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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RICHARD KENNETH GALLOWAY,

APPELLANT

APPELLATE CASE NO. 2018-001806

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

Opinion No. 5905

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Appellant, Richard Kenneth Galloway, respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court.

In September of 2017, a Greenville County Grand Jury indicted Appellant for four counts of criminal sexual conduct with a minor (CSCM) in the first degree and one count of lewd act on a minor. These indictments were for offenses alleged to have occurred in the 1980's and 1990's. R. 16, ll. 5-22; R. 577 – R. 580. Appellant was tried before the Honorable Perry H. Gravely and a jury, from May 14 – 16, 2018. R. 1. Appellant was convicted on two of the four indictments:

CSCM in the first degree and lewd act on a minor. R. 577, l. 21 – 578, l. 11. However, the jury found appellant not guilty of a second count of CSCM in the first degree, and it hung on a third count of CSCM in the first degree. R. 577, l. 5 – 578, l. 2. The court sentenced Appellant to consecutive terms of thirty years for CSCM in the first degree and ten years for lewd act on a minor. R. 562, ll. 18-22; R. 581- R. 582. A timely notice of intent to appeal was served and the direct appeal perfected.

On December 6, 2021, a three judge panel of this Court heard oral argument. On April 20, 2022, this Court affirmed Appellant's convictions in *State v. Galloway*, Op. No. 5905 (S.C. Ct. App. filed April 20, 2022) (Howard Adv. Sheet No. 14 at 50). Appellant respectfully asserts this Court overlooked and/or misapprehended the following points.

1.

The court erred where, during the defense's case in chief, it excluded the testimony of a blind expert in psychology and schizoaffective disorder that schizoaffective disorder could cause false memories, since the complainant was diagnosed with schizoaffective disorder prior to her claim that Appellant molested her.

It was undisputed that Complainant was diagnosed with schizoaffective disorder prior to contacting law enforcement with these allegations. R. 185, ll. 18-20. Dr. Price, who was offered as a "blind" expert in psychology, PTSD, and schizoaffective disorder, testified *in camera* that schizoaffective disorder could cause delusions, which result in false memories, which may produce false accusations. R. 420, l. 23 – 424, l. 18.

The trial court ruled that Dr. Price would be allowed to testify about PTSD and schizoaffective disorder generally but ruled that he could not testify about false memory. R. 430, ll. 6-19. Specifically, the court found the "nature of the testimony is beyond the standard for the

jury . . . I think that he's indicated that he has this knowledge that qualifies him as an expert. Generally, with exception that the substance is reliable as to anything relating to PTSD and schizoaffective disorder." R. 430, ll. 6-13. "But I am not going to allow any testimony on this whole false memory syndrome[1] or whatever it's called, you could open the door for every single case from that. So I'm not going to allow anything regarding false memory, repressed memory since he has not evaluated this particular person and be[en] able to diagnose[ ] that's what's going on here." R. 430, ll. 13-19.

This Court found that,

> We find the trial court considered the evidence for reliability. Although Dr. Price indicated schizoaffective disorder could result in false memories, he also acknowledged false memories could occur in the absence of the disorder, which casted doubt on a causal link. Furthermore, Dr. Price stated he would need to evaluate Victim, or at least review her records, to opine on whether Victim's memories of the alleged abuse were false. In addition, because of the absence of any evidence that Victim fabricated or otherwise imagined her recollections of her past abuse, its probative value would have been substantially outweighed by the possibility that it would confuse the issues or mislead the jury. Under these circumstances, we find the restriction on Dr. Price's testimony was within the trial court's discretion.

State v. Galloway, Op. No. 5905 (S.C. Ct. App. filed April 20, 2022) (Howard Adv. Sheet No. 14 at 55).

The trial court's decision that Dr. Price could testify, just not about what was helpful to the defense's case, was an abuse of discretion. In deciding this issue, this Court overlooked Appellant's argument that the exclusion of this evidence denied Appellant his right to present a

[1] Although the solicitor tried to couch Dr. Price's testimony on false memory in terms of a "disorder" or a "syndrome" during his cross-examination, Dr. Price noted this was not a "syndrome" and he avoided using those terms. R. 424, l. 20 – 425, l. 5.

defense."Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. 14, 19 (1967). "[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). "The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). The testimony was critical to Appellant's defense—Appellant pleaded not guilty; he denied the charges. He was constitutionally entitled to introduce evidence to support his plea of not guilty.

This Court found that "because of the absence of any evidence Victim fabricated or otherwise imagined her recollections of past abuse, its [Dr. Price's testimony] probative value would have been substantially outweighed by the possibility that it would confuse the issues or mislead the jury." Respectfully, this finding overlooks Appellant's argument that because he had pleaded not guilty, he had a right to present a defense—to provide the jury with information it could use to determine whether the allegations were proven beyond a reasonable doubt. Dr. Price's testimony would have aided the jury in doing so—its probative value was substantial and it was not confusing or misleading, so it was admissible under Rule 403, SCRE. Nevertheless, Rule 403 was not the basis of the trial judge's ruling.

This Court also misapprehended Appellant's argument on Dr. Price's qualification under Rule 702. Pursuant to Rule 702, SCRE, before the jury may consider expert testimony, the trial court must, *inter alia*, the trial court evaluate the substance of the testimony and determine whether it is reliable." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). However,

the trial court did not perform this analysis and instead stated that its reason for excluding testimony about false memory was because Dr. Price did not evaluate the complainant. R. 430, ll. 13-19. The court's failure to complete the Rule 702 analysis as to the reliability of Dr. Price's proffered testimony about false memory was error. Dr. Price was offered as a "blind" expert. He was not offered to opine on whether Complainant's claims were true, but to instead give the jury relevant information so that it could make that decision. Moreover, since the fact that Dr. Price was testifying as a "blind" expert did not prevent the court from admitting his other testimony about schizoaffective disorder, it was an abuse of discretion to find that his status as a "blind" expert precluded him from offering testimony on how memory can be affected by schizoaffective disorder.

This Court further overlooked Appellant's argument that, in contrast, the trial court allowed the testimony of another education witness—Shauna Galloway-Williams—who was a "blind" expert, when the evidence was offered by the State. The court's exclusion of Dr. Price's testimony here was manifestly arbitrary, unreasonable, and unfair. *See State v. Grubbs*, 353 S.C. at 379, 577 S.E.2d at 496 (court's ruling on the admissibility of an expert's testimony is an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair). That is particularly so, since the State's witness was allowed to give expert testimony about the impact of trauma on memory. R. 283, l. 4 – 284, l. 2; R. 331, l. 14 – 332, l. 4.

3.

The court erred where it allowed a witness to testify as an expert in child sexual abuse dynamics and disclosures, despite the witness' failure to comply with a subpoena duces tecum that commanded her to bring any research, publications or reports that she relied on

as an expert, since the state failed to prove the reliability of the substance of the expert's testimony.

It was undisputed Galloway-Williams was served with a subpoena duces tecum that commanded her to bring any "articles, publications, treatises, books, manuals, [and] data" upon which she relied. Nevertheless, Galloway-Williams did not bring the materials upon which she claimed she relied in formulating her opinions. Instead, she brought one article about forensic interviewing. R. 313, l. 22 – 314, l. 19. The admission of her testimony as an expert here was error, since the State failed to prove the reliability of the subject matter about which she testified.

Galloway-Williams was offered as a "blind," nonscientific expert and she was qualified as an expert in child sexual abuse dynamics and delayed disclosures. R. 291, l. 23 – 292, l. 10; R. 306, l. 24 – 307, l. 1; R. 322, ll. 17-20. During a proffer, Galloway-Williams said that her testimony was based on "decades of research." R. 306, ll. 10-12. In addition to delayed disclosures, Galloway-Williams's proffered testimony covered a number of topics: grooming; risk factors for childhood sexual abuse; and the impact of trauma on memory. R. 279, l. 4 – 280, l. 10; R. 281, ll. 5-23; R. 283, l. 4 – 284, l. 2.

After being qualified, Galloway-Williams gave expert testimony to the jury on a number of topics: delayed disclosures; grooming; risk factors for childhood sexual abuse. R. 316, l. 18 – 339, l. 20. Galloway-Williams also testified to the impact of time and of trauma on memory. R. 283, l. 4 – 284, l. 2; R. 331, l. 14 – 332, l. 4. (However, as noted in Issue 1 above, the defense's expert witness was not permitted to opine on the impact of schizoaffective disorder on memory).

Particularly relevant here, Galloway Williams testified before the jury that delayed disclosure, "It's very common. It's more common than not from my experience and from the training and research." R. 326, ll. 8-11. Although Galloway-Williams held out to the jury that she

was relying on research, defense counsel was unable to cross-examine her on the research underpinning her testimony since he was unable to obtain it due to the witness's noncompliance with his subpoena.

In *State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018), the South Carolina Supreme Court addressed an argument as to the reliability of this exact witness' testimony. In *Jones*, the defendant alleged "it was error to admit Galloway-Williams' testimony [about delayed disclosure and the role of non-offending caregivers] because there was no evidence demonstrating her opinions were accurate or reliable. Specifically, Jones alleges Galloway-Williams failed to identify or name studies any supporting her opinions, nor did she state whether any of the literature she relied on had been peer reviewed." *Id*. at 638, 817 S.E.2d at 271-72. In finding the trial judge did not abuse his discretion in admitting Galloway-Williams' expert testimony, the South Carolina Supreme Court reasoned that, "**Although Galloway-Williams did not identify by name the articles serving as the basis for her opinions, she indicated she could provide citations if given an opportunity to gather them. Additionally, she explained her opinions were supported by peer-reviewed journals and trade publications**, all of which were uniformly accepted and recognized by child sexual abuse experts and professionals." *Id*. at 639, 817 S.E.2d at 272.

In this case, this Court cited to *Jones* but concluded that,

> At trial, Galloway-Williams testified at length regarding her qualifications as a licensed professional counselor, provided a source with an overview of the topics she was expected to testify about, and explained it contained an extensive bibliography of the topics related to child abuse. We find the trial court acted within its discretion in qualifying her as an expert witness regardless of whether she fully complied with the subpoena duces tecum.

State v. Galloway, Op. No. 5905 (S.C. Ct. App. filed April 20, 2022) (Howard Adv. Sheet No. 14 at 57).

However, providing one article with "topics related to child abuse," was insufficient to comply with the subpoena and establish reliability in this case. This Court overlooked or misapprehended the fact that Galloway-Williams was the same expert witness as the witness in *Jones*, wherein the witness claimed she could provide peer-reviewed journals and publications backing her opinions if she was given time. Several years passed between the trial in *Jones* and this trial. Galloway-Williams's failure to comply with the subpoena in this case made her expert qualification an abuse of discretion under Rule 702, SCRE. Her failure to provide these materials pursuant to subpoena demonstrated that the subject-matter of her testimony was unreliable.[2] *See Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010); *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009); *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015).

The court abused its discretion given the unreliability of the subject-matter as demonstrated by the witness's failure to comply with the subpoena. This is particularly apparent when contrasted with the limitation on Dr. Price's testimony. *See State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting *Douglas*, 369 S.C. at 429-30, 632 S.E.2d at 848) (internal quotations omitted) (An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law"); *State v. Grubbs*, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct. App. 2001)) (court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair).

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[2] In *State v. Acker*, 435 S.C. 716, 729, 869 S.E.2d 873, 880 (Ct. App. 2022), Acker similarly argued that on reliability grounds it was error to admit Galloway-Williams's testimony where Galloway-Williams "did not provide the necessary specific research, publications, training information, or case studies on which she relied to support her testimony . . ." It is notable that Galloway-Williams has failed to produce these alleged materials in multiple cases.

The admission of Galloway-William's testimony was not harmless. There was no physical evidence and there were no eyewitnesses to the alleged molestation, which was alleged to have occurred over thirty years ago. The State's use of Galloway-Williams to testify about delayed disclosures under these circumstances was an important part of its case. The State also relied on Galloway-Williams' testimony on the topics of grooming, risk factors for childhood sexual abuse, and the impact of trauma on memory. *See State v. Mizzell*, 349 S.C. 326, 333–34, 563 S.E.2d 315, 319 (2002) (finding error is harmless beyond a reasonable doubt if the "reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt").

4.

The court erred where it admitted evidence that Appellant had physically abused the complainant's mother, where evidence of prior bad acts is limited to the uses enumerated in *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923) and Rule 404(b), SCRE, since the evidence did not fit within an exception to Rule 404(b) or *Lyle*.

Evidence that Appellant behaved violently against and threatened to kill the complainant's mother was evidence of prior bad acts. The State did not contend the evidence fit within a *Lyle* exception, and the court's admission of this evidence without conducting the requisite analyses under Rule 404(b) and Rule 403, was error. Although this Court agreed that the trial court's failure to conduct a balancing test under Rule 403, SCRE was error, it overlooked Appellant's argument that the evidence would not reach a 403 balancing test, since it did not meet an exception in 404(b), SCRE and *Lyle*. This propensity evidence should have been excluded under Rules 404(b) and Rule 403.

The State asked the complainant about the nature of her mother's relationship with Appellant. R. 114, ll. 19-23. The complainant said the two had physical fights, and defense counsel

objected pursuant to Rule 404(b), SCRE. R. 114, l. 25 – 115, l. 5. The solicitor replied that "the State does not seek to admit this under 404(b). This is not common scheme or plan evidence, Your Honor. This is relevant evidence." R. 115, ll. 7-10. The court ruled, "I'm going to allow the testimony. Objection overruled." R. 115, ll. 12-13. Pursuant to the court's ruling, the complainant testified that Appellant was an "angry" and "violent" person, and during one "really bad" incident Appellant threatened to kill her mother. R. 115, l. 19 – 116, l. 1. The complainant said Appellant frequently had "violent event[s]" and "violent outburst[s]." R. 116, ll. 4-8.

This Court concluded that,

> although we agree with the trial court admission of the evidence because we find it was relevant to Victim's delayed disclosure, we find the trial court erroneously failed to conduct a balancing test. However, we find the court's error was harmless because many other instances of Galloway's violence were admitted without objection. Victim testified without objection that Galloway broke into a hotel room and kidnapped her younger brother. Victim and Waldrop both testified Galloway drove his truck into the yard "doing doughnuts." Victim testified Galloway attempted to run her mother's car off the road and once chased them in the car. Victim also recounted an incident in which Galloway pulled her father from a vehicle, busted his face, and broke his ribs. Waldrop testified Galloway shot at their duplex, harassed her at work, and beat up her boss. Because so many other instances of Galloway's violence were admitted without objection, we find any error in failing to conduct a Rule 404(b) analysis when admitting Victim's initial testimony about Galloway's violence was harmless.

State v. Galloway, Op. No. 5905 (S.C. Ct. App. filed April 20, 2022) (Howard Adv. Sheet No. 14 at 59).

Testimony that Appellant behaved violently against the complainant's mother and threatened to kill her was prior bad act evidence that should have been excluded pursuant to Rule 404(b), SCRE, *Lyle*, and Rule 403, SCRE. "Evidence of other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged; however, such evidence may be admissible to

show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE." *State v. King*, 424 S.C. 188, 199, 818 S.E.2d 204, 210 (2018); *see also State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). The State agreed the evidence did not fall within a *Lyle* exception. The testimony did not go to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. The evidence was inadmissible pursuant to Rule 404(b), and this Court misapprehended or overlooked Appellant's argument that the evidence did not fall within a 404(b) exception.

"Once bad act evidence is found admissible under Rule 404(b), the trial court must then conduct the prejudice analysis required by Rule 403, SCRE." *State v. Wallace*, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009); *accord State v. Spears*, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013). Here, this Court concluded the evidence was "relevant to Victim's delayed disclosure," but that does not mean the evidence would pass a 403 balancing test. The trial court must determine "whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice." *State v. King*, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018). It would not have passed the balancing test. *See, e.g., State v. Johnson*, 293 S.C. 321, 326, 360 S.E.2d 317, 320 (1987) (much of prior bad act testimony "established no material fact or element of the crime for which appellant was on trial; instead, it served to prejudice the jury by focusing its attention on appellant's propensity to commit criminal acts").

This Court also overlooked or misapprehended Appellant's argument that the evidence was not cumulative. Although there was evidence of other bad acts admitted without objection, that testimony was so outlandish in nature, and unsupported by any documentation, that defense counsel made the strategic decision to use the "outlandish details" of those other bad acts to support his position that the complainant was "storytelling" in his closing argument. R. 501, l. 25 – 504, l.

8. However, the testimony that Appellant assaulted the complainant's mother and threatened to kill her was not outlandish and simply painted Appellant as a bad man with a violent character. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." *State v. King*, 424 S.C. at 201, 818 S.E.2d at 211 (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)). Here, the admission of this bad character evidence was not harmless beyond a reasonable doubt.

5.

The court erred where it admitted testimony that Appellant had written a letter to the complainant's mother apologizing for abusing the mother, where the original writing is generally required to prove the content of the writing, since the original writing was not offered.

The complainant's mother claimed that after she broke up with Appellant, he wrote her a letter in which he apologized for being abusive and tried to rekindle their relationship. R. 229, ll. 21-24; R. 233, ll. 12-18. Defense counsel objected to hearsay and pursuant to "the best evidence rule." R. 233, ll. 19-22. The solicitor said, "Your Honor, there is no letter, so there's no way to have better evidence—" R. 234, ll. 1-2. The court ruled, "I am going to allow it in I think based on state of mind." R. 234, ll. 7-8. The complainant's mother went on to testify that in the letter, Appellant "apologized for being mean to us and he said he wouldn't do it anymore and he really wanted us to come back." R. 262, ll. 12-14.

This Court determined that,

> The letter referred to abusive behavior against Victim's mother, not sexual abuse of Victim, which was the controlling issue. Thus, the original letter is not required because it referenced a collateral matter under Rule 1004(4), SCRE. Furthermore, even if the admission of the letter was error, we find it was harmless error . . . In this case, any error in admitting the letter was harmless as cumulative based

> on the many other instances of violence admitted without objection. *See Kirton*, 381 S.C. at 37–38, 671 S.E.2d at 122 (stating the admission of inadmissible evidence is harmless where it is merely cumulative to other evidence that is admitted without objection).

State v. Galloway, Op. No. 5905 (S.C. Ct. App. filed April 20, 2022) (Howard Adv. Sheet No. 14 at 60).

In deciding this issue, this Court overlooked Appellant's argument that the State failed to meet its burden as proponent of the evidence by showing *why* the letter was unavailable. Rule 1002, SCRE provides: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Rule 1004, SCRE provides that an original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

> (1) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
>
> (2) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or
>
> (3) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
>
> (4) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

In order to admit evidence of the contents of a letter without the original, the proponent of the evidence—the State—was required to show that the original was lost or destroyed, that the loss or destruction was not in bad faith, and that the original could not be obtained by any available judicial process or procedure, and it did not show these things. Instead, the solicitor only said,

"there is no letter," before the court ruled. *See Riggs v. Royal Beauty Supply, Inc.*, 879 S.W.2d 848, 850-51 (Ct. App. Tenn. E.S. 1994) (where witness simply stated "I'm sorry. I don't have the letter," the proponent of other evidence of contents of the letter failed to establish foundation under Tenn. R. Evid. 1004 and the witness's testimony about the letter's contents was properly excluded). Assuming *arguendo* that the evidence fell within the hearsay exception of a then-existing mental or emotional condition, the evidence was still admitted in violation of Rules 1002 and 1004, SCRE. The proponent of the evidence did not meet its burden to show what happened to the letter and explain why it could not be obtained by judicial process. The court's admission of testimony about the letter without performing an analysis under Rule 1004, SCRE, was error.

Next, this Court misapprehended the letter's import in finding pursuant to Rule 1004, SCRE that the letter related to a collateral matter rather than being closely related to a controlling issue. *See Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 580 (D. Md. 2007) (providing illustration of difference between controlling issue and collateral matter under Fed. R. Evid. 1004: a doctor testifying as an expert in a personal injury case can testify she is licensed to practice medicine without having to produce the license itself, but where a defendant is charged with practicing medicine without a license, his testimony alone that he has a license will not be accepted, as the license is closely related to a controlling issue).

The controlling issue in this case was whether Appellant molested Complainant, and propensity evidence was closely related to this controlling issue. Propensity evidence is generally inadmissible given its efficacy in convincing a factfinder the defendant is guilty of the crime charged since he has committed other bad acts. Therefore, propensity evidence was closely related to the controlling issue of whether Appellant was guilty. *See generally Michelson v. United States*, 335 U.S. 469, 475–76 (1948) (state may not show defendant's prior trouble with the law, specific

criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime because the evidence would "weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge").

This Court also misapprehended or overlooked Appellant's argument that he was harmed because the admitted evidence was not cumulative to other, separate bad acts because counsel made the strategic decision to use the "outlandish details" of those other bad acts to support his position that the complainant was "storytelling" in his closing argument. R. 501, l. 25 – 504, l. 8.

Although evidence of other, separate bad acts was admitted without objection during the trial, that testimony favored the defense in that it was outlandish in nature and unsupported by any documentation. Testimony that Appellant apologized for abusing the complainant's mother, however, was not outlandish and it painted Appellant as an abusive man. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." *State v. King*, 424 S.C. at 201, 818 S.E.2d at 211 (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)). Here, given the lack of physical evidence, eyewitness testimony, or other corroboration, the admission of propensity evidence of Appellant's abusive nature cannot be considered harmless beyond a reasonable doubt.

Respectfully Submitted,

s/ *Joanna K. Delany*
JOANNA K. DELANY
Appellate Defender

This 5th day of May, 2022.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD KENNETH GALLOWAY,

APPELLANT

APPELLATE CASE NO. 2018-001806

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Richard Kenneth Galloway, #376354, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 5th day of May, 2022.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT