkins, knocked on her door. R. 302, ll. 24-25; R. 307, ll. 6-14; R. 581, ll. 15-20; R. 717, ll. 2-3. Appellant informed Jenkins that she was busy, and she would catch up with her later. R. 307, ll. 6-25; R. 717, ll. 9-13. Jenkins returned home. R. 308, ll. 9-11. When Appellant returned to Minor, she found her breathing, but not talking, which was not unusual for Minor. R. 718, ll. 2-7. Realizing that Minor was cold, Appellant cleaned and dressed Minor quickly. R. 719, ll. 3-11. Appellant then wrapped Minor in a blanket and set her on the couch with a movie playing. R. 719, ll. 12-19. Soon thereafter, Appellant heard Minor "making a really weird noise, like a – a gurgling noise." R. 719, ll. 22-24. Appellant immediately rushed to Minor. R. 719, ll. 24-25.

Appellant blew into Minor's mouth, which prompted Minor to take a breath, but Minor then paused. R. 720, ll. 13-16. Appellant realized something was wrong with Minor. R. 720, ll.

17-18. Unable to find her cell phone, Appellant ran outside to her neighbor's house for help. R. 720, ll. 19-20.

Miriam "Mindy" Myers lived next door to Appellant. R. 377, ll. 20-24. Appellant arrived at Myers' door. R. 380, ll. 1-17. Appellant asked for Myers' help because Minor was not breathing. R. 380, ll. 15-20. Myers and Appellant then ran to Appellant's home. R. 381, ll. 5-7; R. 720, l. 24. Jenkins, the neighbor who earlier knocked on Appellant's door, saw Appellant run to Myers' house. R. 308, ll. 12-22. Appellant was "in a state of panic." R. 308, ll. 24-25. Upon seeing Appellant and Myers return to Appellant's house, Jenkins followed. R. 309, ll. 1-2. Earlene Cochran lived with her daughter, son-in-law, and granddaughter in a home on Heath Circle near Appellant and Scotty. R. 44, ll. 13-25. Cochran's granddaughter often played with Minor and Appellant's children. R. 45, ll. 3-7; R. 582, ll. 13-17. Cochran also saw Appellant run out of the house, screaming that Minor was not breathing. R. 45, ll. 18-22; R. 63, ll. 5-7. Cochran was standing outside, smoking a cigarette at the time. R. 45, ll. 22-24. Cochran ran to Appellant. R. 45, l. 25.

Myers found Minor on the couch covered with a blanket. R. 381, ll. 8-10; R. 720, ll. 24-25. Myers "started just poking everywhere for a pulse." R. 381, ll. 16-17. She also slapped Minor's feet a couple of times. R. 381, ll. 17-18. Unable to detect any signs of breathing or a pulse, Myers "started poking at her abdomen." R. 381, ll. 20-24; R. 721, ll. 4-8 (Appellant testifying that Myers indicated Minor was breathing and had a heartbeat, but they were fading). Myers moved Minor to the floor in order to perform CPR. R. 382, ll. 1-5; R. 720, l. 25 – R. 721, l. 18. Jenkins called 911. R. 309, ll. 16-19. Myers and Cochran administered CPR until the police arrived. R. 47, ll. 5-25; R. 382, ll. 19-25; R. 383, ll. 4-8.

Neither Jenkins nor Cochran ever saw Appellant hit or abuse Minor in any way. R. 50, ll. 16-24; R. 53, ll. 10-12; R. 313, ll. 6-7; see also R. 510, ll. 9-15 (testimony of Appellant's sister that Appellant never hit the children, but used time out for punishment). Generally, Appellant punished the children with time outs. R. 50, l. 18 – R. 51, l. 1; R. 736, l. 21 – R. 737, l. 6. Appellant admitted she "might pop" her son's hand a little for punishment, but noted she generally used time out for discipline. R. 736, l. 21 – R. 737, l. 6.

The police responded to the call for help for Minor. R. 63, ll. 5-25; R. 721, ll. 1-2. The police decided not to wait on EMS to arrive. R. 65, ll. 6-9; R. 160, ll. 10-12. Instead, the officers took Minor to the hospital via patrol car. R. 66, l. 2 – R. 67, l. 2; R. 162, ll. 8-9; R. 721, ll. 13-15. Jenkins drove Appellant to the hospital. R. 310, ll. 23-24; R. 721, ll. 17-18. The officer who carried her noted Minor was dry, including her pajamas, but her hair was damp. R. 68, ll. 15-23. Minor arrived in the emergency room at 12:14 p.m. R. 75, ll. 10-13.

Hospital staff claimed Appellant informed them that Minor fell in the bathtub. R. 83, ll. 2-6; R. 133, ll. 10-20. The emergency room doctor who treated Minor indicated that if he had suspected a head injury, he "may have given a medication called Mannitol to decrease … intracranial pressure." R. 107, ll. 104. He admitted he could not say how successful such treatment would have been. R. 107, ll. 6-7. He noted Minor was cold all over, which indicated her injury occurred more than thirty minutes prior to her arrival at the hospital. R. 108, ll. 10-24. Despite life saving measures, Minor was pronounced dead at 1:32 p.m. R. 81, l. 7; R. 110, ll. 14-20.

The state's pathologist, Dr. Janice Ross, conducted the autopsy and concluded Minor died as a result of "cerebral edema … due to the blunt force injury to the head; and this was contributed to by the hemorrhage in the abdomen." R. 212, ll. 15-20; see also R. 469, ll. 4-9

(testimony of child abuse pediatrician on cause of death). According to Dr. Ross, Minor did not suffer any skull fractures. R. 220, ll. 14-15. Therefore, she concluded, Minor suffered a closed-head injury. R. 220, ll. 16-24.

In contrast, Dr. Nicholas Batalis, a forensic pathologist who testified on behalf of the defense, criticized Dr. Ross for failing to conduct the proper examination in order to "date that fracture" to Minor's right arm. R. 648, ll. 9-23. To rebut Dr. Batalis, the state called a different pathologist, Dr. Amy Durso. She agreed with Dr. Batalis that "when there are broken bones, especially in child abuse cases," she would remove the bone and conduct additional testing to "more accurately date" the injury, which was not done by Dr. Ross. R. 787, l. 24 – R.788, l. 7.

Additionally, Dr. Batalis explained Dr. Ross failed to conduct "two fairly critical examinations … in the work-up of the head injury." R. 649, ll. 4-7. Dr. Ross failed to remove the eyes or examine the eyes," which would be common practice in cases of suspected head trauma. R. 649, ll. 7-11. Examining the eyes would "include the nerves that lead from the brain to the eyes," and "actually sectioning the eyes themselves to see if there are any hemorrhages in the eyes; specifically to the retina, the back part of the eye." R. 649, ll. 11-15. This examination was critical because it can show potential abuse. R. 649, ll. 14-17. According to Dr. Batalis, "in any case of suspected child abuse with head trauma, it's standard practice to do an evaluation of the eyes." R. 649, ll. 18-20.

Additionally, Dr. Ross "sort of attempted" to conduct "a histologic, or microscopic evaluation of the brain." R. 649, ll. 20-22. This "sort of attempt" included only two pieces of brain, which did not use "special stains to really help elucidate that there were injuries present in the brain." R. 649, l. 22 – R. 650, l. 1. Further, Dr. Batalis indicated the brain should have been examined by a neuropathologist, who has specialized training in brain pathology." R. 650, ll. 2-

15. Dr. Ross conducted a "cursory neurological examination of the brain, microscopic examination of the brain, that frankly did not show any - - any injury." R. 650, ll. 17-20.

Although Dr. Batalis agreed with Dr. Ross that Minor's death resulted from the abdominal injury, he disputed the head injury contributed to her death at all. R. 656, ll. 17-23. Significantly, Dr. Durso, who was called to rebut Dr. Batalis, noted that while injury to the head is" always significant," she did not *focus* on Minor's head injury in her review of the autopsy. R. 783, ll. 13-18.

Dr. Batalis disagreed with Dr. Ross regarding the head injury, explaining he "disagree[d] with the contention that there [was] significant edema … and then furthermore that the head trauma was not the ultimate cause of death in this case." R. 651, ll. 4-7. He noted that the two photographs of the brain showed a normal brain. R. 651, ll. 16-18; R. 652, ll. 7-20. According to Dr. Batalis, any edema to the brain was "not significant enough" to have killed Minor. R. 652, ll. 2-6. While agreeing there were several bruises to the head, he noted there were no skull fractures present, which would have indicated the amount of force used to injure the head. R. 653, ll. 1-9. Further, he explained that "in almost all deaths due to head trauma," there is "bleeding around the brain." R. 653, ll. 10-12. Here, there was no bleeding around the brain. R. 653, ll. 10-19. "[T]he only evidence of head trauma" was "a couple of scalp contusions," which may not have been inflicted and could not explain the child's death. R. 653, ll. 20-25.

According to Dr. Batalis, the large bruise on Minor's lower abdomen "had a very distinct coloration to it," indicating it was not caused by an injury to Minor the morning of her death. R. 656, ll. 1-9. He estimated it was one to three days old. R. 656, ll. 1-9. He further explained there was "a continuous line of injury from that older-looking abdominal bruise, down to the retro-peritoneal hematoma" that caused Minor's death. R. 657, ll. 16-19. He reiterated the

injury could not have been caused on the morning of Minor's death. R. 657, ll. 20-24. He opined that Minor suffered the fatal injury "at least a day prior" to her death. R. 657, l. 25 – R. 658, l. 4. Nothing in his examination supported the state's theory that Minor died as a result of a beating on the morning of December 18, 2017. R. 658, ll. 13-16.

Dr. Batalis agreed with Dr. Ross that the abdominal injury was caused by "a very significant force." R. 662, ll. 3-6. However, he disagreed that Minor would have been in pain as a result of the bleeding into her abdomen. R. 663, ll. 9-25. He acknowledged the contusion would hurt, but the bleeding would not cause pain. R. 663, ll. 9-25. Further, Dr. Batalis explained that the retro-peritoneal bleeding Minor suffered was a slower bleed. R. 664, ll. 5-12. These types of bleeds "build up over time" until the person reaches "a critical point, and then become[s] symptomatic." R. 664, ll. 12-15. Finally, Dr. Batalis indicated he could not say whether the injury was inflicted. R. 670, ll. 1-8.

In rebuttal, Dr. Durso claimed that based on her review of the slides of the histologic sections, the internal injuries to the abdomen were recent, or within eighteen hours. R. 789, l. 18 – R. 790, l. 22. According to Dr. Durso, the hemorrhages on the slides from the organs and soft tissues showed no signs of hemosiderin, which forms when blood breaks down. R. 789, l. 18 – R. 790, l. 22. She further claimed that "if you see hemosiderin it's probably more than eighteen hours; if you don't see hemosiderin, it's less than eighteen hours." R. 790, ll. 4-6.

Challenging Dr. Batalis on the type of bleeding Minor suffered, Dr. Durso claimed Minor "would've bled out … within the hour after sustaining these injuries." R. 792, ll. 14-15. She asserted that "injuries to the liver" "bleed very quickly." R. 791, ll. 20-21. Further, Dr. Durso contended Minor would have been symptomatic after sustaining the injuries. R. 792, ll. 16-18.

According to Dr. Durso, Minor died within an hour or two of her arrival at the hospital. R. 793, ll. 7-12; R. 793, ll. 20-23; R. 795, ll. 10-12.

Finally, the child abuse pediatrician claimed Minor would have been symptomatic – including abdominal pain, not eating, not drinking, not walking, not moving – when she suffered the injury to her abdomen. R. 458, l. 18 – R. 459, l. 11. After sustaining the head injury, Minor would have suffered neurologic symptoms, including lethargy, irritability, and non-ambulatory. R. 459, ll. 11-16. The pediatrician claimed Minor suffered the abdominal injury anywhere from "minutes to an hour, … two at the outside" and the head injury anywhere from "minutes to hours" prior to death. R. 469, ll. 10-20. According to the pediatrician, the abdominal injury may have been caused by child abuse "[i]f there is no plausible accidental history." R. 484, l. 23 – R. 485, l. 5. In light of the pediatrician unable to find any accident occurring in Minor's history, the pediatrician opined the abdominal injury was the result of inflicted injuries. R. 485, ll. 6-8. Further, she concluded the injury to Minor's head were "considered child abuse." R. 485, ll. 9-11.

The day after Minor's death, Myers claimed Appellant "started talking about harming herself and killing herself, and wanted to be with [Minor]." R. 387, ll. 10-15; R. 730, ll. 18-25. Myers and Appellant's mother convinced Appellant to go to the hospital. R. 387, ll. 16-25; R. 727, ll. 16-17; R. 730, ll. 5-20; R. 731, ll. 2-7. On the day of Appellant's release from the hospital, December 29, 2017, she was arrested for homicide by child abuse. R. 732, l. 16 – R. 733, l. 7.

At all times, Appellant emphatically denied causing Minor's death. R. 736, ll. 3-4.

ARGUMENT

I. The trial judge erred by failing to grant a mistrial when the lead detective informed the jurors that Appellant's older child, who did not testify, provided evidence that "reinforced" that Appellant caused the death of Minor.

Standard of review

"In criminal cases, the appellate court sits to review errors of law only." State v. Hewins, 409 S.C. 93, 102, 760 S.E.2d 814, 819 (2014). The appellate court is "bound by the trial court's factual findings unless they are clearly erroneous." Id.

A trial judge's decision denying a mistrial will be reversed on appeal if the denial amounts to an abuse of discretion. State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). "Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." Id. at 457–58, 539 S.E.2d at 719 (internal quotations and citations omitted). Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013) (citing State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jennings, 394 S.C. 473, 477-478, 716 S.E.2d 91, 93 (2011).

Relevant facts

Trista Baird was a lieutenant in the child fatality unit for the South Carolina Law Enforcement Division (SLED). R. 589, ll. 2-8. According to Agent Baird, "[t]he child fatality

unit at SLED" was "mandated by law to investigate all child deaths." R. 589, ll. 9-12. Most counties have "a child death investigation task force," that is "paged out … when a child has died, or when there is a near death of a child." R. 589, l. 21 – R. 590, l. 4.

On December 18, 2017, Agent Baird went to Springs Memorial Hospital in response to a call from the Lancaster Police Department seeking assistance related to Minor's death. R. 592, ll. 19-21. Agent Baird detailed her investigation for the jurors, including her interviews of Scotty Schroeder, Tracy Schroeder, Scotty's mother, and Appellant. R. 593, ll. 4-12. Additionally, Agent Baird attended the autopsy. R. 598, ll. 4-6.

Thereafter, Agent Baird went to "the Palmetto citizens Against Sexual Assault Center and observed a forensic interview." R. 601, ll. 9-12. She explained that "[f]orensic interviewers are just trained interviewers that talk to children." R. 601, ll. 13-16. Thereafter, the following occurred:

> Q. And you can't say what she said, but was Phoebe [Appellant's older child] able to give the interviewer some information about this case?
>
> A. She was. The forensic in - -
>
> Mr. Burton: Objection, your Honor. None of what Phoebe said is admissible in this court under criminal.
>
> Solicitor Campbell: We agree.
>
> The Court: I understand that, and to the extent she's going to say what she said I'd sustain it. But if she's just asking preliminary it's okay. So overruled.
>
> Solicitor Campbell: We are. We're going directly from the case, your Honor.
>
> Q. Was she able - - you can't say what she said at all, okay? But was she able to give you information?
>
> A. Yes. The forensic interview, along with all the other evidence in the case, reinforced the fact that [Appellant] did cause [Minor]'s death.
>
> Mr. Burton: Objection, your Honor. This is ridiculous.

R. 601, l. 17 – R. 602, l. 9. Notably, trial counsel moved in limine to exclude the forensic interview of Phoebe, which was granted by the judge without opposition from the state. R. 14, ll. 15-22.

Thereafter, the judge heard argument outside the jury's presence. R. 602, ll. 10-11. Immediately, the judge admonished, "You can't do that. That's - - that's backdooring what was said all day long. You can't do that, you know that." R. 602, ll. 12-14. Apparently reading from an unnamed case, the solicitor defended Agent Baird's response: "Your Honor, in reading this it says that he based all his information, he did not directly relate any statements made by the child so I had the opportunity to cross-examine and that … to challenge the state's witness they said that they got information from the child and then took action, which was getting an arrest warrant. And they said that was okay." R. 602, ll. 15-23. The judge explained to the solicitor that the question posed by the solicitor, and the answer given, violated the hearsay rule, which was the objection. R. 603, ll. 1-4. Thereafter, trial counsel moved for a mistrial, explaining, "I don't think we can come back from that." R. 603, ll. 8-11.

The trial judge ruled it was "not manifested necessarily at this juncture," and noted he would "give a curative instruction." R. 603, ll. 15-17. Further, he indicated he would "strike that answer from the record" and "tell the jury they're not to consider it." R. 603, ll. 17-19. In short, he denied the mistrial request. R. 603, ll. 21-22. Trial counsel noted that "[i]n order to protect the record, [he] must accept [the judge's] curative instruction," but he objected that it was not enough. R. 603, l. 25 – R. 604, l. 2. When the jury re-entered, the judge informed the jurors as follows:

> Mr. Foreman, ladies and gentlemen of the jury, the witness's last response to the question posed to her is stricken from the record. You may not and shall not consider it at all in your deliberations, when you're told to begin your

deliberations. And that's your job to make sure that's not part of the jury's deliberation, okay, sir?

R. 607, ll. 6-12.

Discussion

According to the South Carolina Supreme Court, "[t]he less than lucid test is … declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). While a mistrial should be granted only when "absolutely necessary" and when a defendant can show error and resulting prejudice, a mistrial must be ordered when the incident "is so grievous that the prejudicial effect can be removed in no other way." State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013). Another way of describing when a mistrial must be granted is when there is "manifest necessity." State v. Bilton, 156 S.C. 324, 153 S.E. 269 (1930). This Court has held a "mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010). Thus, to warrant reversal, "the errors must adversely affect [the defendant's] right to a fair trial." State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999).

"Hearsay is not admissible." Rule 802, SCRE. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. In State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994), the South Carolina Supreme Court held "an out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." In Brown, two officers testified about receiving information before establishing surveillance, receiving complaints while in the neighborhood, and being familiar with the neighborhood. Id. According to

the Court, the "statements were not offered for their truth but rather to explain why the officers began their surveillance." Id.

Officers testifying regarding what an investigation reveals must tread carefully so as not to testify to hearsay. See United States v. Hinson, 585 F.3d 1328 (10th Cir. 2009) (finding a detective's testimony that she began investigating a particular individual due to her suspicion that the individual was selling drugs and that in an interview someone indicated the source of the individual's drugs was the defendant was hearsay and had no purpose except to prove the truth of the matter asserted – that the defendant was a drug supplier); United States v. Benitez-Avila, 570 F.3d 364, 369 (1st Cir. 2009) (explaining "[a] prosecutor cannot justify the receipt of prejudicial, inadmissible evidence simply by calling it 'background' or 'context' evidence"); United States v. Shiver, 414 F.2d 461, 463 (5th Cir. 1969) (noting an officer's testimony that an investigation "revealed" that a particular car had been stolen was "pure hearsay" because the officer could not have personal knowledge of this "fact"); United States v. Reyes, 18 F.3d 65, 69-71 (2nd Cir. 1994) (holding testimony of a customs' agent concerning statements by others implicating the defendant in a drug conspiracy was inadmissible hearsay, not "context" or "background").

"Out-of-court statements can be admitted as background for an investigation only if they provide information that is necessary to explain the government's subsequent actions, and it is not likely that the jury will 'consider the statement[s] for the truth of what was stated with significant resultant prejudice.'" Hinson, 585 F.3d at 1336 (quoting United States v. Cass, 127 F.3d 1218, 1223-1224 (10th Cir. 1997)); see also United States v. Becker, 230 F.3d 1224, 1228 (10th Cir. 2000) (providing that testimony that is offered only for relevant context or background is not considered hearsay because it is not offered for the truth of the matter asserted).

Recently, the South Carolina Supreme Court addressed a similar matter. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017). A police officer testified that during her canvass of a neighborhood after a shooting, "she talked to two people and learned that there were '[a]pproximately three or four shots' fired that night." Id. at 53, 810 S.E.2d at 20-21. The Court held the officer's "testimony was hearsay as it was based exclusively on what the witness told her during the neighborhood canvas and was offered to prove that King fired more than one gunshot." Id. at 66, 810 S.E.2d at 28. The Court found no exception to the prohibition against hearsay. Id. The Court determined it was "necessary to caution prosecutors against using 'investigative information' as it appears this is an attempt to circumvent the rules against hearsay.'" Id. at 66-67, 810 S.E.2d at 28.

The trial judge correctly sustained trial counsel's objection to Agent Baird's testimony. What Appellant's older child allegedly said during a forensic interview was impermissible hearsay evidence, and no exception applied. Although the judge struck the testimony and ordered the jurors to not consider it during deliberations, the instruction was insufficient in connection with the grave error. Frankly, no instruction could cure the error, and a mistrial was required.

"Generally, a curative instruction is deemed to have cured any alleged error." State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005). "While an instruction to disregard incompetent evidence usually is deemed to have cured the error in its admission, a mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced." State v. White, 371 S.C. 439, 446, 639 S.E.2d 160, 164 (Ct. App. 2006) (citing State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996)).

Appellant's trial was a classic "whodunnit?" There was no question Minor was under eleven years old and died as a result of blunt force trauma. The question for the jury was who inflicted the fatal injury – Appellant or Scotty. While the state's expert witnesses narrowed the window of time for infliction of the injury to when Appellant was the only adult with Minor, the defense presented an expert in forensic pathology who broadened the window to include when Scotty was the only adult with Minor. Further, the evidence showed Scotty was physically violent with Appellant the day immediately preceding Minor's death and in the hours just before he was alone with Minor. Thus, this was not a case of overwhelming evidence of guilt. Further, the defense forensic pathologist testified that he was unable to say to a reasonable degree of medical certainty that Minor's abdominal injuries, which caused her death, were inflicted, rather than accidental. Therefore, the jury was confronted with the additional question of whether Minor's fatal injuries were inflicted by someone or the result of a terrible accident.

Through Agent Baird, the state presented an additional witness against Appellant – her own daughter. While the state chose not to call the daughter as a witness during the trial, the state elicited the damaging testimony from Agent Baird. Specifically, Agent Baird claimed what daughter said during her interview "reinforced the fact that [Appellant] did cause [Minor]'s death." Although the trial judge instructed the jurors to disregard the testimony, there was simply no way for any juror to do so. According to Agent Baird, Appellant's own daughter told the forensic interviewer about matters and conduct that "reinforced" that Appellant caused Minor's death. The jurors simply could not ignore such powerful evidence in a case where the identity of the culprit was in dispute.

II. The trial judge erred by allowing the state to introduce evidence that Minor suffered an injury to her arm two-to-four weeks prior to her death where (1) the evidence was irrelevant, (2) the evidence was inadmissible character evidence, and (3) the probative value of the evidence was substantially outweighed by its prejudicial effect.

Standard of review

"In general, the admission or exclusion of evidence is a matter left to the sound discretion of the trial court, whose ruling will not be reversed on appeal absent an abuse of that discretion." In the Matter of Campbell, 427 S.C. 183, 190, 830 S.E.2d 14, 18 (2019). "'An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.'" Id. at 191 830 S.E.2d at 18 (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). "'To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.'" Id. (quoting State v. Commander, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2011)).

Relevant facts

During a pre-trial hearing, the trial judge expressed concern about evidence regarding Minor's broken arm. R. 11, ll. 5-11. Although the state agreed Minor's broken arm did not contribute to Minor's death, the state argued the evidence was admissible because Appellant "was in the presence of the child" at the time of the arm breaking. R. 11, ll. 12-24. Further, the state claimed the "pediatric forensic pediatrician" "would say that could because all the injuries happened when [Appellant] [was] alone with the child, that that did come into play as to some of her findings." R. 11, l. 24 – R. 12, l. 4. The state admitted it had no evidence to refute

Appellant's statement to police that Minor broke her arm by falling. R. 12, ll. 5-7. However, the state claimed a desire to present evidence that Appellant "did not take the child to get any treatment for the broken arm," which would have been painful according to the state's experts. R. 12, ll. 7-10. The state also claimed Appellant lied to other people about having sought treatment for Minor. R. 12, ll. 11-13. The state alleged Appellant's failure to seek "the proper care for the child" was "relevant to this case as a pattern of abuse in the days" prior to her death. R. 13, ll. 5-11. The judge withheld ruling on the motion and instructed the solicitor to proffer the testimony before presenting it to the jury. R. 14, ll. 2-13.

The state's first witness, Earlene Cochran, claimed she saw Minor "[a] few days" before her death. R. 48, ll. 16-20. When asked how she looked at the time, Cochran responded that "[o]ne of her arms was swollen." R. 48, ll. 21-22. Importantly, the state did not proffer this testimony or seek a ruling on the admissibility of this testimony prior to offering Cochran as a witness or asking the questions that elicited testimony about Minor's arm. The solicitor asked what Appellant indicated happened to cause the injuries. R. 48, l. 23 – R. 49, l. 1. According to Cochran, Appellant "said she fell," but provided no other details. R. 49, ll. 2-5. During cross-examination, defense counsel also asked Cochran about her observations of Minor's swollen arm and Appellant's indication that Minor fell. R. 52, l. 15 – R. 53, l. 3.

Alexander Vinuya treated Minor in the emergency room. R. 91, ll. 21-24; R. 95, ll. 5-13. Dr. Vinuya explained that he noted bruising on Minor's right arm. R. 111, ll. 21-22. Defense counsel objected based on his pretrial motions. R. 111, ll. 23-25. Initially, defense counsel focused on the testimony as it related to bruising because that was the testimony that had been elicited. R. 112, ll. 6-13. The judge overruled the objection, but he asked if the state intended to present evidence regarding Minor's arm fracture. R. 112, ll. 14-17. The state argued defense

counsel had "opened the door to that" when he questioned Cochran about Minor's swollen arm, which had been elicited during direct examination without a proffer preceding the testimony as the judge ordered. R. 112, ll. 18-21; R. 113, ll. 9-14. Thereafter, the state explained a desire to only question Dr. Vinuya about Minor's "swollen" arm. R. 113, ll. 1-3. The judge agreed the state could question Dr. Vinuya regarding the swelling of the arm, and defense counsel renewed his objection to exclude the testimony. R. 114, ll. 2-6. The judge indicated he was unsure about the admissibility of the fracture to Minor's arm because there was no proof Appellant caused the break. R. 114, ll. 7-9. However, he viewed the swollen arm as different from a broken arm. R. 114, ll. 10-11. Trial counsel maintained his objection to the testimony. R. 114, ll. 13-18.

Thereafter, Dr. Vinuya informed the jurors about bruising on Minor's right bicep, but he did not mention seeing a swollen arm. R. 115, ll. 2-8. However, Christy Blackman, the clinical charge nurse in the emergency room, claimed she saw "some swelling to the elbow and upper - - right upper arm." R. 135, ll. 20-23.

Next, the state sought to proffer the testimony of Miriam Myers, Appellant's neighbor, because she had "information about the arm." R. 149, ll. 13-23. During the proffer, Myers claimed she saw Minor walking around while holding her arm and elbow. R. 151, ll. 9-14. Myers then claimed Appellant told her that Minor "had hurt it by falling off the bed, and that she was telling people Mommy did it, and pointing at [Appellant]." R. 151, ll. 14-16. Also, when Myers helped Minor use the bathroom, she accidentally hit Minor's arm, which caused Minor to say "ow, ow, ow, ow, ow!" R. 151, ll. 22-25. This occurred within "two or three weeks" of Minor's death. R. 152, ll. 3-5.

Defense counsel moved to exclude the testimony, explaining that while it was uncontested that Minor's arm was broken, the state could not prove Appellant "had anything to

do with the broken arm." R. 152, ll. 9-14. Further, defense counsel objected to what Minor said because Appellant was not her biological mother. R. 152, ll. 14-18.

The trial judge questioned the state about any exception to the prohibition on hearsay that would permit a witness to testify about what Minor said. R. 152, ll. 19-22. Further, the judge questioned the state on the relevance of the testimony in light of statute requiring the death of the child to be caused by abuse. R. 152, l. 22 – R. 153, l. 10. Finally, the judge explained that it seemed to him "the probative value is gonna be outweighed by the prejudicial impact" of the testimony. R. 153, ll. 11-15.

The solicitor argued evidence of Minor's broken arm was admissible as a prior bad act. R. 154, ll. 5-6. Further, the solicitor argued she was only required to prove by clear and convincing evidence that Minor's broken arm occurred in Appellant's presence. R. 154, ll. 16-21. According to the solicitor, "part of the bad act [was] that she doesn't get treatment for them." R. 154 ll. 22-23. The solicitor claimed Appellant's failure to supply Minor with medical care for the broken arm was "just like that day where she doesn't get help for her immediately" and Minor died. R. 155, ll. 15-17. The judge took the matter under advisement. R. 156, ll. 16-18.

Later, the solicitor informed the judge that Appellant discussed Minor's hurt arm during her four-hour police interrogation. R. 176, ll. 12-17. While there was no mention of an actual break, Appellant discussed with police that Minor sprained her arm. R. 176, ll. 12-17. The trial judge ruled that if the state sought to introduce the evidence to show "an ongoing pattern" of "extreme indifference," then he would admit the evidence with a limiting instruction. R. 176, l. 18 – R. 177, l. 6. He noted the evidence was not being presented to show Appellant caused the break or that the break caused Minor's death. Instead, the evidence was presented "for the

limited purpose of showing that there was an indifference to her care by her failure to give care." R. 176, l. 25 – R. 177, l. 6. When defense counsel continued to object, the judge re-iterated that the evidence was admissible coupled with his limiting instruction. R. 177, ll. 11-20.

The next witness, Dr. Janice Ross, explained the autopsy revealed Minor suffered a fracture of her right upper arm, or the humerus. R. 193, ll. 6-9. The fracture was healing at the time of Minor's death. R. 193, ll. 6-9. This was the only fracture Dr. Ross found. R. 193, ll. 23-24. Finding it difficult to determine exactly when the injury to Minor's arm occurred, Dr. Ross estimated the fracture occurred "[a] few weeks" prior to her death. R. 194, ll. 3-5. Ultimately, Dr. Ross found "two major areas of injury" to Minor – "[t]he swelling of the brain and the hemorrhage in the lower - - right-lower abdomen." R. 211, ll. 13-16. According to Dr. Ross, the "two areas" that "contributed to her death" were the "cerebral edema, due to the beating - - due to the blunt force injury to the head; and this was contributed to by the hemorrhage to the abdomen." R. 212, ll. 15-20. Regarding the head injury, Dr. Ross opined Minor may have been able to survive it if she had received medical treatment "soon enough." R. 211, ll. 17-25. She estimated Minor died within two hours of receiving the injuries to her head and abdomen. R. 212, ll. 7-14.

There was no limiting instruction given before, during, or after Dr. Ross's testimony concerning Minor's broken arm.

The child abuse pediatrician, Dr. Susan Lamb, informed the jurors that the fractured arm occurred "at least two weeks prior" to Minor's death and did not contribute to Minor's death. R. 470, l. 21 – R. 471, l. 2. There was no limiting instruction given before, during, or after Dr. Lamb's testimony concerning Minor's arm. Additionally, the pediatrician never indicated

Minor's fractured arm contributed to her analysis or assisted her in reaching any of her conclusions.

Through one of the lead investigators, Jodi Sims, the state played Appellant's interrogation for the jury. R. 229, ll. 2-13; R. 231, ll. 23-24; R. 237, ll. 23-24; R. 238, ll. 10-11; R. 238, ll. 20-21; R. 239, ll. 20-22; State's Exhibit #36. During the interrogation, Appellant informed the police that Minor hurt her arm several weeks prior to her death. State's Exhibit #36. There was no limiting instruction given before, during, or after Sims' testimony, which laid the foundation for Appellant's statements made during interrogation concerning Minor's injured arm.

The state later recalled Myers as a witness. Myers claimed she saw last Minor "[p]robably the week before" her death. R. 383, ll. 22-24. At this point, the judge instructed the jury that the evidence it was about to hear regarding the right humerus was "to be received by [the jury] for the limited purpose, and the only purpose towards whether the State has met what the elements, the statute towards the elements, the statute requiring extreme indifference." R. 384, ll. 12-15. He promised to charge them "about that later, but any consideration of this testimony following in just a moment must be limited to that purpose and that purpose only." R. 384, ll. 15-18. Defense counsel renewed his objection. R. 384, ll. 21-22. Thereafter, Myers again informed the jury that she saw Minor "in the weeks prior" to her death, and that Minor complained when Myers hit Minor's arm. R. 385, ll. 3-5; R. 385, ll. 9-15. Myers claimed Appellant said Minor hurt her arm when she fell of the bed. R. 385, ll. 16-17. Further, Myers claimed Appellant told her that Minor "was saying that - - and she was saying Mommy did it, and pointing to [Appellant]." R. 386, ll. 1-4.

Tracy Schroeder was Minor's paternal grandmother. R. 394, ll. 2-3. Due to Minor's biological mother's drug addiction, Minor was placed in Tracy's custody. R. 395, l. 17 – R. 396, l. 25. Shortly after the custody change, Tracy and her husband moved in with Tracy's father-in-law to care for him due to his failing health. R. 397, ll. 12-22. Tracy informed the Department of Social Services (DSS) that she would stay in the home of Appellant and Scotty from the hours of 10:00 p.m. until 4:00 a.m. where Minor would reside. R. 399, ll. 1-3; R. 419, ll. 1-3. She further informed DSS that Appellant would watch Minor while Tracy worked. R. 399, ll. 1-6. However, Tracy never stayed a single night in that house. R. 402, ll. 5-6; R. 403, ll. 3-5. Even after Minor's death, Tracy continued the charade with the police. R. 414, l. 17 – R. 415, l. 3. She actually claimed she was in the home the night before Minor died. R. 414, l. 17 – R. 415, l. 3; R. 419, ll. 10-13. Eventually, she told the police the truth. R. 415, ll. 4-6. In light of Tracy's failure to abide by her agreement with DSS, she was charged with neglect, which was pending at the time of Appellant's trial. R. 416, ll. 2-7.

"Sometime around Thanksgiving," Tracy learned that Minor's arm was injured. R. 405, ll. 2—25. According to Tracy, Appellant and Scotty informed her that "it was a sprain, and they were keeping it wrapped." R. 406, ll. 1-5. When trial counsel renewed his objection, the judge instructed the jury as follows:

> Mr. Foreman, ladies and gentleman of the jury, let me remind you, any testimony with regard to the right humerus, or the right arm, is being received solely for the purpose of whether or not the state has presented any evidence with regard to the intent required under the statute for extremely [sic] indifference.
>
> I'll charge you further that you may not consider it as being - - this arm being caused by the defendant. That is not in the evidence towards that regard, and that - - and there's no evidence that that arm had anything to do with this child's ultimate death.

R. 406, ll. 11-22.

The state then sought to introduce a series of text messages allegedly between Tracy and Appellant regarding Minor's arm, and the judge overruled trial counsel's objection. R. 409, ll. 3-11; R. 892. According to the messages, Appellant informed Tracy that Minor's arm was badly sprained. R. 411, ll. 4-10; R. 892. Tracy was forced to admit she was unaware if Appellant or Scotty authored the text messages because it was undisputed the two used the same phone. R. 420, ll. 2-16.

Kerrin Cook, Appellant's sister, saw Minor's arm the day before she died. R. 499, ll. 21-24. She saw no "cause [for] an alarm." R. 499, ll. 20-24. There was no limiting instruction given before, during, or after Kerrin's testimony.

Scotty Schroeder, Minor's father, claimed that Appellant told him that Minor fell off the bed, onto possibly a toy, and sprained her arm. R. 528, l. 17 – R. 529, l. 9. Minor's arm was swollen with a small bruise "right at the elbow." R. 529, ll. 10-13. "The bruise went away, and the swelling went down." R. 563, l. 5. He did not seek treatment for Minor. R. 529, ll. 10-13; R. 530, ll. 5-8. When he questioned Minor about her arm, she said, "I'm okay, Daddy." R. 529, ll. 14-16. Scotty looked at Minor's arm and found no reason to worry. R. 530, ll. 9-15. Minor's arm was moving, and she used it to play with toys. R. 530, ll. 10-12. The few times she complained about her arm, Scotty simply kissed it, and she returned to playing. R. 530, ll. 13-15. There was no limiting instruction given before, during, or after Scotty's testimony.

Appellant's neighbor, Jennifer Cochran, recalled that at some unknown time, Minor's arm was swollen. R. 583, l. 24 – R. 584, l. 2. There was no limiting instruction given before, during, or after Cochran's testimony.

SLED Agent Trista Baird told the jurors that Appellant said "that at some point before [Minor's] birthday that she had fallen off the bed" injuring her right arm. R. 615, ll. 2-4. There was no limiting instruction given before, during, or after Baird's testimony.

Defense counsel called DSS worker Jennifer Adams as a witness. Adams met with Minor on December 7, 2017. R. 626, ll. 8-12. When Adams hugged Minor, she noticed that Minor "kind of shied away when [she] touched her arm on the back." R. 628, ll. 18-21. Adams asked Minor what happened, and Minor responded that she was jumping on the bed. R. 628, ll. 21-22; see also R. 635, ll. 15-18 (on cross-examination by the state, Adams testifying that Appellant told her Minor fell of the bed causing injury to her arm). Minor did not cry or "holler out" when Adams touched her arm. R. 629, ll. 2-5. Adams attached no importance to the arm. R. 629, ll. 13-14. There was no limiting instruction given before, during, or after Adams' testimony.

Contrary to Scotty's claims, Appellant explained she and Scotty were present when Minor fell off the bed and hurt her arm. R. 753, ll. 3-7. Minor's arm did not swell when she first hurt it. R. 734, l. 25 – R. 735, l. 1. Minor only complained about her arm when she played too hard or slept on her arm. R. 735, ll. 9-13. There was no limiting instruction given before, during, or after Appellant's testimony.

The state's reply witness, Dr. Amy Durso, a forensic pathologist, also observed a fracture to Minor's right humerus. R. 786, ll. 14-19. According to Dr. Durso, the fracture occurred two to four weeks prior to Minor's death. R. 786, ll. 14-22. There was no limiting instruction given before, during, or after Dr. Durso's testimony.

In her closing argument, the solicitor accused Appellant of lying to the police regarding Minor's broken arm. R. 839, ll. 9-21. She asked the jurors to recall the testimony indicating that

Minor was "telling people Mommy did that." R. 839, ll. 12-15. Finally, the solicitor argued that the "time line of events" relevant for the jury's consideration started with Minor's fall from the bed when she broke her arm. R. 851, ll. 15-17. This fall occurred "[s]ometime before Thanksgiving." R. 851, ll. 15-17. She reminded the jurors that the doctors "testified how painful that would be" despite numerous witnesses testifying that Minor complained little of any pain from her injured arm. R. 851, ll. 17-18.

During his charge on the law to the jurors, the trial judge failed to limit the jury's consideration of the prior bad act evidence in any way. R. 855, l. 24 – R. 871, l. 20.

Discussion

The state charged Appellant with homicide by child abuse. R. 897-898. Accordingly, the state alleged Appellant "cause[d] the death of [Minor], a child under the age of eleven, while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." See S.C. Code Ann. § 16-3-85(A)(1). Specifically, the state alleged that on December 18, 2017, Appellant caused the death of Minor, while committing child abuse or neglect, "and the child's death occurred from cerebral edema and/or hemmorage [sic] to the abdominal area, resulting in blunt force trauma to the head and/or abdomen, under circumstances manifesting the defendant's extreme indifference to human life." R. 897 – 898. Under the statute, "'child abuse or neglect' means an act or omission by any person which causes harm to the child's physical health or welfare." S.C. Code Ann. § 16-3-85(B)(1). Further,

> "harm" to a child's health or welfare occurs when a person: (a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment; (b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or (c) abandons the child resulting in the child's death.

S.C. Code Ann. § 16-3-85(B).

"Extreme indifference is in the nature of a culpable mental state … and therefore is akin to intent." State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002). "[I]ndifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care." Id. This Court held extreme indifference was "a mental state akin to intent characterized by a deliberate act culminating in death." Id. Under the statute, the state is not required to prove a defendant acted with the intent to harm; instead the state must prove the defendant performed a deliberate act that he or she knew would create a risk of death to the child. State v. Phillips, 411 S.C. 124, 135, 767 S.E.2d 444, 449 (Ct. App. 2014) aff'd as modified 416 S.C. 184, 785 S.E.2d 448 (2016).

Relevance

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Generally, "[a]ll relevant evidence is admissible." Rule 402, SCRE. "Evidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) (citing Toole v. Salter, 249 S.C. 354, 361, 154 S.E.2d 434, 437 (1967)). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004).

According to this Court, "evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." State v. Lyles, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct. App. 2008). Stated another way, "[e]vidence is relevant if it tends

to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears." Schmidt, 288 S.C. at 303, 342 S.E.2d at 403.

In Lyles, supra, this Court explained the analysis for determining the relevancy and admissibility of evidence. The state made a motion *in limine* to exclude any comments regarding drug use or the existence of drugs at the alleged victim's apartment. Lyles, 379 S.C. at 335, 665 S.E.2d at 205. Following a proffer, "[t]he state objected and the trial judge conducted an inquiry to determine the relevance of the testimony." Id. at 336, 665 S.E.2d at 205. Thereafter, the judge excluded the testimony finding it was not "'relevant in any fashion in this case.'" Id. According to this Court, "the testimony [did] not serve as a defense to any of the offenses charged in this case nor [did] it excuse or mitigate [the defendants'] actions. It was not probative of any issue material to reaching a verdict. This absence of a logical connection to the facts in debate ma[de] the evidence irrelevant and inadmissible." Id.

The Supreme Court dealt with multiple pieces of erroneously admitted irrelevant evidence in State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). The deceased, Joseph Barefoot, disappeared on May 25, 1997. Id. at 119, 551 S.E.2d at 243. Barefoot's body was found on September 16, 1997. Id. at 120, 551 S.E.2d at 243. Three of Saltz's friends provided statements implicating Saltz in Barefoot's death. Id. Appellant gave "seven consecutive statements" that were "highly contradictory" and one of which was "factually improbable." Id. at 120, 551 S.E.2d at 243-244.

The Court held the trial judge erred in admitting Saltz's attendance record showing he was absent from school on May 29, 1997. Id. at 127-128, 551 S.E.2d at 247-248. According to the Court, the fact Saltz "was absent from school on Thursday, May 29, 1997, did not tend to make 'the existence of any fact that is of consequence to the determination of the action more or

less probable than it would be without the evidence.'" Id. at 127, 551 S.E.2d at 247 (citing Rule 401, SCRE). The Court rejected the state's argument that the evidence showed Saltz's "whereabouts on that date were [as] unknown as" the Barefoot's. Id. at 127-128, 551 S.E.2d at 247 (alterations in original). "[T]he state presented no evidence Thursday, May 29, 1997, had any consequence to this case." Id. at 128, 551 S.E.2d at 247. Rather, "introduction of this irrelevant evidence encouraged the jury to speculate that Thursday, May 29, 1997, must be significant to the case in some way unknown to them." Id. at 128, 551 S.E.2d at 248. Also, "admission of this irrelevant evidence served to portray [Saltz] as a delinquent." Id.

It was undisputed that Minor's injured arm, which occurred two-to-four weeks prior to her death was wholly unrelated to her death. By all accounts – including the state's experts – Minor's injured arm could have resulted from an accident. There was no evidence that it was the result of an inflicted blow by Appellant or anyone else.

None of the witnesses who saw Minor's arm expressed alarm or concern. None of the witnesses who saw Minor's arm demanded that Minor receive medical intervention. Minor, who was a toddler, had a small bruise and a swollen arm, which Minor's father, Scotty, expressed no concern over a need for professional medical care. By all accounts, Minor was playing and behaving normally after the injury.

Even if the state were able to show that Appellant failed to provide Minor with adequate health care for her injured arm, the injury would not be relevant because the statute requires that the failure to supply aid result in death, and it was undisputed the injury to Minor's arm was unrelated to her death. Minor's injured arm and Appellant's failure to obtain professional medical care for the injury had no tendency to make the existence of any fact of consequence more or less probable.

Finally, Minor's injured arm and Appellant's decision to not seek professional medical care was not evidence of "extreme indifference" to Minor. Indifference requires a conscious disregard of a risk the person's conduct has created or a failure to exercise due care. In the context of homicide by child abuse, that indifference must culminate in death. Here, there was no question that Minor's death was unrelated completely from the injury to her arm. Further, there was no question that Appellant's decision to not obtain professional medical treatment for Minor's injury was unrelated completely from her death. Any alleged indifference Appellant displayed toward Minor's injured arm failed to culminate in Minor's death as required under the statute.

Quite simply, the evidence of Minor's injured arm and Appellant's failure to seek professional medical care for the arm was irrelevant.

Inadmissible character evidence

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. Rule 404(a), SCRE. "Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial." State v. Perry, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). "In any criminal case, however, evidence the defendant committed similar criminal acts has the inherent tendency to show this propensity." Id. "Proof that a defendant has been guilty of another crime equally as heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty." Id. (internal quotation omitted). "Thus, evidence of a defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior." Id. In essence, evidence of other bad acts is not admissible to prove a person's guilt; however, such evidence may be admissible to

show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

"To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." State v. Gaines, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008). "Whether evidence of other distinct crimes properly falls within any of the recognized exceptions noted is often a difficult matter to determine." Lyle, 125 S.C. at 406, 118 S.E. at 807. "The acid test is its logical relevancy to the particular excepted purpose or purposes for which it is sought to be included." Id. "[T]he dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the courts to rigid scrutiny." Id. Judges must resolve the question of admissibility "in the light of the consideration that the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors." Id. Therefore, "if the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected." Id.

In addition, if the defendant were not convicted of the prior bad act, evidence of the conduct must be clear and convincing. Gaines, 380 S.C. at 29, 667 S.E.2d at 731; State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. "Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

Although the state did not specifically state which exception it believed supported admission of Minor's injured arm, the argument appeared to suggest the injury was admissible to show

identity. One of the leading cases in South Carolina concerning the "identity" exception for the exclusion of prior bad acts is State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). Pagan was accused of killing Gloria Cummings, whose body was found on December 11, 1997. Pagan, 369 S.C. at 205, 631 S.E.2d at 264. Semen found on Cummings' body matched Stephen Blathers, who lived near where her body was found. Id. Blathers admitted sexual intercourse with Cummings, but denied killing her. Id. Instead, he blamed Pagan. Id. He claimed he heard screaming and saw a shadow, which he believed belonged to Pagan, whom he had seen with Cummings earlier on the night of her death. Id. Cummings' friend, Cooks, claimed in court that she saw Pagan kill Cummings, but she had previously been unable to identify Pagan and had never told the police she witnessed the killing. Id. at 206, 631 S.E.2d at 264. Pagan presented an alibi defense. Id. at 206-207, 631 S.E.2d at 264-265.

Another witness claimed that after Pagan was arrested and released on bond, approximately two years after Cummings' death, she was with Pagan in a car when the police attempted to pull them over. Id. at 207, 631 S.E.2d at 265. According to the witness, Pagan sped away, wrecked the car, and fled the scene. Id. When the witness ran into Pagan again, he apologized, saying he ran from the police because he did not have a driver's license and that he had been accused of killing a girl and was out on bond. He also mentioned the name of a potential witness against him. Id. Defense counsel objected to this witness's testimony, but the judge permitted it as evidence of identity under Rule 404(b), SCRE. Id.

The South Carolina Supreme Court held the judge erred in admitting the testimony. Id. at 210-211, 631 S.E.2d at 267. The Court explained the "bad act did not logically relate to the murder." Id. at 211, 631 S.E.2d at 267. "The failure to stop and the following explanation in no way identifie[d] [Pagan] as the person who murdered the victim." Id. The evidence "merely

illustrate[d]" that Pagan, "who had already been charged with the victim's murder and released on bond for that charge, knew he had been accused of murder and knew the name of a witness in the case." Id.

Minor's injured arm was *unconnected* to the fatal injuries, which occurred two-to-four weeks later. It was undisputed that the injured arm – and the lack of professional medical intervention – was unrelated to Minor's death. Further, it was undisputed that the state could not show Appellant caused Minor's arm injury; therefore, there was no logical connection to show that the person who caused the arm injury was the same person who caused the fatal injury. Simply, there was no logical or temporal connection of the arm injury to the fatal injuries. Importantly, to the extent the state claimed the evidence of Minor's arm injury was presented to show the identity of the person who failed to render aid for the arm injury was the same person who failed to render aid for the fatal injury, then the evidence did little to narrow down the identity question. In this "whodunnit?" the jury was presented with two possible assailants – Appellant and Scotty. Both were alone with Minor during the times when the fatal injuries may have been inflicted. The evidence of the alleged prior bad acts – causing the injury to the arm or failing to supply professional medical treatment – did not assist the jury in understanding a material issue in the case related to one of the five exceptions. See State v. Smith, 391 S.C. 353, 361, 705 S.E.2d 491, 495 (Ct. App. 2011).

The state may also argue Minor's injured arm and Appellant's failure to supply Minor with professional medical care was admissible to show a common plan or scheme. This argument, too, must fail. In order for the state to introduce evidence under the common plan or scheme exception to the prohibition on propensity evidence, the state must show a logical connection between the prior bad act and the charged offense. Perry, 430 S.C. at 34, 842 S.E.2d at 659. There was no

logical connection between Minor's injured arm or Appellant's alleged failure to supply adequate medical care to Minor due to the injury. See State v. Parker, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993) (holding there was no connection between the other crime and the charged crime in order to support the common plan or scheme exception where there was only a general similarity between the two); State v. Rivers, 273 S.C. 75, 78, 254 S.E.2d 299, 300 (1979) (holding evidence of prior bad acts should have been excluded where the Court was "[u]nable to clearly perceive the connection between the acts").

The state presented no evidence – or argument – that Minor's injured arm was logically connected to her fatal abdominal injury. Instead, the state sought to introduce the evidence to show that Appellant failed to render aid to Minor when her arm was injured, and therefore, she was likely the person who failed to render aid to Minor when she suffered fatal injuries to her abdomen. The state's own argument for admission showed it sought to introduce the alleged prior bad act for propensity. The state hoped the jury would convict Appellant based upon her alleged bad character for not rendering aid to Minor for her arm. Despite the state's admission that it could not show Appellant caused Minor's injury to her arm, in closing argument, the state reminded the jurors of the testimony from a neighbor that Minor was telling people that Appellant caused her injury. Thus, while the state could not prove Appellant caused the injury, the state hoped the jury would believe she did without any evidence at all to support the contention. Admission of the evidence under the common plan or scheme exception was error.

Finally, the state admitted he could not show Appellant caused Minor's injury to her arm. Again, the state could not even show the arm injury was non-accidental. Thus, the state failed to show by clear and convincing evidence – or any evidence at all – that Appellant caused Minor's injured arm. Further, the state failed to show by clear and convincing evidence that Appellant failed

to provide professional medical treatment to Minor because the state could not show that such treatment was necessary. The witnesses agreed that Minor's arm was swollen and bruised, but all agreed Minor acted normally, Minor's father – Scotty – explained Minor told him she was "okay." Minor used her arm to play and only claimed of pain in the arm if she hit it or slept on it. There was no requirement for Appellant to seek professional medical care for Minor due to the seemingly insignificant injury. Thus, to the extent the state could show Appellant failed to provide professional medical treatment to Minor, the state could not show that Appellant knew or should have known that such treatment was necessary.

To the extent the state may argue the evidence of alleged prior bad acts by Appellant was admissible as part of the *res gestae* of the crimes charged, this argument must fail. Evidence is admissible as part of the *res gestae* of the charged offenses when it provides part of the context of the crime or is necessary to the full presentation of the case or is "intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context." State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996) (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980) (internal citations omitted)). A prior bad act is admissible under the theory of *res gestae* when it is "so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other." Id. See also State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001) (stating "the *res gestae* theory recognizes 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. Gilmore, 396 S.C. 72, 83, 719 S.E.2d 688, 694 (Ct. App. 2011) (explaining "the State may prove the actions of the defendant

when those actions are part of the crime, not separate"); State v. Adams, 354 S.C. 361, 379-380, 580 S.E.2d 785, 794-795 (Ct. App. 2003) (permitting evidence of other crimes when the evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the '*res gestae*' "or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...' [and is thus] part of the *res gestae* of the crime charged").

Minor's arm was injured two-to-four weeks prior to her death. The injured arm was not part of the "environment" of the case and was not necessary to complete the story of the crime. The state could not show Appellant caused the injury or that it was even a non-accidental injury. The experts agreed the injury may have resulted from a fall – an accident. Further, any claim that Appellant's failure to supply Minor with professional medical treatment for her arm was part of the immediate context of the fatal injury is refuted easily by the time lapsed between the injuries and the fact that many others saw Minor with her injured arm and none demanded Minor receive professional intervention as a result.

The trial judge erred in allowing the jury to hear evidence about Minor's broken arm and Appellant's failure to seek professional medical treatment for the arm where the state failed to show how the evidence satisfied one of the exceptions to the rule prohibiting evidence of prior bad acts. Further, the trial judge erred because the state failed to show Appellant caused the injuries or that rendering aid was necessary by clear and convincing evidence. Instead, the jury was allowed to hear propensity evidence on which it based its guilty verdict. "'[E]vidence of

other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged.'" Perry, 430 S.C. at 32, 842 S.E.2d at 658 (quoting Lyle, 125 S.C. at 415-416, 118 S.E. at 807).

Danger of unfair prejudice substantially outweighs probative value

Finally, even if the evidence fit within one of the enumerated exceptions and was proven by clear and convincing evidence, the trial court erred in admitting it as "its probative value was substantially outweighed by the danger of unfair prejudice." See Rule 403, SCRE. Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011). The first step requires a determination of the probative value of the evidence. The second step requires an evaluation of the danger of unfair prejudice resulting from the introduction of the evidence. The third step requires balancing of the probative value and unfair prejudice. "When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case." Lyles, 379 S.C. at 338, 665 S.E.2d at 206. Unfair prejudice means an undue tendency to suggestion a decision on an improper basis, commonly, but not necessarily, an emotional one. Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)(providing that "[e]vidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one").

The starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "'Probative' means '[t]ending to prove or disprove.'" State v. Gray, 408

S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). According to this Court, "'[p]robative value' is the measure of the importance of that tendency to the outcome of a case." Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). "'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis.'" State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). According to the United States Supreme Court, "[t]he term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." Old Chief v. United States, 519 U.S. 172, 180 (1997). "Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion." United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003). Unfair prejudice means an undue tendency to suggestion a decision on an improper basis, commonly, but not necessarily, an emotional one. Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)(providing that "[e]vidence is unfairly

prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one").

Once a court has determined the probative value and the danger of unfair prejudice of the evidence, the court must balance the two. State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013). Only after balancing the probative value and the danger of unfair prejudice may the court determine if the danger of unfair prejudice outweighs the probative value of the proffered evidence as required by Rule 403, SCRE.

Minor's injured arm and Appellant's decision to not seek professional medical treatment for the arm were of low probative value in the homicide by child abuse case. As discussed supra, the evidence did not address any of the elements of the offense. Rather, the evidence posed a high danger of unfair prejudice as it was used to argue Appellant was of a bad character because she failed to realize Minor's arm was broken and seek professional medical treatment for it. The evidence posed the high danger of unfair prejudice that the jury would view Appellant's conduct related to Minor's arm as propensity evidence. The evidence posed the high danger of unfair prejudice that the jury would determine Appellant actually caused the injury to Minor's arm, especially in light of the state's closing argument asking the jurors to recall the testimony that Appellant told a neighbor that Minor said, "Mommy did it," in reference to her arm. Knowledge that Minor suffered a broken arm for two-to-four weeks prior to her death without professional medical intervention allowed the jury to render a verdict on an improper one – an emotional reaction to Minor's injury, not the evidence in the case.

Balancing the low probative value of Minor's injured arm against the extremely high danger of unfair prejudice required exclusion of the evidence. The danger of unfair prejudice substantially outweighed the probative value. The trial judge erred in allowing the jury to consider the evidence,

which was presented by numerous witnesses over the multi-day trial. The jury did not hear about the injured arm once or twice. The jury heard about the injured arm repeatedly from almost every witness who testified. This was not an error that appeared once and likely disappeared in the recesses of the jurors' memories. Rather, this was an error that permeated the entirety of the trial and left an indelible impression upon the jurors.

Limiting instruction

The judge's "limiting instruction" did very little to limit the jury's consideration of Minor's broken arm or to explain how the jurors were to use the evidence. Certainly, the instruction was not limited to using the evidence for one of the exceptions to the prohibition on character evidence. Instead, the instruction directed the jury to use the evidence to satisfy the elements of the offense. The judge not only permitted the jurors to use the evidence of Minor's injured arm as substantive evidence of the offense, but he instructed them that they must do so. As discussed supra, neither Minor's injured arm nor Appellant's failure to seek professional medical treatment for the arm in no way satisfied any elements of the offense, including extreme indifference. The statute requires that extreme indifference, which is defined as disregarding a risk the person created or failing to exercise due care, culminate in the child's death. No evidence or argument exists to show anything related to Minor's arm was related to her death.

Twice the judge provided a limiting instruction to the jury regarding the evidence of Minor's injured arm. Again, at best, the two instructions were confusing and unclear. First, the judge informed the jury that the evidence it was going to hear about the right humerus was being received "for the limited purpose, and the only purpose towards whether the state has met what the elements, the statute towards the elements, the statute requiring extreme indifference." R. 384, ll. 12-15. After promising to instruct them "about that later," he informed them that "this

testimony following in just a moment must be limited to that purpose and that purpose only." R. 384, ll. 15-18.

Second, the judge instructed the jurors that "any testimony with regard to the right humerus, or the right arm, is being received solely for the purpose of whether or not the state has presented any evidence with regard to the intent required under the statute for extremely [sic] indifference." R. 406, ll. 11-22. He charged the jury that they "may not consider it as being - - this arm being caused by the defendant. That is not the evidence towards that regard, and that - - and there's no evidence that that arm had anything to do with the child's ultimate death." R. 406, ll. 11-22.

The jurors were instructed to use the singled-out evidence to determine whether the state met the element of "extreme indifference." It was unclear if the jurors could use other evidence as it related to this element. It was also unclear whether the jurors were to use the evidence to decide if Appellant acted with extreme indifference concerning Minor's arm, which was not an issue in the case, or whether the jurors were to use the evidence to decide if Appellant acted with extreme indifference concerning an act or omission that culminated in Minor's death. If it were the latter, then the evidence was wholly irrelevant due to the lack of temporal and logical connections between the injured arm and death. The judge's confusing limiting instruction failed to right the wrong of introducing the irrelevant and improper character evidence, particularly where the danger of unfair prejudice substantially outweighed any probative value offered by the evidence.

CONCLUSION

Appellant respectfully requests this Court reverse her conviction and remand for a new trial.

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Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of July, 2021.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

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

July 15, 2021

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