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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Steven H. John, Circuit Court Judge

Opinion No. 2021-UP-384 (S.C. Ct. App. filed November 3, 2021)

THE STATE,

RESPONDENT,

V.

ROGER D. GRATE,

PETITIONER

APPELLATE CASE NO. 2019-000472

APPENDIX

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INDEX

INDEX

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Roger D. Grate, Appellant.

Appellate Case No. 2019-000472

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2021-UP-384
Submitted October 1, 2021 – Filed November 3, 2021

AFFIRMED

Appellate Defender Susan B. Hackett, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General W. Jeffrey Young, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General William Joseph Maye, all of Columbia, and Solicitor Jimmy A. Richardson, II, of Conway, for Respondent.

PER CURIAM: Roger D. Grate appeals his convictions and concurrent sentences of thirty-five years' imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime. On appeal, he argues the trial court erred in admitting prior bad act evidence to show habit and the absence of mistake or accident under Rules 404(b) and 406, SCRE. We affirm pursuant to Rule 220(b), SCACR.

Any error in admitting the testimony of the prior bad act was harmless based on other competent evidence conclusively proving guilt, such that no other rational conclusion could have been reached. *See State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice."); *State v. Brown*, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001) ("Whether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole."); *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" (quoting *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989))). At trial, eyewitness testimony showed the victim did not aggressively approach Grate. Additionally, Grate did not allege the victim was acting in a manner to suggest Grate actually believed he was in imminent danger of harm. *See State v. Slater*, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007) (stating that to establish self-defense, "the defendant . . . must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury[,]" and "if his defense is based upon his belief of imminent danger, [the] defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life"). Though Grate claims he acted in self-defense and accidently shot the victim, the evidence does not support this contention. Specifically, evidence regarding his concealed weapons permit, ownership of the gun used to shoot the victim, and use of it months prior to the shooting shows Grate was familiar with the gun used in the shooting and had training in using firearms. Based on the competent evidence the State presented at trial, we find any error in admitting the testimony of the prior bad act could not reasonably have affected the result of the trial.

AFFIRMED.[1]

KONDUROS, HILL, and HEWITT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

4

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROGER D. GRATE,

APPELLANT

APPELLATE CASE NO. 2019-000472

Appeal from Horry County

Steven H. John, Circuit Court Judge

Opinion No. 2021-UP-384

PETITION FOR REHEARING

On November 3, 2021, this Court affirmed Appellant's convictions and sentences in an unpublished opinion without the benefit of oral argument. On appeal, Appellant challenged the trial judge allowing the state to introduce evidence of a prior bad act allegedly committed by Appellant under the guise of evidence of habit. This Court held any error in admitting the evidence was harmless. Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter regarding numerous points overlooked or misapprehended by this Court in reaching its conclusion.

During a gathering at Appellant's home to celebrate Christmas, Appellant and his stepson argued. Darrell Doctor insisted on intruding upon the argument despite Appellant and his stepson repeatedly rejecting Doctor's meddling. Eventually, Appellant shot Doctor. Appellant defended against the charges, explaining that he shot his gun in self-defense and did not intend to kill Doctor.

Pursuant to the state's request, the trial judge allowed Terri Doctor to testify that a year prior to the shooting of Doctor, Appellant had pulled out a gun on Kentrez Hilton during a card game because Appellant was angry that he was losing. R. 94, ll. 1-7; R. 95, ll. 5-18; R. 123, l. 1 – R. 124, l. 15. Specifically, the state wanted to introduce this evidence to show that if Appellant "gets in an argument, he pulls a gun." R. 87, ll. 20-21; R. 88, ll. 13-14. According to the state, this was evidence of Appellant's habit. App. 87, ll. 18-20. The judge agreed the testimony was "proper under [Rule] 406, habit, routine, and practice." App. 95, ll. 12-15.

Although this Court did not rule directly on whether the evidence presented constituted improper evidence of habit, the opinion appears to do so. Nevertheless, a brief discussion of how Terri's testimony was not evidence of habit but was inadmissible evidence of an alleged prior bad act is necessary, particularly in light of the state's insistence, even on appeal, that Terri's testimony was admissible as evidence of habit.

"Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Rule 406, SCRE. "[H]abit or pattern of conduct is never to be lightly established, and evidence of examples, for purpose of establishing such habit, is to be carefully scrutinized before admission." Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 511 (4th Cir. 1977). "The reason for such an attitude toward evidence of habit is the obvious danger of

abuse in such evidence resulting from the confusion of issues, collateral inquiry, prejudice and the like." Id.

"It is only when the examples offered to establish such pattern of conduct or habit are numerous enough to base an inference of systematic conduct and to establish one's regular response to a repeated specific situation or ... where they are sufficiently regular or the circumstances sufficiently similar to outweigh the danger, if any of prejudice and confusion, that they are admissible to establish pattern or habit." Id. (internal quotations omitted). "In determining whether the examples are numerous enough and sufficiently regular, the key criteria are adequacy of sampling and uniformity of response." Id. (internal quotations omitted). "Proof of something done in a single occasion is hardly proof of a habit." Utility Control Corp. v. Prince William Const. Co., Inc., 558 F.2d 716, 721 (4th Cir. 1977).

The South Carolina Supreme Court "recognized the tension between Rule 406 (habit) and Rule 404 (character) and noted the difficulty in distinguishing between admissible evidence of habit and inadmissible character evidence." State v. Brown, 344 S.C. 70, 74, 543 S.E.2d 552, 554 (2001). "[T]he distinguishing feature of habit is its degree of specificity." Id. Habit is "situation-specific or specific, particularized conduct capable of almost identical repetition." Id. (internal quotations omitted). On the other hand, character is "a generalized description of a person's disposition or a general trait such as honesty, temperance, or peacefulness." Id. (internal quotation omitted).

Here, contrary to the trial judge's ruling, Terri Doctor's testimony that approximately one year prior to the shooting for which Appellant stood trial, Appellant pulled a gun on Kentrez Hilton during a card game was not evidence of Appellant's habit. As the Fourth Circuit explained,

evidence of something occurring a single time is not proof of a habit. Quite simply, the state presented evidence of Appellant's character masked as habit evidence, which is prohibited.

On appeal, the state argued the Terri Doctor's testimony was admissible as evidence of habit because it had a "tendency to prove a disputed and immensely important fact of the case." FBOR at 19. In other words, the state argued the testimony was *relevant* under Rule 401, SCRE, because the testimony went "toward answering the question of 'why' Appellant drew his gun." FBOR at 19. The state argued the evidence contradicted Appellant's claim that the death was the result of mistake or accident. FBOR at 19. While a discussion of absence of mistake or accident is better suited for consideration of Rule 404(b), SCRE, the state's relevancy argument may be addressed now.

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.

Here, the evidence offered by Terri – that Appellant allegedly previously pulled a gun on Hilton during an argument over a card game – was not relevant because it had no tendency to make the existence of any fact of consequence more or less probable. There was no dispute that Appellant pulled his gun and shot the deceased. There was no dispute the deceased interjected himself into the argument between Appellant and Appellant's stepson, Gregory Grate. There was no dispute that as a result of the deceased interjecting himself into the argument that Appellant was angry with the deceased and wanted the deceased to leave his home. Thus, the evidence presented through Terri Doctor had no tendency to make the existence of any fact more or less probable; instead, the evidence could only serve to inflame the passions and prejudices of the jurors and encourage them to base their verdict on Appellant's character.

Having determined Terri Doctor's testimony was improperly admitted as evidence of habit, it is now necessary to demonstrate Terri's testimony was not admissible under Rule 404, SCRE.[1] 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. "In any criminal case, ... evidence the defendant committed similar criminal acts has the inherent tendency to show this propensity." State v. Perry, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020). "[E]vidence of a

[1] In addition, if the defendant were not convicted of the prior bad act, evidence of the conduct must be clear and convincing. Id. "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). The state presented no evidence that Appellant had been convicted of the prior incident; thus, the state was required to prove by clear and convincing evidence that it occurred. The state fell far short of this burden.

defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior." Id. However, if the evidence serves some legitimate purpose that is not prohibited by Rule 404(b), SCRE, then it may be admissible. Id. "The rule provides examples of legitimate purposes, stating evidence of other crimes 'may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Id. at 30-31, 842 S.E.2d at 657; see also Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). 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.

According to the trial judge, Terri's testimony was admissible as an exception to the prohibition on character evidence because it fit within the exception of absence of mistake or accident. When the South Carolina appellate courts have approved the admission of evidence as falling within the exception of absence of mistake or accident, the evidence has shown clearly how the prior bad acts related to an inability of the criminal conduct to be the product of an accident or mistake. See e.g., State v. Martucci, 380 S.C. 232, 252-253, 669 S.E.2d 598, 609 (Ct. App. 2008) (holding evidence of prior child abuse was admissible to show absence of accident in light of the criminal intent element for homicide by child abuse for which Martucci stood trial). On the other hand, the appellate courts of this state have made clear that unless the prior bad act meets the strict test of logical and temporal relevancy, the evidence is not admissible. See e.g., State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000) (holding a prior forgery conviction was not admissible under the absence of mistake exception where the prior conviction was not logically relevant to the current charge of forgery against Brooks because it did not disprove Brooks' defense or prove that Brooks forged the check or knew it was forged).

"To the extent a trial court finds evidence of 'other crimes' does serve these dual purposes, the court must determine whether the evidence has sufficient probative force for serving the legitimate purpose that the evidence should be admitted, despite its inherent tendency to serve the improper purpose." Perry, 430 S.C. at 31, 842 S.E.2d at 657-658. "[T]o justify a finding that evidence of other crimes, wrongs, or acts is offered for a legitimate purpose, and thus should not be excluded pursuant to Rule 404(b), South Carolina Courts have required a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged. Id. "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." State v. Lyle, 125 S.C. 406, 406, 118 S.E. 803, 807 (1923). "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.

The incident described by Terri of Appellant allegedly growing angry with Hilton during a card game, arguing with Hilton, and then drawing his gun on Hilton was not logically relevant to the shooting death of the deceased. The prior act occurred with different individuals in an entirely different setting. Further, the prior act occurred over a year preceding the shooting. While the state

argued the prior incident showed Appellant knew how to handle a gun, the state failed to show that the gun allegedly used during the prior incident was the same gun used to shoot the deceased. To the extent the state wanted to show generally that Appellant was familiar with handling guns, the state established that Appellant carried a gun on his person frequently and that Appellant had a concealed weapons permit, which required him to complete a course in handling a gun. Therefore, the state's desire to present the prior bad act was for the purpose of establishing Appellant's bad character – not the stated purpose of showing his familiarity with the functionality of guns.

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.

The probative value of the alleged incident involving Kentrez Hilton at the card game was of low probative value. Appellant's alleged pulling a gun on Hilton during an argument over a card game over a year prior to the shooting failed to prove or disprove any fact necessary for the trial related to the shooting death of the deceased. Whether Appellant pulled the gun on Hilton did not assist the jury in rendering its verdict based purely on the evidence against Appellant in the shooting. Instead, the evidence presented a very high danger of unfair prejudice. Terri Doctor's testimony allowed the state to paint Appellant as a danger to society because he was a man who solved his minor conflicts with a gun. The evidence permitted the jury to base its verdict on emotions – fear – rather than the direct and circumstantial evidence against Appellant. Any attempt to balance the low probative value of Terri's testimony against the very high danger of unfair prejudice requires exclusion of the evidence.

This Court held any error in allowing the state to present this impermissible character evidence of habit was harmless. Appellant respectfully disagrees and requests rehearing. "As part of [the] harmless error analysis, [appellate courts] review 'the materiality and prejudicial character of the error' in the context of the entire trial." State v. Phillips, 430 S.C. 319, 342, 844 S.E.2d 651,

663 (2020). According to this Court, any error was harmless because "[a]t trial, eyewitness testimony showed the [alleged] victim did not aggressively approach [Appellant]," Appellant "did not allege the victim was acting in a manner to suggest [Appellant] actually believed he was in imminent danger of harm," and other evidence in the record did "not support" Appellant's contention that he acted in self-defense and accidently shot Doctor. In arriving at these fact-based conclusions, this Court overlooked important evidence in the record. Specifically, this Court overlooked Appellant's testimony that Doctor placed his hand in his pocket and began walking aggressively toward Appellant. See R. 228, ll. 1-25; R. 251, l. 21; R. 252, l. 20 – R. 254, l. 14; R. 256, ll. 5-6. Thus, there was eyewitness testimony that showed Doctor aggressively approached Appellant. Additionally, Appellant testified he felt "[t]hreatened" and feared Doctor would shoot him or beat him. R. 254, ll. 10-14. This evidence went directly to Appellant believing he was in imminent danger of harm, which this Court overlooked in its harmless error analysis.

Finally, in determining that the evidence did not support Appellant's claims of self-defense or accident, this Court noted Appellant had a concealed weapons permit, owned the gun used in the shooting, used the gun months prior to the shooting, and had training in using firearms. While this evidence may have supported an argument that Appellant did not use the gun in a careless way, this evidence could not defeat entirely a defense of accident and most assuredly could not defeat self-defense. Undercutting any contention that the impermissible evidence was harmless is the state's closing argument, which used Terri's testimony to establish Appellant had a propensity to solve his problems with a gun and asked the jury to find Appellant acted in conformity with that propensity when he shot doctor. The state's use of the evidence in this way is hardly surprising considering its argument that the evidence was admissible to show habit, and the trial judge's ruling allowing the jury to hear the evidence to show habit.

Specifically, the state recounted that Terri Doctor "said she [had] seen him pull a gun on somebody before." R. 298, ll. 17-18. Thereafter, the state argued Terri's version "either happened or it didn't. It can't be both ways. Either Mr. Hilton is lying or Terri is lying." R. 298, ll. 18-20. After explaining that the state "contend[ed] it happened," the state asked why Hilton, who had denied the incident when called as a witness by the defense, would lie. R. 298, l. 22. With no evidence to support the contention, the state told the jurors that Hilton lied because he feared Appellant: "He's proven that he's willing to shoot somebody. We know he is; that's undisputed. Why would Mr. Hilton lie? Because he's afraid of him, and rightfully so." R. 298, ll. 22-25. Later, the state returned to this theme. R. 302, ll. 3-7.

Based upon this closing argument and the overlooked evidence in the record, Appellant respectfully requests this Court rehear the matter.

Respectfully Submitted,

Lara M. Cady for:
SUSAN B. HACKETT
Appellate Defender

This 18th day of November, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER D. GRATE,

APPELLANT

APPELLATE CASE NO. 2019-000472

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is, jmaye@scag.gov; and Roger D. Grate, #379507, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of November, 2021.

Lara M Caudy for:
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

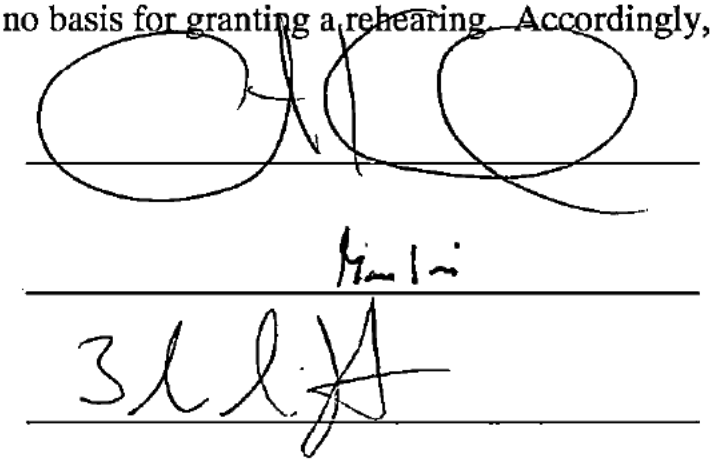
v.

Roger D. Grate, Appellant.

Appellate Case No. 2019-000472

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Susan Barber Hackett, Esquire
William Joseph Maye, Esquire
W. Jeffrey Young, Esquire

FILED
Dec 16 2021

Donald J. Zelenka, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable Steven H. John