

INDEX

INDEX ..... 1

TABLE OF AUTHORITIES ..... 2

ISSUE PRESENTED ..... 3

STATEMENT OF FACTS ..... 4

ARGUMENT ..... 5

TABLE OF AUTHORITIES

**CASES**

McFadden v. State, 342 S.C. 637, 539 S.E.2d 391 (2000)..... 7

State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000)..... 7

State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)..... 7

State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) ..... 7

State v. Morris, 289 S.C. 294, 345 S.E.2d 777 (1986)..... 6

State v. Pagan, 357 S.C. 152, 591 S.E.2d 646 (Ct. App. 2004)..... 4

**RULES**

South Carolina Evidence Rule 403..... 5, 6

South Carolina Evidence Rule 404..... 6

### ISSUE PRESENTED

The Court of Appeals erred by holding that the trial judge did not misinterpret Evidence Rule 403 by allowing the State to introduce evidence that, more than one year after the murder, petitioner had failed to stop for a blue light and then wrecked his car, later explaining to his passenger at that time that he had fled from the police because he was accused of killing the victim and was out on bail.

## STATEMENT OF FACTS

On July 23, 1998, a Florence County grand jury indicted Charles Pagan for murder after a single witness, Monique Cooks, identified him as the man she had seen beating to death Gloria Cummings in December 1997. Pagan's defense was alibi. In addition, he contended that the evidence strongly pointed to another individual, Stephen Blathers, as Cummings' killer. Judge L. Casey Manning presided at Pagan's jury trial on February 9 through 12, 2001. The jury found Pagan guilty of murder and the judge sentenced him to life imprisonment.

On direct appeal to the Court of Appeals, Pagan argued:

The judge violated Evidence Rule 403 by admitting evidence that, more than one year after the murder, appellant failed to stop for a blue light and wrecked his car, then explained to his passenger that he had fled from the police because he was accused of killing of the victim and was out on bail. Any slight relevance this evidence possessed was far outweighed by its prejudicial effect: a spurious inference that appellant's and statements were somehow proof of his guilt.

Brief of Appellant, p. 3. The Court of Appeals affirmed. State v. Pagan, 357 S.C. 152, 591 S.E.2d 646 (Ct. App. 2004). The Court denied rehearing by order dated June 25, 2004.

On September 23, 2004, Pagan petitioned this Court for writ of certiorari. The Court granted certiorari by order dated October 5, 2005.

## ARGUMENT

The Court of Appeals erred by holding that the trial judge did not misinterpret Evidence Rule 403 by allowing the State to introduce evidence that, more than one year after the murder, petitioner had failed to stop for a blue light and then wrecked his car, later explaining to his passenger at that time that he had fled from the police because he was accused of killing the victim and was out on bail.

Early one morning in December 1997, the partially-clothed, badly-beaten body of Gloria Cummings was discovered in a vacant lot across the street from the home of Stephen Blathers. ROA p. 2, l. 10 – p. 4, l. 24; ROA p. 217, ll. 8-9. But for the testimony of another prostitute, Monique Cooks, Blathers probably would have been charged with Cummings' murder. After all, his semen was found on Cummings and he ultimately admitted – but only after being confronted with the DNA evidence – that he had sex with Cummings shortly before she was killed. ROA p. 113, l. 17 – p. 114, l. 16; ROA p. 126, ll. 6-20; ROA p. 200, ll. 15-16.

In addition, Blathers and another man named Melton Campbell were seen together that night in the area. ROA p. 130, ll. 20-23; ROA p. 191, ll. 23-25; ROA p. 207, l. 9 – p. 209, l. 6. By all accounts, Pagan was alone. This fact is significant because, shortly before the murder, one witness saw two people chasing Cummings, who was screaming. ROA p. 498, ll. 4-15.

But Monique Cooks testified that she saw Pagan beat Cummings to death with a two-by-four after an argument concerning money and drugs. ROA p. 290, ll. 1-25; ROA p. 314, l. 12 – 316, l. 6; ROA p. 319, ll. 10-16. Pagan, on the other hand, consistently maintained that he had never met Cummings and was at home with his wife when Cummings was killed. ROA p. 85, ll. 13-25; ROA p. 89, l. 23 – 90, l. 7; ROA p. 507, l. 6 – p. 509, l. 8; ROA p. 719, ll. 15-18; ROA p. 743, ll. 11-20.

Pagan's alibi was corroborated by his wife and two acquaintances. ROA p. 591, ll. 12-13; ROA p. 647, ll. 7-11; ROA p. 677, l. 21 – p. 679, l. 20.

Therefore, this case essentially boiled down to a credibility contest between Charles Pagan and Monique Cooks. The State's case was further weakened by the evidence pointing to Stephen Blathers (possibly assisted by Melton Campbell) as the perpetrator. Under these circumstances, the erroneous admission of prejudicial evidence could not possibly be harmless. See, for example, State v. Morris, 289 S.C. 294, 345 S.E.2d 777 (1986).

Pagan was arrested in New Jersey for Cummings' murder two months later. ROA p. 111, ll. 12-16; ROA p. 573, ll. 6-8. He returned to South Carolina and was subsequently released on bond. Although Pagan denied knowing her, a woman named Tameka Lambert claimed that she had been a passenger in his car one year later, in February 1999, when he failed to stop for a blue light and wrecked his car. ROA p. 547, l. 10 – p. 550, l. 22; ROA p. 743, ll. 11-13. Several hours later, according to Lambert, she encountered Pagan again and he explained that he had run from the police because he was accused of Cummings' murder and was out on bond. ROA p. 552, l. 1 – p. 554, l. 25.

Defense counsel repeatedly objected to the introduction of Lambert's testimony as unduly prejudicial under Evidence Rule 403. ROA p. 520, l. 15 – p. 521, l. 25; ROA p. 544, ll. 5-8; ROA p. 576, l. 16 – p. 577, l. 6; ROA p. 579, l. 22 – p. 580, l. 11; ROA p. 800, l. 20 – p. 801, l. 3. The judge ruled that her testimony was relevant to establish the identity of Cummings' killer under Evidence Rule 404 and allowed Lambert to testify. ROA p. 530, l. 4 – p. 531, l. 3; ROA p. 580, l. 13 – p. 582, l. 14; ROA p. 801, ll. 4-13.

The Solicitor exploited Lambert's testimony in his closing argument. ROA p. 813, l. 22 – p. 814, l. 3. The judge then gave an instruction limiting this evidence “to the issue of identification of Mr. Pagan.” ROA p. 815, l. 22 – p. 816, l. 7.

The Court of Appeals held:

Tameka Lambert's testimony was clearly admissible for the purposes of proving Pagan's flight and “guilty knowledge.” After failing to stop for a blue light, evading police, and leaving the scene of the accident, Pagan told Lambert he was out on bond “because they... accused him of killing some girl,” and that he was in trouble because of a girl named “Monica.” As such, Lambert's testimony was admissible for proving: (1) Pagan was attempting to avoid capture and violate his bond provisions for the murder charged in the instant case and (2) Pagan could identify the very person, Monique Ellerby Cooks, who was the key witness in the case. A jury could have easily inferred knowledge of Pagan's guilt from these actions.

The Court also held that Lambert's testimony corroborated Cooks' identification of Pagan as the victim's killer and that it was further admissible “as tending to establish Pagan's identity.” Finally, the Court concluded that any possible error in admitting Lambert's testimony was harmless:

Because there was testimony regarding other episodes of flight, prior convictions, a parole violation, violations of Department of Corrections rules and regulations, and a previous incident of violence between Pagan and the victim, Lambert's testimony did not have a substantial effect upon Pagan's trial.

The difference between Pagan's case and the authorities cited by the Court of Appeals is that Lambert's testimony did not concern Pagan's efforts to avoid apprehension for murder, as in State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). In fact, Pagan had already been arrested for killing Cummings and was out on bond. His acknowledgement of that fact to Lambert and his knowledge of the key State's witness did not, under these circumstances, give rise to an inference of “guilty knowledge.” In other words, Pagan was not fleeing from the scene of the relevant crime. Compare McFadden v. State, 342 S.C. 637, 539 S.E.2d 391 (2000). Pagan did not identify himself

as Cummings' murderer nor were there any similarities between that homicide and the subsequent traffic offense. Compare State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), and State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000).

In short, Lambert's testimony neither corroborated Cooks' account of the murder nor did it identify Pagan as the perpetrator. The error could not have been harmless, because the case was a credibility contest between Cooks and Pagan and the State's evidence also pointed strongly to Steven Blathers as Cummings' killer.

For this reason, the Court should reverse the Court of Appeals and remand the case for a new trial.

Respectfully submitted,

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Joseph L. Savitz, III  
Acting Chief Attorney

ATTORNEY FOR PETITIONER

This 3rd day of November, 2005



STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County  
L. Casey Manning, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

CHARLES PAGAN,

PETITIONER

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the brief of petitioner in this case has been served on S.  
Creighton Waters, Esquire, this 3rd day of November, 2005.

\_\_\_\_\_  
Joseph L. Savitz, III  
Acting Chief Attorney

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day  
of November, 2005.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: March 13, 2007.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Florence County

L. Casey Manning, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHARLES PAGAN,

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BRIEF OF PETITIONER

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April 7, 2006

S. Creighton Waters, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

Re: The State v. Charles Pagan

Dear Creighton:

Enclosed are two copies of the brief of petitioner in the above case that I filed with the S.C. Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

Joseph L. Savitz, III  
Acting Chief Attorney

JLS,III/kde

Enclosures

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April 7, 2006

Mr. Charles Pagan #272720  
Evans Correctional Institution  
610 Hwy. 9 West  
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Re: Your appeal

Dear Mr. Pagan:

Enclosed please find a copy of the brief of petitioner your case that I filed today with the South Carolina Supreme Court on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Joseph L. Savitz, III  
Acting Chief Attorney

JLS,III/kde

Enclosure