



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 14
April 20, 2022
Patricia A. Howard, Clerk
Columbia, South Carolina
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CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

28095 – The Protestant Episcopal Church v. The Episcopal Church 11

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

2020-000919 – Sharon Brown v. Cherokee County School District Pending

PETITIONS FOR REHEARING

None

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

5905 – State v. Richard K. Galloway 50

UNPUBLISHED OPINIONS

2022-UP-173 – State v. Derrick L. Porter

2022-UP-174 – Meredith Manley v. Earl Carrara

2022-UP-175 – Brown Contractors, LLC v. Andrew McMarlin

PETITIONS FOR REHEARING

5889 – Matthew Hayduk v. Emily Hayduk Pending

5898 – Josie Bostick v. Earl Bostick, Sr. Pending

5899 – Tyrin S. Young v. USAA General Indemnity Co. Pending

5902 – Larry Tyler v. State Pending

2022-UP-002 – Timothy Causey v. Horry County Pending

2022-UP-025 – Nathenia Rossington v. Julio Rossington Pending

2022-UP-033 – E. G. and J. J. v. SCDSS Pending

2022-UP-036 – John Burgess v. Katherine Hunter Pending

2022-UP-083 – Joshua A. Reed v. State Pending

2022-UP-085 – Richard Ciampanella v. City of Myrtle Beach Pending

2022-UP-095 – Steven Molloy v. Beaufort County (2) Pending

2022-UP-096 – Samuel Paulino v. Diversified Coatings, Inc.	Pending
2022-UP-097 – State v. Brandon K. Moore	Denied 4/11/22
2022-UP-114 – State v. Mutekis J. Williams	Pending
2022-UP-115 – Morgan Conley v. April Morganson	Pending
2022-UP-118 – State v. Donald R. Richburg	Pending
2022-UP-119 – Merilee Landano v. Norman Landano	Pending
2022-UP-125 – State v. Treshawn Markeese Jenkins	Pending
2022-UP-138 – Shawn Eubanks v. SCPEBA	Pending
2022-UP-139 – John Alexander #194748 v. Alan Wilson	Pending
2022-UP-146 – M&T Bank v. Tyrone Davis	Pending

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5731 – Jericho State v. Chicago Title Insurance	Pending
5738 – The Kitchen Planners v. Samuel E. Friedman	Pending
5749 – State v. Steven L. Barnes	Granted 2/2/22
5769 – Fairfield Waverly v. Dorchester County Assessor	Pending
5776 – State v. James Heyward	Pending
5782 – State v. Randy Wright	Pending
5792 – Robert Berry v. Scott Spang	Pending
5794 – Sea Island Food v. Yaschik Development (2)	Pending

5806 – State v. Ontavious D. Plumer	Pending
5816 – State v. John E. Perry, Jr.	Pending
5818 – Opternative v. SC Board of Medical Examiners	Pending
5821 – The Estate of Jane Doe 202 v. City of North Charleston	Pending
5822 – Vickie Rummage v. BGF Industries	Pending
5824 – State v. Robert Lee Miller, III	Pending
5826 – Charleston Development v. Younesse Alami	Pending
5827 – Francisco Ramirez v. May River Roofing, Inc.	Pending
5829 – Thomas Torrence #094651 v. SCDC	Pending
5830 – State v. Jon Smart	Pending
5834 – Vanessa Williams v. Bradford Jeffcoat	Pending
5835 – State v. James Caleb Williams	Pending
5838 – Elizabeth Hope Rainey v. SCDSS	Pending
5839 – In the Matter of Thomas Griffin	Pending
5840 – Daniel Lee Davis v. ISCO Industries, Inc.	Pending
5841 – State v. Richard Passio, Jr.	Pending
5843 – Quincy Allen #6019 v. SCDC	Pending
5844 – Deutsche Bank v. Patricia Owens	Pending
5845 – Daniel O'Shields v. Columbia Automotive	Pending
5846 – State v. Demontay M. Payne	Pending

5849 – SC Property and Casualty Guaranty Fund v. Second Injury Fund	Pending
5850 – State v. Charles Dent	Pending
5851 – State v. Robert X. Geter	Pending
5853 – State v. Shelby Harper Taylor	Pending
5854 – Jeffrey Cruce v. Berkeley Cty. School District	Pending
5855 – SC Department of Consumer Affairs v. Cash Central	Pending
5856 – Town of Sullivan's Island v. Michael Murray	Pending
5859 – Mary P. Smith v. Angus M. Lawton	Pending
5860 – Kelaher, Connell & Conner, PC v. SCWCC	Pending
5861 – State v. Randy Collins	Pending
5863 – State v. Travis L. Lawrence	Pending
5864 – Treva Flowers v. Bang N. Giep, M.D.	Pending
5865 – S.C. Public Interest Foundation v. Richland County	Pending
5866 – Stephanie Underwood v. SSC Seneca Operating Co.	Pending
5867 – Victor M. Weldon v. State	Pending
5868 – State v. Tommy Lee Benton	Pending
5870 – Modesta Brinkman v. Weston & Sampson Engineers, Inc.	Pending
5871 – Encore Technology Group, LLC v. Keone Trask and Clear Touch	Pending
5875 – State v. Victoria L. Sanchez	Pending

5877 – Travis Hines v. State	Pending
5878 – State v. Gregg Pickrell	Pending
5880 – Stephen Wilkinson v. Redd Green Investments	Pending
5882 – Donald Stanley v. Southern State Police	Pending
5884 – Frank Rish, Sr. v. Kathy Rish	Pending
5888 – Covil Corp. v. Pennsylvania National Mut. Ins. Co.	Pending
5891 – Dale Brooks v. Benore Logistics System, Inc.	Pending
2020-UP-197 – Cheryl DiMarco v. Brian DiMarco (3)	Granted 5/29/21
2020-UP-244 – State v. Javon Dion Gibbs	Pending
2021-UP-009 – Paul Branco v. Hull Storey Retail	Pending
2021-UP-088 – Dr. Marvin Anderson v. Mary Thomas	Pending
2021-UP-105 – Orveletta Alston v. Conway Manor, LLC	Pending
2021-UP-121 – State v. George Cleveland, III	Pending
2021-UP-141 – Evelyn Hemphill v. Kenneth Hemphill	Pending
2021-UP-147 – Gavin V. Jones v. State	Pending
2021-UP-151 – Elvia Stoppiello v. William Turner	Pending
2021-UP-156 – Henry Pressley v. Eric Sanders	Pending
2021-UP-161 – Wells Fargo Bank, N.A. v. Albert Sanders (2)	Pending
2021-UP-162 – First-Citizens Bank v. Linda Faulkner	Pending
2021-UP-167 – Captain's Harbour v. Jerald Jones (2)	Pending

2021-UP-171 – Anderson Brothers Bank v. Dazarhea Monique Parson(3)	Pending
2021-UP-182 – State v. William Lee Carpenter	Pending
2021-UP-196 – State v. General T. Little	Pending
2021-UP-204 – State v. Allen C. Williams, Jr.	Denied 1/13/22
2021-UP-229 – Peter Rice v. John Doe	Pending
2021-UP-230 – John Tomsic v. Angel Tomsic	Pending
2021-UP-242 – G. Allen Rutter v. City of Columbia	Pending
2021-UP-245 – State v. Joshua C. Reher	Pending
2021-UP-247 – Michael A. Rogers v. State	Pending
2021-UP-252 – Betty Jean Perkins v. SCDOT	Pending
2021-UP-254 – State v. William C. Sellers	Pending
2021-UP-259 – State v. James Kester	Pending
2021-UP-272 – Angela Bain v. Denise Lawson	Pending
2021-UP-273 – SCDHEC v. Davenport	Pending
2021-UP-275 – State v. Marion C. Wilkes	Pending
2021-UP-277 – State v. Dana L. Morton	Pending
2021-UP-278 – State v. Jason Franklin Carver	Pending
2021-UP-279 – State v. Therron R. Richardson	Pending
2021-UP-280 – Carpenter Braselton, LLC v. Ashley Roberts	Pending

2021-UP-281 – In the Matter of the Estate of Harriet Kathleen Henry Tims	Pending
2021-UP-283 – State v. Jane Katherine Hughes	Pending
2021-UP-288 – Gabriel Barnhill v. J. Floyd Swilley	Pending
2021-UP-289 – Hicks Unlimited v. UniFirst Corporation	Pending
2021-UP-290 – Randal W. Benton v. State	Pending
2021-UP-293 – Elizabeth Holland v. Richard Holland	Pending
2021-UP-298 – State v. Jahru Harold Smith	Pending
2021-UP-302 – State v. Brandon J. Lee	Pending
2021-UP-306 – Kenneth L. Barr v. Darlington Cty. School Dt.	Pending
2021-UP-311 – Charles E. Strickland, III v. Marjorie E. Temple	Pending
2021-UP-312 – Dorchester Cty. Taxpayers Assoc. v. Dorchester Cty.	Pending
2021-UP-330 – State v. Carmie J. Nelson	Pending
2021-UP-336 – Bobby Foster v. Julian Neil Armstrong (2)	Pending
2021-UP-341 – Phillip Francis Luke Hughes v. Bank of America	Pending
2021-UP-351 – State v. Stacardo Grissett	Pending
2021-UP-354 – Phillip Francis Luke Hughes v. Bank of America (2)	Pending
2021-UP-360 – Dewberry v. City of Charleston	Pending
2021-UP-367 – Glenda Couram v. Sherwood Tidwell	Pending
2021-UP-368 – Andrew Waldo v. Michael Cousins	Pending

2021-UP-370 – State v. Jody R. Thompson	Pending
2021-UP-372 – Allen Stone v. State	Pending
2021-UP-373 – Glenda Couram v. Nationwide Mutual	Pending
2021-UP-384 – State v. Roger D. Grate	Pending
2021-UP-385 – David Martin v. Roxanne Allen	Pending
2021-UP-395 – State v. Byron L. Rivers	Pending
2021-UP-396 – State v. Matthew J. Bryant	Pending
2021-UP-399 – Henry Still, V v. Barbara Vaughn	Pending
2021-UP-400 – Rita Brooks v. Velocity Powersports, LLC	Pending
2021-UP-405 – Christopher E. Russell v. State	Pending
2021-UP-408 – State v. Allen A. Fields	Pending
2021-UP-418 – Jami Powell (Encore) v. Clear Touch Interactive	Pending
2021-UP-422 – Timothy Howe v. Air & Liquid Systems (Cleaver-Brooks)	Pending
2021-UP-429 – State v. Jeffery J. Williams	Pending
2021-UP-437 – State v. Malik J. Singleton	Pending
2021-UP-447 – Jakarta Young #276572 v. SCDC	Pending
2022-UP-003 – Kevin Granatino v. Calvin Williams	Pending
2022-UP-022 – H. Hughes Andrews v. Quentin S. Broom, Jr.	Pending
2022-UP-059 – James Primus #252315 v. SCDC	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church Of St. Luke and St Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County; The Vestries And Churchwardens Of The Parish Of St. Andrew, Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina, Appellants.

Appellate Case No. 2020-000986

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 28095
Heard December 8, 2021 – Filed April 20, 2022

AFFIRMED IN PART, REVERSED IN PART

Bert Glenn Utsey III, of Clawson Fagnoli Utsey, LLC, of Charleston; Kathleen Chewing Barnes, of Barnes Law Firm, LLC, of Hampton; Kathleen Fowler Monoc, of Monoc Law LLC, of Charleston; and Thomas S. Tisdale Jr., of Law Offices of Thomas S. Tisdale, LLC, of Charleston, all for Appellant The Episcopal Church in South Carolina.

Allan R. Holmes Sr., of Gibbs & Holmes, of Charleston; David Booth Beers, of Washington, DC; and Mary E. Kostel, of Alexandria, VA, all for Appellant The Episcopal Church.

C. Alan Runyan, of Runyan & Platte, LLC, of Beaufort, for Respondents Church of The Cross Declaration of Trust; Church of The Cross, Inc.; St. David's Church; The

Church of Our Saviour of the Diocese of South Carolina; The Church of The Epiphany (Episcopal); The Protestant Episcopal Church in the Diocese of South Carolina; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; and Vestry and Church Wardens of The Episcopal Church of the Parish of St. John's, Charleston County. William A. Bryan, of Bryan & Haar, of Surfside Beach, for Respondent The Church of The Resurrection, Surfside. Thomas Christian Davis, of Harvey & Battey, PA, of Beaufort, for Respondent Christ St. Paul's Episcopal Church. Albert A. Lacour III, of Clawson & Staubes, LLC, of Charleston, for Respondent The Vestries and Churchwardens of The Parish of St. Andrews. Charles H. Williams, of Williams & Williams, of Orangeburg, for Respondents The Protestant Episcopal Church in the Diocese of South Carolina and The Trustees of The Protestant Episcopal Church in South Carolina. Susan Pardue MacDonald, of Nelson Mullins Riley & Scarborough, LLP, of Myrtle Beach, for Respondent Trinity Church of Myrtle Beach. G. Mark Phillips, of Nelson Mullins Riley & Scarborough, LLP, of Charleston, for Respondent The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina. Peter Brandt Shelbourne, of Shelbourne Law Firm, of Summerville, for Respondent The Vestry and Wardens of St. Paul's Church, Summerville and Trinity Episcopal Church, Pinopolis. C. Pierce Campbell, of Turner Padgett Graham & Laney, PA, of Florence, for Respondents All Saints Protestant Episcopal Church, Inc.; St. Bartholomew's Episcopal Church; and The Church of The Holy Cross. James Kent Lehman, of Nelson Mullins Riley & Scarborough, LLP, of Columbia, for Respondent

Trinity Church of Myrtle Beach. C. Mitchell Brown, of Nelson Mullins Riley & Scarborough, LLP, of Columbia, for Respondents The Protestant Episcopal Church in the Diocese of South Carolina and The Trustees of The Protestant Episcopal Church in South Carolina. Ivon Keith McCarty, of McCarty Law Firm, PC, of Charleston, for Respondent Christ St. Paul's Episcopal Church. Timothy O'Neill Lewis, of Gibbs & Holmes, of Charleston, for Respondent Trinity Episcopal Church. Henry E. Grimball, of Womble Bond Dickinson (US) LLP, of Charleston, for Respondent The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina. Robert R. Horger, of Horger, Barnwell & McCurry, LLP, of Orangeburg, for Respondent Church of the Redeemer. Allan Poe Sloan III, of Pierce, Sloan, Wilson, Kennedy & Early, LLC, of Charleston, for Respondent Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church. Andrew Spencer Platte, of Runyan & Platte, LLC, of Beaufort, for Respondents Church of The Cross Declaration of Trust; Church of The Cross, Inc.; St. David's Church; The Church of Our Saviour of the Diocese of South Carolina; The Church of The Epiphany (Episcopal); Vestry and Church Wardens of The Episcopal Church of the Parish of St. John's, Charleston County; The Protestant Episcopal Church in the Diocese of South Carolina; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina; The Vestry and Church Wardens of St. Jude's Church of Walterboro; and The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust. Thornwell F. Sowell III and Bess Jones DuRant, of Sowell & DuRant, LLC, of Columbia, for Respondent Church of the Holy Comforter. William Foster Gaillard, of Womble

Bond Dickinson (US) LLP, of Charleston, for Respondent The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina. Joseph C. Wilson IV, of Joseph C Wilson Law Firm LLC, of Folly Beach, for Respondent Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church. David Spence Cox, of Barnwell Whaley Patterson & Helms, LLC, of Charleston, for Respondents The Protestant Episcopal Church in the Diocese of South Carolina and The Trustees of The Protestant Episcopal Church in South Carolina. William A. Scott, of Pedersen & Scott, PC, of John's Island, for Respondent Holy Trinity Episcopal Church. Harry Roberson Easterling Jr., of Easterling Law Firm, PC, of Bennettsville, for Respondents St. David's Church and St. Paul's Episcopal Church of Bennettsville, Inc. Mark V. Evans, of Charleston, for Respondent St. James' Church, James Island, S.C. Francis Marion Mack, of Saint Matthews, for Respondent The Vestry and Church Wardens of The Parish of St. Matthew. David B. Marvel, of Charleston; and David L. DeVane, of Summerville, both for Respondent The Church of St. Luke and St. Paul, Radcliffeboro. Henrietta U. Golding, of Burr & Forman LLP, of Myrtle Beach, for Respondents Saint Luke's Church, Hilton Head; The Protestant Episcopal Church in the Diocese of South Carolina; and The Trustees of The Protestant Episcopal Church in South Carolina. John Furman Wall III, of Mount Pleasant, for Respondent The Church of the Good Shepherd, Charleston, S.C.

JUSTICE FEW: The dispute before the Court in this case is which church entity became the legal or beneficial owner of certain real and personal property after The Protestant Episcopal Church in the Diocese of South Carolina (Disassociated Diocese) and thirty-six individual Episcopal Parishes (Parishes) disassociated from The Episcopal Church in the United States of America (National Church). The dispute requires us to address two broad questions. First, who now owns the real estate long-owned and occupied by the individual Parishes. Second, who is now the

beneficiary of a statutorily-created trust controlled by the Trustees of The Protestant Episcopal Church in South Carolina (Trustees). The National Church and the Episcopal Church in South Carolina (Associated Diocese) contend this Court made a final decision as to who owns all the disputed property when the Court heard the case in 2015 and each Justice sitting on the Court in 2015 issued a separate opinion in 2017. *See Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017). The Parishes disagree the Court made a final decision as to the real property occupied by twenty-nine Parishes—the first question—and contend the Court left much to be decided by the circuit court as to these Parishes. The Disassociated Diocese and the Trustees agree the Court made a final decision as to real and personal property the Trustees formerly held in trust for the Lower Diocese—the second question—but they disagree what that decision was.

As to the second question, we agree with the National Church and the Associated Diocese that the 2017 Court decided the real and personal property held in trust by the Trustees is now held for the benefit of the Associated Diocese. We will explain our holding on this point in Section IV of the opinion.¹

The primary issue before the Court today, however, is the first question: whether the 2017 Court made a final decision as to all real property owned by the twenty-nine Parishes. We hold it did not. Thus, we proceed to review the merits of the circuit court's 2020 Parish by Parish determination as to which entity owns the disputed property. We affirm in part and reverse in part. As to some Parishes, we hold the circuit court correctly ruled the individual Parish retained ownership of its property. As to other Parishes, we hold those Parishes created an irrevocable trust in favor of the National Church and its diocese, now the Associated Diocese. As to the Parishes that created a trust, we direct that appropriate documentation be filed in the public record indicating the National Church and the Associated Diocese now own that real estate. From our decision today, there will be no remand. The case is over.

¹ The Disassociated Diocese raises a third question, the merits of which we do not address because we defer to the federal courts. Our explanation of why we defer to the federal courts on this question may be found in Section V of the opinion.

I. Factual and Procedural History

Before 2010, the Lower Diocese in South Carolina (Lower Diocese) was a member of the National Church, and the Parishes were members of the Lower Diocese. In 2010, after doctrinal differences arose, the Lower Diocese disassociated from the National Church. The Lower Diocese became the Disassociated Diocese, which is not affiliated with the National Church. Thirty-six Parishes remained members of the Disassociated Diocese. Other parishes formed the Associated Diocese—organized after the split—and remained affiliated with the National Church. The collective 2017 opinions set forth in great detail the historical and factual background of the property and the dispute that resulted from the split. *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017). We refer readers to the 2017 opinions for more detailed discussion of that lengthy history.

In 2013, the Parishes, the Disassociated Diocese, and the Trustees filed this lawsuit in circuit court seeking a declaration that the National Church and the Associated Diocese "ha[ve] no legal, beneficial or equitable interest in any of [their] real and personal property" and that the Parishes alone are the lawful and rightful owners of the property. The plaintiffs' primary theory in that case was that—if the National Church or its diocese ever had any right to claim legal or beneficial ownership of the property—the Disassociated Diocese and the Parishes took the necessary steps to sever their relationship with the National Church, and those steps resulted in the Disassociated Diocese and the Parishes owning all the property.

The National Church and the Associated Diocese counterclaimed against the Disassociated Diocese and the Parishes, alleging ownership over the property and claiming, among other things, that the Parishes and the Disassociated Diocese had no authority to disassociate and, in the alternative, the Parishes held their property in trust for the benefit of the National Church and its diocese pursuant to a 1979 provision of Episcopal Church law called the "Dennis Canon." *See infra* note 4. The National Church also counterclaimed against the Trustees, alleging "all property held by or for the [Disassociated Diocese] is held and may only be used for the mission and benefit of the Church and its subordinate [Associated Diocese]."

Judge Diane Schafer Goodstein conducted a non-jury trial in 2014 and found the Parishes and the Disassociated Diocese "validly exercise[d] [their] legal and

constitutionally-protected right to disassociate," and the National Church and the Associated Diocese never had any rights in the property held by the Trustees. Judge Goodstein also ruled the Parishes did not create a trust in favor of the National Church or its diocese. Judge Goodstein thus ruled the National Church and the Associated Diocese had "no legal, beneficial or equitable interest" in any of the real or personal property.

The National Church and the Associated Diocese appealed. This Court heard oral argument in the case in September 2015. In August 2017, each of the five Justices who served on the Court at the time of oral argument (the 2017 Court) filed separate opinions. 421 S.C. 211, 806 S.E.2d 82. The collective result of the five opinions is the central issue before the Court as to both of the broad questions we address in this appeal.

II. First Question before this Court—Ownership of Parish Real Estate

Judge Goodstein focused primarily on the issues of corporate control of the Parishes, the Disassociated Diocese, and the Trustees; the Parishes' claim that they never had any relationship with the National Church; and the Disassociated Diocese's right to disassociate from the National Church. As to whether the Parishes held their property in trust for the National Church or its diocese, Judge Goodstein ruled "The Dennis Canon created no express trust of which [the National Church or its diocese] was the beneficiary." Under Judge Goodstein's ruling, the National Church and the Associated Diocese cannot rely on the Dennis Canon to claim a Parish created a trust. The five opinions of 2017 seemingly affirmed Judge Goodstein on the Parishes' and the Disassociated Diocese's rights to no longer follow or be associated with the National Church. However, the collective opinions reversed Judge Goodstein's ruling that the Dennis Canon cannot give rise to a trust. In reversing, this Court collectively ruled that any Parish that expressly "acceded" to the Dennis Canon created a trust in favor of the National Church and its diocese. As Chief Justice Beatty explained in his opinion, Parishes that "merely promised allegiance" to the National Church did not create a trust. 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part).² Because Judge Goodstein had not considered which individual Parishes acceded to the Dennis Canon or which

² Chief Justice Beatty addresses the collective meaning of the five opinions of 2017 in his separate writing concurring in today's holding.

"merely promised allegiance," the 2017 Court did not reach that issue. It was proper, therefore, for the circuit court (Edgar W. Dickson) to address this question in its 2020 decision, and it is now proper for us to review Judge Dickson's 2020 Parish by Parish rulings.³

III. Express Accession to the Dennis Canon

The five opinions of the 2017 Court left open the question of what actions by the Parishes are necessary to constitute express accession to the Dennis Canon; thus, we must make that determination. Before we can determine whether the actions of the individual Parishes constitute accession to the Dennis Canon and, thus, created a trust in favor of the National Church or its diocese, we first consider the background in which the Dennis Canon was written and adopted, which provides context for the actions by the individual Parishes. We must also consider the requirements of South Carolina trust law.

³ The five opinions of 2017 made a final decision that seven of the original thirty-six Parishes did not create a trust in favor of the National Church or its diocese. Those Parishes are no longer in the case, but we list them here for clarity. The following Parishes hold title to their property unencumbered by any trust in favor of the National Church or the Associated Diocese:

- Christ the King, Waccamaw;
- St. Matthews Church, Darlington;
- Parish of St. Andrews, Mount Pleasant (and its Land Trust, a separate corporation);
- The Vestries and Churchwardens of the Parish of St. Paul's Episcopal Church of Conway;
- The Episcopal Church of the Parish of Prince George Winyah, Georgetown;
- St. John's Episcopal Church of Florence; and
- St. Matthias Episcopal Church, Summerton.

A. Background of Dennis Canon

We begin in 1979 with *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). *Jones* involved a property dispute between the Presbyterian Church in the United States of America (PCUSA) and a local Georgia church that had withdrawn from PCUSA. 443 U.S. at 598, 99 S. Ct. at 3023, 61 L. Ed. 2d at 781. A majority faction of the local church voted to split from PCUSA and that faction continued to occupy the church property. *Id.* The remaining minority sued the majority faction arguing the minority owned the property as remaining members of PCUSA. *Id.* The Georgia Supreme Court held the trial court correctly applied Georgia law—instead of ecclesiastical law—and rejected the minority's claim to the property. 443 U.S. at 599, 99 S. Ct. at 3023, 61 L. Ed. 2d at 782. The issue before the Supreme Court of the United States was "whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." 443 U.S. at 597, 99 S. Ct. at 3022, 61 L. Ed. 2d at 780-81.

After the Supreme Court majority ruled a court may rely on neutral principles of state law and need not defer to ecclesiastical law, 443 U.S. at 602, 604, 99 S. Ct. at 3025, 3026, 61 L. Ed. 2d at 784, 785, the Court discussed the advantages of the neutral principles of law approach. The Court stated, "it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." 443 U.S. at 603, 99 S. Ct. at 3025, 61 L. Ed. 2d at 784-85. The Supreme Court explained, "Through appropriate . . . trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy." 443 U.S. at 603, 99 S. Ct. at 3025, 61 L. Ed. 2d at 785. The Court suggested, "At any time before [a] dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. . . . [T]he constitution of the general church can be made to recite an express trust in favor of the denominational church." 443 U.S. at 606, 99 S. Ct. at 3027, 61 L. Ed. 2d at 786. The Court concluded that "civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.*

In the months after *Jones*, Walter Dennis—a priest and a member of the National Church's Standing Committee on Canons⁴—proposed Canon I.7.4⁵ at the National Church's 1979 General Convention. Bernie D. Jones, *Litigating the Schism and Reforming the Canons: Orthodoxy, Property & the Modern Social Gospel of the Episcopal Church*, 42 Golden Gate U. L. Rev. 151, 186 (2012). The National Church adopted the proposed Canon I.7.4, which came to be known as the "Dennis Canon." The National Church appears to have adopted the Dennis Canon for two primary reasons. First, the National Church was concerned by local churches' negative response to the new Book of Common Prayer and the amendment to other Canons permitting the ordination of women as priests.⁶ Second, the National Church

⁴ According to the National Church, the word "canon" is synonymous with "Church Law," and they "are the written rules that provide a code of laws for the governance of the church." *Canon, An Episcopal Dictionary of the Church*, The Episcopal Church, <https://www.episcopalchurch.org/glossary/canon/> (last visited Apr. 7, 2022).

⁵ When the National Church adopted the Dennis Canon, the Canon was actually numbered I.6.4. *Journal of the General Convention of the Protestant Episcopal Church in the United States of America -otherwise known as The Episcopal Church 1979 B-60* (Sept. 13, 1979), https://www.episcopalarchives.org/sites/default/files/publications/1979_GC_Journal.pdf. However, the 2006 Constitution and Canons of the National Church, which are in the record on appeal before us, number the Dennis Canon as I.7.4.

⁶ See Valerie J. Munson, *Fraud on the Faithful? The Charitable Intentions of Members of Religious Congregations and the Peculiar Body of Law Governing Religious Property in the United States*, 44 Rutgers L.J. 471, 502 (2014) (noting "the canon was adopted because of two developments. First, in 1976, [the National Church] decided to adopt a new Book of Common Prayer and amended its canons to permit the ordination of women priests. Those actions resulted in local churches disaffiliating from [the National Church] and claiming full property rights in church property"); Jeffrey B. Hassler, Comment, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in A Time of Escalating Intrad denominational Strife*, 35 Pepp. L. Rev. 399, 414 (2008) ("The *Jones* decision was handed down just three months prior to The Episcopal Church's triennial national General Convention, at which the church was faced with an increasing

did so in apparent response to the Supreme Court's suggestion in *Jones* that a trust could be created under which the National Church would have beneficial ownership of Parish property.⁷

The Dennis Canon provides,

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains part of, and subject to this Church and its Constitution and Canons.

Also in 1979, the National Church adopted Canon I.7.5, which provides,

The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.

The Lower Diocese in South Carolina followed the suggestion in Canon I.7.5 at the Annual Diocesan Convention in 1987 and adopted, as part of its own canons, a version of the Dennis Canon. This canon—which we refer to as the Diocesan Canon—provided,

number of parishes departing in response to significant doctrinal disagreements. In response to both the departures and the *Jones* decision, the Church's House of Bishops adopted what has come to be known as the 'Dennis Canon' . . .").

⁷ See Munson, *supra* note 6, at 502 (noting the second reason for adopting the Dennis Canon "was the Supreme Court's decision of *Jones v. Wolf* in 1979"); Hassler, *supra* note 6, at 414 (noting the National Church adopted the Dennis Canon "[i]n response to both the departures and the *Jones* decision").

All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina. The existence of this trust, however, shall in no way limit the power and Authority of the Parish, Mission, or Congregation existing over such property so long as the particular Parish, Mission, or Congregation remains a part of, and subject to, the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina.

The 1979 adoption of the Dennis Canon—and its potential effect on Parish property disputes—was widely known in the Episcopal community.⁸ In addition, each Parish apparently participated in the 1987 Diocesan Convention at which the Lower Diocese adopted the Diocesan Canon. According to testimony in the Goodstein trial, each Parish was entitled to send "up to four delegates . . . [a]nd . . . any members of the clergy who [were] canonically resident" to every Annual Diocesan Convention. In the 2018 and 2019 Dickson hearings, the National Church cited the apparent fact that each Parish had representatives at the 1987 Diocesan Convention as evidence the Parishes were aware of the terms and effect of the Dennis and Diocesan Canons when they took the actions we discuss below.

B. State Law Requirements to Create a Trust

With this background in mind, we turn to the actions required to create a trust under South Carolina law. Before a court may find that an owner of property has created a trust under South Carolina law, the court must find the party claiming to benefit from the trust has proven several elements, two of which are particularly relevant here. First, the court must find the party creating the trust took present actions—in writing—documenting both the creation of a trust and the placing of specified

⁸ According to one commentator, "lawyers throughout the country [] were defending local dioceses from dissenting parishes" using "the Dennis Canon [] as an important tool in their arsenal." *See* Bernie D. Jones, *supra*, at 187. The commentator further observed that lawyers around the country corresponded with Walter Dennis to report their progress in litigating Dennis Canon property disputes involving disaffiliating churches throughout the 1980s and 1990s. *Id.*

property in it. Subsection 62-7-401(a)(1)(ii) of the South Carolina Code (2022) provides there must be a "written declaration signed by the owner of property that the owner holds identifiable property as trustee." While the actions to create a trust "must be proved by some writing signed by the party creating the trust," S.C. Code Ann. § 62-7-401(a)(2), the court can look to more than one writing in determining whether a trust has been created, *Foster v. Foster*, 393 S.C. 95, 98, 711 S.E.2d 878, 879 (2011) (citing *Ramage v. Ramage*, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984)); *see also Ramage*, 283 S.C. at 244, 322 S.E.2d at 26 (stating the statute of frauds "is not violated by piecing together the trust instrument from the various documents which were intended to create the trust"). Second, the court must find the documents creating the trust indicate the owner had the present intent for the writings to create a trust for the particular beneficiary. S.C. Code Ann. § 62-7-402(a) (2022) (providing among four other requirements that "A trust is created only if: . . . (2) the settlor indicates an intention to create the trust").

C. Parish Analysis⁹

Judge Dickson reviewed the Goodstein trial record on the issue of accession and found no Parish created a trust in favor of the National Church or its diocese. He ruled the Parishes "merely promised allegiance" to the National Church and "no Parish expressly acceded to the Dennis Canon." To review Judge Dickson's decision—to determine what actions constitute express accession to the Dennis Canon and whether individual Parishes created a trust in favor of the National Church or its diocese—we turn to the actions taken by each individual Parish. Considering the Parishes' knowledge of the Dennis Canon and participation in adopting the Diocesan Canon, we must evaluate the Parishes' actions under South Carolina trust law, including the requirements that the owner take present action coupled with the present intent to create a trust for the beneficiary.

Most of the twenty-nine Parishes remaining in this case amended their governing documents at various times after the National Church adopted the Dennis Canon in

⁹ For reference, we have included an Addendum to this opinion which contains a summary of all the potential evidence of "accession" for each Parish. The Parishes are listed in the Addendum in the same order in which we list their disposition below. There were typographical errors in the documents summarized in the Addendum and we chose not to correct them.

1979. The National Church and the Associated Diocese argue these actions by each Parish constitute express accession to the Dennis Canon. In the pages that follow, we will analyze the actions taken by each individual Parish to determine whether those actions constitute express accession. Whether a Parish took an action is a question of fact, on which we defer to the circuit court if there is any evidence to support the finding. *See Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (noting "a question of fact in a law action [is] subject to an any evidence standard of review when tried by a judge without a jury" (citation omitted)). However, the question of whether an action known to have been taken by a Parish created a trust in favor of the National Church and its diocese under South Carolina trust law is a question of law. This Court does not defer to the circuit court concerning questions of law. *See City of N. Myrtle Beach v. E. Cherry Grove Realty Co., LLC*, 397 S.C. 497, 502, 725 S.E.2d 676, 678 (2012) ("Questions of law are decided with no . . . deference to the trial court." (citation omitted)).

One Parish—Trinity Episcopal Church, Pinopolis—is particularly unlike the other Parishes. The National Church contends Trinity, Pinopolis was required to submit an application for admission into the Lower Diocese in which it was required to state its "willingness to conform to the Constitution and Canons of the General Convention and the Constitution and Canons of this Diocese." There is no such application in the record before us. Thus, as far as we can tell, Trinity, Pinopolis did not take any action that could be argued to have created a trust. Further, as we will explain in Subsection III.B.v, even if Trinity, Pinopolis had submitted an application containing this language, a "willingness to conform" to the Canons does not indicate Trinity, Pinopolis took present action or had the present intent necessary to create a trust under South Carolina trust law. A "willingness" to take action is not itself a present action; it is the contemplation of future action. Therefore, we find there is no evidence of express accession to the Dennis Canon by the following Parish, and there is no trust in favor of the National Church or the Associated Diocese over its property:

- Trinity Episcopal Church, Pinopolis

The remaining twenty-eight Parishes fall on a spectrum of specific actions alleged to constitute accession, ranging from pledging allegiance to the National Church and its diocese to reciting the Dennis Canon verbatim in their governing documents. For each of the Parishes, we consider the actions taken within its own governing

documents adopted after 1979 along with the Dennis Canon and the Diocesan Canon.

i. Parishes that did nothing more than pledge or affirm allegiance to the National Church and the Lower Diocese and do not mention the Canons

Four Parishes took no more action than to pledge or affirm in their constitutions or bylaws allegiance to the National Church and its teachings, or to acknowledge the National Church and the Lower Diocese's religious authority. For example, The Church of the Epiphany—located in Eutawville, South Carolina—included in its 2002 Bylaws a provision that stated,

The object and purpose of the corporation is for the support and maintenance of a Church . . . in the [Lower Diocese] for the public worship of Almighty God in accordance with the doctrine and practices of the [National Church] and the [Lower Diocese], together with such other religious, educational and charitable works as may properly be connected therewith.

Nowhere in this provision does Epiphany, Eutawville act in a manner that creates a trust under South Carolina trust law. In these words, Epiphany, Eutawville "merely promised allegiance" to the National Church and the Lower Diocese. Epiphany, Eutawville did not take the necessary present action nor indicate the necessary intent to create a trust.

The other three Parishes in this category included similar provisions in their governing documents. These provisions contain no reference to the Canons of either the National Church or the Lower Diocese. The provisions merely set forth the Parishes' doctrinal beliefs and a promise to follow the religious teachings of the National Church and the Lower Diocese. "Without more," as Chief Justice Beatty wrote in 2017, "this promise cannot deprive them of their ownership rights in their property." 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part). Consequently, the following Parishes did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina
- The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust
- Church of the Cross, Inc. and Church of the Cross Declaration of Trust, Bluffton
- The Church of the Epiphany, Eutawville

ii. Parish that "considered" its canons "null and void" if "in conflict" with the Canons of the National Church or the Lower Diocese

One Parish—the Vestry and Church Warden of the Episcopal Church of the Parish of St. Helena and the Parish of St. Helena Trust—stated it "pledges to adhere to the doctrine, discipline, and worship" of the National Church—similar to the Parishes discussed in Subsection III.B.i—and also provided that any of its bylaws that "may be in conflict with the canons" of the National Church or the Lower Diocese "shall be considered null and void." These provisions are included in St. Helena's 1987 Bylaws. The words "adhere to" may be stronger than the language used by the Parishes discussed in Subsection III.B.i, but the use of the word "pledges" nonetheless contemplates future action, not the present action necessary to satisfy the first element mentioned above. St. Helena's Bylaws do mention the Canons generally in the clause about conflicting canons, but they make no mention of the Dennis Canon. This language does not show a present action necessary to create a trust nor does it indicate the intent necessary to create a trust based on the Dennis Canon. We find the following Parish did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- The Vestry and Church Warden of the Episcopal Church of the Parish of St. Helena and the Parish of St. Helena Trust, Beaufort

iii. Parishes that "operated" or were "organized" pursuant to the Canons of the National Church and the Lower Diocese

Five Parishes stated in their governing documents they were "organized for the purpose of operating an Episcopal Church pursuant to" or "organized pursuant to"

the Canons of the National Church and the Lower Diocese. For example, The Church of the Resurrection, Surfside included in its 1983 Bylaws a statement that it "is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the [Lower Diocese] and of the [National Church] now in force or as hereafter may be amended." Like the Parish of St. Helena discussed in Subsection III.B.ii, the words contemplate the future action of "operating" a church, not the present action necessary to satisfy the first element mentioned above. We view "organizing" and "operating" a church as different from, and not involving, the disposition of real estate by creating a trust. While the governing documents for these five Parishes do mention the Canons generally, they do not specifically mention the Dennis Canon. Therefore, the following five Parishes did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- Christ St. Paul's Episcopal Church, Yonges Island
- The Church of the Resurrection, Surfside
- The Church of St. Luke and St. Paul, Radcliffeboro
- The Vestry and Church Wardens of St. Paul's Church, Summerville
- Trinity Episcopal Church, Edisto Island

iv. Parish that stated it was "subject to" the Canons of the National Church and the Lower Diocese

One Parish—St. Paul's Episcopal Church of Bennettsville—not only stated in its 2002 Articles of Incorporation that it was "organized under" the Canons of the National Church and the Lower Diocese but also that it was "subject to" the Canons. There is no specific reference to the Dennis Canon. While this is more than simply being "organized under" the Canons, the language "subject to" refers to future action—in this instance the future action of the drafters of the Canons—not the present action of the property owner that is necessary to satisfy the first element discussed above.¹⁰ In addition, this language gives no indication of the necessary

¹⁰ The Dennis Canon provides that any trust in favor of the National Church and the Associated Diocese "shall in no way limit the power and authority of the Parish . . . so long as the particular Parish . . . remains part of, and subject to this Church and its Constitution and Canons." However, as we have already stated, being "subject to" the Canons of the National Church is not itself sufficient to create a trust; there must be a separate present act creating a trust.

intent to create a trust based on the Dennis Canon.¹¹ Therefore, the following Parish did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- St. Paul's Episcopal Church of Bennettsville, Inc.

v. Parishes that "agreed to be bound by" or "agreed to conform to" the Canons of the National Church and the Lower Diocese

Three Parishes amended their constitutions or bylaws after the National Church adopted the Dennis Canon in 1979 to include phrases such as we agree "to be bound by" or "to conform to" the Canons of the National Church and the Lower Diocese. There is no specific reference to the Dennis Canon. As with the statements we discussed in Subsections III.B.ii, iii, and iv, we believe these statements contemplate how a parish is going to act in the future. They do not show present action coupled with a present intent to create a trust based on the Dennis Canon. For example, The Church of the Redeemer in Orangeburg included in its 2000 Constitution a statement that it "shall conform to the Constitution and Canons of the [National Church], and the Constitution and Canons of the [Lower Diocese], which are now, or hereafter may be enacted by the authority of the same." The phrase "shall conform to" is an agreement to comply with some future requirement; here, the Canons. Future compliance with the Canons is not present action and does not indicate these Parishes had the present intent necessary to create a trust based on the Dennis Canon.

¹¹ St. Paul's, Bennettsville also included in its Bylaws a provision stating, "The Vestry shall be authorized and empowered to acquire and purchase such real and personal property as they may deem necessary for the purpose of the congregation, and the same to sell, transfer, mortgage or authorize the disposition of as they may deem expedient so long as such acts are in accord with the Canons of the Episcopal Church." Although this phrase gives authority to its governing body concerning real and personal property and limits that authority "so long as such acts are in accord with the Canons" of the National Church, it is not evidence St. Paul's, Bennettsville took a present action to satisfy the first element discussed above. Like the phrase "subject to," this provision contemplates future actions by the Parish. For further explanation of the language in St. Paul's, Bennettsville's Bylaws, *see infra* note 12.

Therefore, the following three Parishes did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- All Saints Protestant Episcopal Church, Inc., Florence
- The Church of Our Saviour of the Diocese of South Carolina, John's Island
- The Church of the Redeemer, Orangeburg

vi. Parishes that "adopted" or "acceded to" the Canons of the National Church and the Lower Diocese

Nine Parishes amended their constitutions or bylaws after the National Church adopted the Dennis Canon in 1979 and after the Lower Diocese adopted the Diocesan Canon in 1987 to include phrases such as we "adopt" or "accede to" the Canons of the National Church and the Lower Diocese. For example, St. Bartholomew's Episcopal Church's 2005 Bylaws provided, "St. Bartholomew's Episcopal Church accedes to and adopts the Constitution and Canons of the [National Church] and of the [Lower Diocese] and acknowledges this authority accordingly." As we explained, the National Church's Canons include the Dennis Canon and the Lower Diocese's Canons included the Diocesan Canon, both of which recite a trust over "All real and personal property held by or for the benefit of any Parish" in favor of the National Church and its diocese. Therefore, the Parishes that used this language took present action that created the trust the National Church and the Lower Diocese recited in those Canons. While none of these documents specifically mention the Dennis Canon, we find the language "adopt" or "accede to" represents a sufficient affirmative present action—in light of the knowledge these Parishes had of the Dennis and Diocesan Canons—to satisfy the two elements described above. Consequently, the following nine Parishes took sufficient actions indicating the necessary present intent, and each created a trust under South Carolina trust law in favor of the National Church and its diocese:

- The Church of the Good Shepherd, Charleston, SC
- The Church of the Holy Comforter, Sumter
- St. Bartholomew's Episcopal Church, Hartsville
- The Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, John's Island (Charleston)
- The Vestry and Church Wardens of St. Jude's Church of Walterboro

- Saint Luke's Church, Hilton Head
- St. David's Church, Cheraw
- The Vestry and Church Wardens of the Parish of St. Matthew (St. Matthews, Fort Motte)
- The Vestries and Church Wardens of the Parish of St. Andrew (Old St. Andrew's), Charleston

vii. Parishes that "acceded to" the Canons of the National Church and the Lower Diocese and recognized the Lower Diocese's beneficial interest

Four Parishes are identical to the nine Parishes in Subsection III.B.vi, except for the fact that these Parishes went further to recognize the Lower Diocese's beneficial interest in their property. This recognition is additional evidence of these Parishes' intent to create a trust in favor of the National Church and its diocese. For example, the Church of the Holy Cross, Stateburg included in its 2011 Bylaws a statement providing, "the Vestry shall in no case alienate or encumber any of the real and personal property of the corporation without the same having been submitted first to the congregation . . . and having received the affirmative vote thereof for such alienation or encumbrance." Immediately following this provision, Holy Cross, Stateburg included a footnote stating, "Diocesan Canon require [sic] Standing Committee approval." The Standing Committee was a committee of the Lower Diocese authorized to act on behalf of the Lower Diocese in accordance with its Constitutions and Canons. Therefore, Holy Cross, Stateburg not only referenced the Diocesan Canon in 2011 but also demonstrated a recognition that any alienation or encumbrance of its property must first be submitted to the Lower Diocese for approval.¹²

Trinity Church of Myrtle Beach and Holy Trinity Episcopal Church, Charleston also recognized the Lower Diocese's beneficial interest in their properties in their

¹² The analysis of whether Holy Cross, Stateburg satisfied the second element discussed above—intent to create a trust—is the same as our analysis for St. Paul's, Bennettsville, but the outcome of the case for the two Parishes is different. This is because Holy Cross, Stateburg took affirmative present action in its 2011 Bylaws to "accede[] to the . . . Canons of the [National Church]," but St. Paul's, Bennettsville merely stated it was "organized under" and "subject to" the Canons.

governing documents. Both Parishes included nearly identical statements, providing,

The Vestry . . . shall hold, manage, and administer all Church property including real property which they shall have power to sell, alienate, mortgage, lease or otherwise deal with and dispose of by deed or other documents executed by the Wardens or one of them; provided that the Vestry shall not sell, alienate mortgage or otherwise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese as provided in Diocesan or National Church Canons.

These provisions show both Parishes recognized the National Church and the Lower Diocese's beneficial interest in their property by requiring any alienation or encumbrance of such property first requires the written consent of the Lower Diocese.

The last Parish in this category—Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church, Mount Pleasant—amended its Bylaws in 1980 to include a provision stating, "In the event Christ Church, Mount Pleasant, S.C. should ever dissolve . . . , the Standing Committee of the [Lower Diocese] shall become the managing body of the corporation, with full power and authority without restriction, to sell or mortgage its property or any part thereof, to convey any or all of its property to the [Trustees]." This provision recognizes the Lower Diocese's successor interest in Christ Church, Mount Pleasant's property. However, by also including the provision "The terms of these By-laws which may be in conflict with the Canons of the [National Church] . . . are hereby amended to conform to such canons," Christ Church made a present amendment to that provision to incorporate the Dennis Canon and to recognize the Lower Diocese's present *beneficial* interest.

Christ Church, Mount Pleasant is different from the other Parishes in this category in that it last amended its Bylaws in 1980. Because this amendment was made seven years before the Lower Diocese adopted the Diocesan Canon, we cannot rely on Christ Church, Mount Pleasant's participation in the Lower Diocese's adoption of the Diocesan Canon as evidence of its intent to create a trust. Nevertheless, we find Christ Church, Mount Pleasant's recognition of the Lower Diocese's beneficial interest in its property, coupled with the statement "accede to the . . . Canons of the

[National Church]," demonstrates it satisfied both elements discussed above, and thus did expressly accede to the Dennis Canon through the adoption of its 1980 Bylaws.

Therefore, the following four Parishes took the necessary present actions indicating the necessary present intent, and each created a trust under South Carolina trust law in favor of the National Church and its diocese:

- The Church of the Holy Cross, Stateburg
- Trinity Church of Myrtle Beach
- Holy Trinity Episcopal Church, Charleston
- Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church, Mount Pleasant

viii. Parish that recited the Dennis Canon in its constitution

One Parish—St. James' Church, James Island, SC—did even more than "accede to" or "adopt" the Canons of the National Church and the Lower Diocese. St. James' Church recited a version of the Dennis Canon in its own constitution, stating, "All real and personal property held by or for the benefit of any Parish . . . is held in trust for the Church and the Diocese thereof" If "express accession to the Dennis Canon" by "adopting" or "acceding to" the Canons of the National Church and the Lower Diocese is sufficient to create a trust, then verbatim recitation of the Dennis Canon is clearly sufficient as well. Consequently, the following Parish created a trust under South Carolina trust law in favor of the National Church and its diocese:

- St. James' Church, James Island, SC

D. Parish Analysis Summary

According to the five opinions of the 2017 Court, "express accession to the Dennis Canon" is sufficient to create a trust under South Carolina law. Accordingly, we find "express accession" occurs under the 2017 Court's collective ruling when the governing body of a Parish states in an official document of the Parish, such as a constitution or bylaws, that the Parish "adopts" or "accedes to" the Canons of the National Church, coupled with the Parish's knowledge of the Dennis Canon and participation in adopting the Diocesan Canon indicating the present intent to create a trust. The Parish's formal adoption of the constitutional provision or bylaw

satisfies the writing and signature requirements of our trust law. Under these circumstances, the formal adoption of the document indicates the governing body of the Parish took the action with the intent of complying with the National Church's demand set forth in the Dennis Canon and thus intentionally created a trust. Under this analysis, we are satisfied fourteen Parishes created a trust in favor of the National Church and its diocese by their "express accession to the Dennis Canon." The remaining fifteen Parishes, however, either did not take the necessary actions or did not have the requisite intent to create a trust under South Carolina trust law.

E. Revocation

Because we now hold fourteen Parishes created a trust in favor of the National Church and its diocese, the question arises whether those trusts are revocable. It is clear no majority of the 2017 Court reached a consensus on a theory of revocation. However, we find it is equally clear that three Justices would have held the trusts in this case, based on express accession to the Dennis Canon, are irrevocable. *See* 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part) (stating "express accession to the Dennis Canon" creates "an irrevocable trust"); 421 S.C. at 242, 806 S.E.2d at 98 (Hearn, J., concurring) (stating "the trust is irrevocable"); 421 S.C. at 231, 806 S.E.2d at 93 (Pleicones, J., lead opinion) (joining Justice Hearn's opinion). We adhere today to the votes those Justices cast in 2017. This holding is limited to the trusts created by express accession to the Dennis Canon *in this case*. We decline to comment on the revocability—or on any theory of revocability—of trusts created by other churches or parishes.

IV. Second Question before this Court—Ownership of Diocesan and Trustee Property

The second broad question we address in this case is whether the 2017 Court decided the National Church and the Associated Diocese are the beneficiaries of a trust over the Disassociated Diocese's real and personal property and of the trust held by the Trustees. Judge Goodstein ruled there is no trust in favor of the National Church and the Associated Diocese "as to the [Disassociated] Diocese and the Trustees, [because] the Dennis Canon does not apply on its face to them." Judge Dickson ruled the opinions of 2017 considered only Camp St. Christopher, and because the language of the 1951 deed to Camp St. Christopher was not an issue in the case and because the five opinions were "ambiguous on whether the [Disassociated] Diocese

or the Defendant [Associated Diocese] is the proper beneficiary of the Trustee's assets," the 2017 Court did not reverse Judge Goodstein's ruling.

We disagree. Three Justices in 2017 decided the Disassociated Diocese and the Trustees hold all of their real and personal property in trust for the benefit of the National Church and the Associated Diocese. 421 S.C. at 230, 806 S.E.2d at 92 (Pleicones, J., lead opinion) ("I would therefore reverse the circuit court's decision . . . to the extent it held that the Disassociated Diocese[and] the Trustees . . . controlled or owned the disputed real and personal property."); 421 S.C. at 248, 806 S.E.2d at 101 (Hearn, J., concurring) (stating the Associated Diocese "represent[s] the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property, including Camp Saint Christopher"); 421 S.C. at 251 n.29, 806 S.E.2d at 103 n.29 (Beatty, C.J., concurring in part and dissenting in part) ("I would find 'The Trustees of the Protestant Episcopal Church' in the Diocese of South Carolina should retain title to Camp St. Christopher In my view, the disassociated diocese can make no claim to being the successor to the [Lower Diocese]."). We interpret Chief Justice Beatty's comment that "the disassociated diocese can make no claim to being the successor to the Lower Diocese" as indicating the 2017 Court did not limit its decision to Camp St. Christopher but applied it to all Diocesan and Trustee property. We adhere today to the votes those Justices cast in 2017.

V. Names, Styles, Emblems, and Service Marks

There is also a dispute in this case regarding which entity owns certain names, styles, emblems, and service marks and whether the 2017 Court ruled on these issues. Judge Goodstein enjoined the National Church and the Associated Diocese from "using, assuming, or adopting in any way, directly or indirectly the names, styles, emblems or marks of" the Parishes or the Disassociated Diocese. Judge Dickson found "the Federal Court has jurisdiction over matters related to the trademarks, intellectual property, and service marks," and "likewise follows and conforms to" the five opinions of 2017 on these issues. Although they did not cross appeal on the issue, the Parishes and the Disassociated Diocese argue we should consider the trademark issues because the Justices were "split" on the issues in the five opinions of 2017.

We agree with Judge Dickson that three Justices in 2017 made a final decision that these issues should be litigated in federal court. 421 S.C. at 249 n.28, 806 S.E.2d at

102 n.28 (Beatty, C.J., concurring in part and dissenting in part) ("I express no opinion concerning the rights to the service marks as I believe this determination should remain with the federal court."); 421 S.C. at 288, 806 S.E.2d at 123 (Toal, J., dissenting) ("[B]ecause there is already a pending federal case involving the applicability of the Lanham Act to these exact marks, I would defer to the federal courts regarding the applicability of federal copyright law."); 421 S.C. at 251 n.31, 806 S.E.2d at 103 n.31 (Kittredge, J., concurring in part and dissenting in part) (joining Justice Toal's opinion except for her conclusion no trust was created). It is our understanding these issues are currently on appeal to the United States Court of Appeals for the Fourth Circuit. We defer to the federal courts on these issues.

VI. Conclusion

The current Court was given the unwelcomed task of interpreting the collective result of five separate opinions of the Justices of the 2017 Court—none of which gained a majority of votes—because a collective result could not be discerned from the opinions themselves. The reasoning set forth in this opinion is primarily to determine what the 2017 Court decided as to two broad questions, not to decide those questions ourselves. Our ruling as to the 2017 Court's answers to these questions yields a final decision for each Parish and the Trustees. However, our decision today is not precedential in any future church property dispute.

Trinity Episcopal Church, Pinopolis and the fourteen Parishes listed in Subsections III.B.i, ii, iii, iv, and v of this opinion did not create a trust in favor of the National Church or its diocese, and thus those fifteen Parishes retain title to their real estate. The fourteen Parishes listed in Subsections III.B.vi, vii, and viii did create a trust in favor of the National Church and its diocese, which is now the Associated Diocese. We order the governing bodies of the fourteen Parishes that we hold created a trust to prepare an appropriate legal instrument to document the transfer of title of each Parish's real estate to the National Church and the Associated Diocese, confer with counsel for the National Church and the Associated Diocese, and upon agreement to the terms of this instrument, record it in the public record with the appropriate local official.

The real and personal property held in trust by the Trustees is now held for the benefit of the Associated Diocese.

AFFIRMED IN PART AND REVERSED IN PART.

BEATTY, C.J., KITTREDGE, JAMES, JJ., and Acting Justice James E. Lockemy, concur. BEATTY, C.J. and JAMES, J., concurring in separate opinions.

ADDENDUM

1. Trinity Episcopal Church, Pinopolis

A letter from the Lower Diocese to Trinity Episcopal Church, Pinopolis explaining how to be admitted into the Lower Diocese which required the Parish to state in its application that it "has been organized in accordance with the Canons of the Diocese and 'its continued existence thereunder for at least a year'" and state its "willingness to conform to the Constitution and Canons of the General Convention and the Constitution and Canons of this Diocese."

The letter is followed by Journal pages containing meeting minutes from the 197th Annual Meeting of the Diocese Convention in 1987. The minutes indicate "Trinity, Pinopolis" and other parishes were to "be seated as parishes in union with this Convention."

2. The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina

1987 Articles of Restatement: "The purposes of the said corporation include the preaching and teaching of the Gospel of our Lord and Savior, Jesus Christ, in accord with the Articles of Religion of the Protestant Episcopal Church in the United States of America; the administering of the sacraments and other rites and ceremonies of the said Church as set forth in its Book of Common Prayer; and, generally, ministering to the needs, especially spiritual, of its members, visitors and the community at large."

2003 Bylaws: "The Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Protestant Episcopal Church in the United States of America, shall be used in the Church."

3. The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust

1989 Bylaws: "St. Michael's acknowledges the authority of the Protestant Episcopal Church in the Diocese of South Carolina (the 'Diocese') and of the Protestant Episcopal Church in the United States of America (the 'National Church')."

4. Church of the Cross, Inc. and Church of the Cross Declaration of Trust, Bluffton

2003 Bylaws: "The object and purpose of the corporation is for the support and maintenance of a Church in the general area of Bluffton, South Carolina, in the Episcopal Diocese of South Carolina for the public worship of Almighty God in accordance with the doctrine and practices of the Episcopal Church in the United States of America and of the Diocese of South Carolina, together with such other religious, educational and charitable works as may properly be connected therewith."

5. The Church of the Epiphany, Eutawville

2002 Bylaws: "The object and purpose of the corporation is for the support and maintenance of a Church in the general area of Eutawville, South Carolina in the Protestant Episcopal Diocese of South Carolina for the public worship of Almighty God in accordance with the doctrine and practices of the Protestant Episcopal Church in the United States of America and the Diocese of South Carolina, together with such other religious, educational and charitable works as may properly be connected therewith."

6. The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and The Parish of St. Helena Trust, Beaufort

1987 Bylaws: "BE IT FURTHER KNOWN that this parish from henceforth pledges to adhere to the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America."

"Any article or section of these By-Laws which may be in conflict with the canons of the Diocese of South Carolina and the Protestant Episcopal Church of the United States of America, shall be considered null and void."

7. Christ St. Paul's Episcopal Church, Yonges Island

1980 Bylaws: "[T]his parish is organized for the purpose of operating an Episcopal Church pursuant to the constitution and canons of the Episcopal Church in the

Diocese of South Carolina and of the Episcopal Church in the United States now in force or as hereafter may be adopted."

8. The Church of the Resurrection, Surfside

1983 Bylaws: "The parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States of America now in force or as hereafter may be amended."

"Any article or part of any article or these by-laws which may be in conflict with the Constitution and Canons of the Diocese of South Carolina or with the Protestant Episcopal Church in the United States are void."

9. The Church of St. Luke and St. Paul, Radcliffeboro

1995 Bylaws: "This Parish is organized for the purpose of operating an Episcopal church pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States now in force or as hereafter may be adopted."

"Any article or part of any article or these By-Laws which may be in conflict with the Constitution or Canons of the Diocese of South Carolina or the Protestant Episcopal Church in the United States are void."

10. The Vestry and Wardens of St. Paul's Church, Summerville

1992 Bylaws: "In order to carry out this objective, the Parish is organized pursuant to the Constitution and Canons of the Episcopal Church in the United States of America (ECUSA) and of the Protestant Episcopal Church in the Diocese of South Carolina now in force or as hereafter may be adopted."

11. Trinity Episcopal Church, Edisto Island

1998 Bylaws: "This parish is organized for purpose of opening an Episcopal Church pursuant to the Constitution and Canons of the Diocese of South Carolina and of the Episcopal Church now in force or as hereafter may be adopted."

"Any article or part of any article of these By-Laws which may be in conflict with the Constitution or Canons of the Diocese of South Carolina or the Episcopal Church are void."

12. St. Paul's Episcopal Church of Bennettsville, Inc.

2002 Articles of Incorporation: "Our purpose is to operate a Parish organized under and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina, as amended from time to time."

2004 Bylaws: "The Vestry shall be authorized and empowered to acquire and purchase such real and personal property as they may deem necessary for the purpose of the congregation, and the same to sell, transfer, mortgage or authorize disposition of as they may deem expedient so long as such acts are in accord with the Canons of the Episcopal Church."

"Any article or section of these By Laws which may be in conflict with the present or future Canons of the Diocese shall be considered null and void."

13. All Saints Protestant Episcopal Church, Inc., Florence

1985 Bylaws: "The By-Laws of All Saints' Church are drawn with the recognition that as a part of the Episcopal Church in the United States of America, we are bound by the Constitution and Canons of the National Church and the Constitution and Canons of the Diocese of South Carolina."

"Any article or Section of these By-Laws which may be in conflict with the present or future Constitution and Canons of the Episcopal Church or the Diocese of South Carolina shall be considered null and void."

14. The Church of Our Saviour of the Diocese of South Carolina, John's Island

1981 Bylaws: "The purpose of the said proposed Corporation is for the purpose of operating a Mission, organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina as now in force or as hereafter may be amended"

"This mission is organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States now in force or as hereafter may be adopted."

1984 Letter to Lower Diocese: "We agree to conform to the Constitution and Canon of the General Convention and the Canon of the Convention of the Diocese."

2003 Bylaws: "The Parish Church of Our Savior acknowledges the authority of the Protestant Episcopal Church in the United States of America in accordance with the Constitution and Canons thereof"

15. The Church of the Redeemer, Orangeburg

2000 Constitution: "This Church shall conform to the Constitution and Canons of the General Convention of the Protestant Episcopal Church of the United States of America, and the Constitution and Canons of the Convention of the Diocese of South Carolina, which are now, or hereafter may be enacted by the authority of the same. It likewise supersedes all previous Constitutions and Bylaws of said Church."

16. The Church of the Good Shepherd, Charleston, SC

2006 Constitution: "It adopts the bylaws and canons of the Protestant Episcopal Church of the United States of America and of the Diocese of South Carolina."

17. The Church of the Holy Comforter, Sumter

1989 Constitution: "We, the congregation of the Protestant Episcopal Church of the Holy Comforter, Sumter, South Carolina, County of Sumter, Diocese of South Carolina, as such do hereby acknowledge, accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitutions and Canons of the same Church in the Diocese of South Carolina."

"Any provisions in this Constitution repugnant to or in conflict with any of the Canons of the Diocese of South Carolina or of the Protestant Episcopal Church in the United States shall be null and void."

18. St. Bartholomew's Episcopal Church, Hartsville

2005 Bylaws: "St. Bartholomew's Episcopal Church accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church and of the Diocese of South Carolina and acknowledges this authority accordingly. Any article or section of these By-Laws which may at any time be in conflict with such Canons shall be null and void."

19. The Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, John's Island (Charleston)

2006 Constitution and Bylaws: "St. John's Church, John's Island, S.C. accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of the Protestant Episcopal Church in the United States of America and acknowledges these authorities accordingly."

1996 Articles of Amendment: "The corporation is subject to the Constitution and Canons of the Protestant Episcopal Church in the United States and the Protestant Episcopal Church in the Diocese of South Carolina, as now in force or as may hereafter be amended, including, but not limited to"

20. The Vestry and Church Wardens of St. Jude's Church of Walterboro

1990 and 2006 Constitution: "The Church of St. Jude's accedes to and adopts the Constitution and Canons of the Episcopal Church in the United States of America and also the Constitution and Canons of the Church in the Diocese of South Carolina and acknowledges their authority accordingly."

21. Saint Luke's Church, Hilton Head

2000 Bylaws: "This Church accedes to and adopts the constitution, canons, doctrine, discipline, and worship of the Protestant Episcopal church in the State of South Carolina, and the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly."

22. St. David's Church, Cheraw

1992 Bylaws: "The organized Parish of St. David's Church, Cheraw, South Carolina, accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and also the Constitution and Canons of the Diocese of South Carolina."

23. The Vestry and Church Wardens of the Parish of St. Matthew (St. Matthews, Fort Motte)

2004 Bylaws: "Saint Matthew's Parish Episcopal Church . . . accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and in the Episcopal Diocese of South Carolina; whenever a conflict exists between the Constitution and By-Laws and the Canons of the Church and Diocese the Canons take precedence."

24. The Vestries and Church Wardens of the Parish of St. Andrew (Old St. Andrew's), Charleston

2007 Constitution and Canons: "The Rector, Wardens, Vestry, and Congregation hereby resolve that should any future changes be made in the Constitution and Canons of the Episcopal Church in the United States or those of the Diocese of South Carolina which may then conflict with any article herein contained, this Constitution and these Canons shall be deemed automatically changed to conform with the national and diocesan constitution and canons."

2010 Constitution and Canons: "Saint Andrew's Parish Church in the Diocese of South Carolina accedes to and adopts the Constitution and Canons of the Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of South Carolina, and, accordingly, acknowledges the authority of the same."

25. The Church of the Holy Cross, Stateburg

2011 Bylaws: "This parish, known as the Church of the Holy Cross, Stateburg having resolved to accept the rules and regulations of the Episcopal Church, in effect, accedes to the doctrine, discipline and worship, the Constitution and Canons of the

Protestant Episcopal Church in the United States of America, and the Constitution and Canons in of the same church in the Diocese of South Carolina."

"The Vestry in authorized and empowered to acquire and purchase such real and personal property as it deems necessary for the purpose of the corporation, and the same to sell, alienate, mortgage or other wise dispose of as it may deem expedient. . . . [T]he Vestry shall in no case alienate or encumber any of the real or personal property of the corporation without the same having been submitted first to the congregation . . . and having received the affirmative vote thereof for such alienation or encumbrance." Footnote: "Diocesan Canon require Standing Committee approval."

26. Trinity Church of Myrtle Beach

1993 Bylaws and Constitution: "We . . . accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina."

"The Vestry . . . shall hold, manage, and administer all Church property including real property which they shall have power to sell, alienate, mortgage, lease or otherwise deal with and dispose of by deed of other documents executed by the Wardens or one of them; provided that the Vestry shall not sell, alienate mortgage or otherwise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese as provided in Diocesan or National Church Canons."

27. Holy Trinity Episcopal Church, Charleston

2008 Bylaws: "This Parish, known as Holy Trinity Episcopal Church, does acknowledge and accede to the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitutions and Canons of the same Church in the Diocese of South Carolina."

"The Vestry . . . shall hold, manage and administer all Church property including real property which they shall have power to sell, alienate, mortgage, lease or otherwise deal with and dispose of by deed of other documents executed by the Wardens or one of them upon resolution of the Vestry; provided that the Vestry shall

not sell, alienate, mortgage or other wise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese as provided in the Canon VI, Section 3 of the General Church Canons."

"The terms of these Bylaws which may be in conflict with the Canons of the Protestant Episcopal Church in the United States of America and/or the Diocese of South Carolina are hereby amended to conform to such Canons."

28. Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church, Mount Pleasant

1980 Bylaws: "The Episcopal Church of the Parish of Christ Church . . . does acknowledge and accede to the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitutions and Canons of the same Church in the Diocese of South Carolina."

"In the event Christ Church, Mount Pleasant, S.C. should ever dissolve . . . , the Standing Committee of the Protestant Episcopal Church in the Diocese of South Carolina shall become the managing body of the corporation, with full power and authority without restriction, to sell or mortgage its property or any part thereof, to convey any or all of its property to the trustees of the Protestant Episcopal Church in South Carolina."

"The terms of these By-laws which may be in conflict with the Canons of the Protestant Episcopal Church in the United States of America . . . are hereby amended to conform to such canons."

29. St. James' Church, James Island, SC

2001 Constitution: "The Parish of St. James' accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America (PECUSA) and to the Constitution and Canons of the Diocese of South Carolina (Diocese of S.C.)."

"All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Church and the Diocese thereof in which such Parish, Mission or Congregation otherwise existing over such property so long as

the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitutions and Canon."

CHIEF JUSTICE BEATTY: The primary argument Appellants make to this Court is the 2017 Court made a final decision that all real property formerly owned by the twenty-nine Parishes is now owned by the National Church and the Associated Diocese. It is clear that in 2017 Justice Pleicones and Justice Hearn would have decided all of the Parishes acceded to the Dennis Canon and created a trust in favor of the National Church. 421 S.C. at 230, 806 S.E.2d at 92 (Pleicones, A.J.); 421 S.C. at 245, 806 S.E.2d at 100 (Hearn, J., concurring). It is equally clear, however, that Justice Kittredge would have decided all of the Parishes revoked any trust in favor of the National Church, 421 S.C. at 257, 806 S.E.2d at 106 (Kittredge, J., concurring in part and dissenting in part), and that Justice Toal would have decided none of the Parishes created a trust in favor of the National Church, 421 S.C. at 280, 806 S.E.2d at 119 (Toal, A.J., dissenting). Therefore, as the parties argued to this Court, the underlying question in determining whether the 2017 Court made a final decision is what outcome I intended in my 2017 concurring opinion. As I explained during oral argument in this case, I did *not* vote to end the case in 2017. Rather, I intended to reserve final judgment as to each individual Parish until the circuit court decided on remand whether each individual Parish acceded to the Dennis Canon.

JUSTICE JAMES: In his concurrence, Chief Justice Beatty correctly summarizes the five 2017 opinions. Since I was not one of the five authors, I write separately to explain why I concur in Justice Few's majority opinion.

Two members of the 2017 Court deferred to ecclesiastical law and concluded a trust over every Parish's real property was created in favor of the National Church. The other three members of the 2017 Court concluded neutral principles of law must be applied to determine whether a real property trust was created (and I agree). Two of those three members concluded express accession to the Dennis Canon was enough to create a real property trust. The remaining Justice, Justice Toal, concluded South Carolina law required more than express accession and that no real property trusts were created. So, when counting the "votes," two Justices concluded trusts were created through deference to ecclesiastical law, and two Justices concluded trusts were created if the Parish expressly acceded to the Dennis Canon; consequently, the collective result of the 2017 opinion was that a real property trust was created by a Parish if the Parish expressly acceded to the Dennis Canon.

In my view, Justice Toal was correct—express accession to the Dennis Canon was not enough to create a real property trust under South Carolina law; however, that ship has sailed. We have no choice but to honor the collective result of the five 2017 opinions and to apply the "express accession" approach to each Parish's real property. Try as I might, I cannot disagree with Justice Few's dissection of the 2017 opinions and his analysis of each Parish's real property; therefore, I reluctantly concur.

**THE 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
Perry H. Gravely, Circuit Court Judge

Opinion No. 5905
Heard December 6, 2021 – Filed April 20, 2022

AFFIRMED

Appellate Defender Joanna K. Delany, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General David A. Spencer, of Columbia, and Solicitor William W. Wilkins, III, of Greenville, for Respondent.

THOMAS, J.: Richard Kenneth Galloway appeals his convictions of criminal sexual conduct with a minor in the first degree and lewd act upon a child, arguing the trial court erred in (1) limiting the testimony of his expert witness, (2) allowing the State's expert witness to testify about risk factors for childhood sexual abuse, (3) permitting the State's witness to testify about childhood sexual abuse dynamics

and disclosures although she did not comply with a subpoena duces tecum, (4) admitting evidence of his alleged prior bad acts against Victim's mother, and (5) admitting testimony in violation of the best evidence rule. We affirm.

FACTS

The events leading to Galloway's charges occurred between January 1, 1988, and July 31, 1990, and all charges concerned the same victim (Victim). In 2016, Victim revealed a delayed disclosure of prior abuse. Investigator Robert Perry, who worked with GCSO's Crimes Against Children Unit, interviewed Victim, Victim's mother, and other family members. After Perry conducted two interviews and a telephone call with Galloway, Galloway was arrested. A jury trial was held in May 2018. Victim, who was thirty-nine years old and had travelled from Missouri for the trial, testified she initially knew Galloway because he had been married to her aunt.

During an in-camera hearing, Victim testified the first time Galloway abused her was at the University Inn in Greenville County, where he was babysitting her and her brother. Victim alleged Galloway reached into her pants and touched her vagina. According to Victim, Galloway claimed he mistook her for her mother in his sleep. Victim testified that under the pretext of supervising her, Galloway insisted on helping Victim shower and would wash her buttocks, vagina, and breasts, telling her if he did not play with her breasts they would not grow. Victim also discussed one occasion when Galloway took her into her mother's bedroom, laid her on the bed, removed her pants, and performed oral sex. Before the jury, Victim testified her mother, Patricia Waldrop, worked at a gas station convenience store. Victim testified Galloway began frequenting the store, and she similarly testified regarding the babysitting incident at the University Inn. The day after the first abuse, Victim told Waldrop what happened. Although Galloway did not babysit her and her brother for a long time, she, Waldrop, and Victim's brother later moved in with Galloway. Victim also described abuse that occurred in North Carolina, stating when she was stacking wood into a truck, Galloway came up behind her, reached into her underwear, and fondled her.

Victim testified Galloway's relationship with Waldrop "started out okay" but "just got bad fast." When Victim began to testify about physical fights between Waldrop and Galloway, Galloway objected under Rule 404(b), SCRE. The State replied it did not seek admission of the disputed evidence under Rule 404(b);

rather, it contended it was "relevant evidence." The trial court overruled Galloway's objection without specifying a reason for its ruling. Victim testified Galloway would be violent when he was angry and had physical altercations with Waldrop. She recalled an incident when she tried to call 911 after a "really bad" altercation and Galloway, upon learning what she was doing, threatened to kill Waldrop.

Victim eventually again disclosed Galloway's abuse to Waldrop and, shortly thereafter, she saw Galloway at the home of Waldrop's mother and Galloway told Victim if she did not forgive him he would go to hell. According to Victim, she responded, "I guess you're just going to go [to] hell." Although they never moved back in with Galloway, Galloway continued to behave violently toward Victim and her family, and Victim testified that on different occasions, Galloway kidnapped her brother, drove "doughnuts" in their yard, attempted to run Victim and Waldrop off the road, and along with two other persons, pulled Victim's biological father from his car, busted his face, and broke his ribs. According to Victim, she suffered from post-traumatic stress disorder (PTSD) and schizoaffective disorder. She attributed the PTSD as arising from the abuse.

Waldrop, who testified after Victim, corroborated much of Victim's testimony. Waldrop also testified without objection that Galloway himself had corroborated much of Victim's account of the first time Galloway abused her, claiming he woke up next to Victim and put his arm around her, thinking it was Waldrop. During her testimony, Waldrop referenced a letter that Galloway had written to her in which he expressed a desire for a reconciliation. When asked by the State to elaborate about what Galloway said in the letter, Waldrop said, "[h]e just talked to me about he was sorry that he's been abusive." Galloway immediately objected on the grounds of hearsay and the best evidence rule. As to the best evidence rule, Galloway asserted, "If they're going to talk about the contents of the letter, they need the letter to prove it." The trial court asked if the letter was available, and the State replied there was no letter. The court allowed Waldrop to continue discussing it, reasoning her testimony was "based on state of mind." Waldrop testified that in the letter Galloway "apologized for being mean to us and he said he wouldn't do it anymore and he really wanted us to come back."

The State called Shauna Galloway-Williams, a licensed professional counselor and the executive director of a child abuse and sexual assault recovery center. During an in-camera hearing, Galloway-Williams testified about her qualifications, current

employment, and risk factors of childhood abuse.¹ The State sought to have her qualified as an expert in childhood sexual abuse dynamics and disclosure pursuant to Rule 702, SCRE. Galloway objected, arguing the subject matter was not beyond the ordinary knowledge of the jury, Galloway-Williams was not qualified as an expert to testify regarding the issues for which her testimony was being offered, and her testimony was not reliable. Galloway requested the trial court "exercise its gatekeeping role under [Rule] 702[, SCRE]." Galloway further complained that the week before trial he had sent Galloway-Williams a subpoena duces tecum directing her "to bring with her to court . . . all the articles, publications, treatises, books, manuals, [and] data that she would be relying upon." However, she brought only one article about forensic interviewing. The trial court qualified her as an expert.

Before the jury, Galloway-Williams testified that one risk factor for childhood sexual abuse was a single-parent household with a live-in caregiver. Galloway-Williams also identified common reasons that a child victim would delay reporting abuse. One such factor was the child's awareness that disclosure could result in consequences to the child and the child's family. According to Galloway-Williams, "these consequences may be based on unrealized fears or they may be based on threats that were made." As to the subpoena, Galloway-Williams explained it would have been impossible to bring all of the publications she based her opinions on, and the article on forensic interviewing that she provided to the defense before trial gave a good overview and a lengthy bibliography of the topics related to child abuse. Although Galloway-Williams conceded the article was "called forensic interviewing," she noted it included a subsection on delayed reporting.

Galloway did not testify on his own behalf; however, he proffered Dr. David Price, a forensic psychologist and forensic neuropsychologist, as an expert witness in general psychology, specifically in PTSD and schizoaffective disorder. During an in-camera hearing in which Dr. Price discussed his qualifications and proposed testimony, he testified on direct examination that it was possible for someone to have a false memory of abuse but the reasons for such an occurrence varied among individuals. On cross-examination, Dr. Price conceded that although it was

¹ The factors identified by Galloway-Williams were age, disabilities, emotional problems, behavioral problems, substance abuse, poverty, violence, and single-parent homes, particularly those with live-in caregivers.

possible that someone who was "schizoaffective now . . . could possibly . . . misrepresent something in their mind," such a misrepresentation could also occur in the absence of a schizoaffective disorder. Dr. Price also clarified he was testifying as a blind expert, had not evaluated Victim and was not testifying about anything in detail about her, and was therefore not able to state there was anything in her past that would have made her more likely to have false memories. Price explained he could not give an expert opinion about Victim without either evaluating her or reviewing her medical records and other relevant documents. The trial court allowed Dr. Price to testify as an expert but prohibited him from testifying about false memory and repressed memory because he had not evaluated Victim. Dr. Price's jury testimony included a statement that possible symptoms of schizoaffective disorder include delusions or hallucinations and that someone suffering from PTSD may have distorted memories.

The jury convicted Galloway of one charge of criminal sexual conduct on a minor in the first degree (CSC)² and of lewd act on a minor. The trial court sentenced Galloway to consecutive sentences of thirty years' imprisonment for first-degree CSC and ten years for lewd act on a minor. The court denied Galloway's motion for reconsideration of his sentence. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, we review the decisions of the trial court only for errors of law." *State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690 (Ct. App. 2011). "Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). Thus, "this [c]ourt is limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). An appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Id.*

² The jury acquitted Galloway of one CSC charge and was unable to reach a unanimous verdict on the remaining CSC charge.

LAW/ANALYSIS

I. LIMITATION ON DR. PRICE'S TESTIMONY

Galloway argues the trial court erred in prohibiting Dr. Price from testifying that schizoaffective disorder could cause false memories because, despite finding the subject matter of the testimony was beyond the ordinary knowledge of the jury and Dr. Price had acquired the knowledge to be qualified as an expert, the court failed to give due consideration to the reliability of the testimony regarding false memory. Thus, Galloway contends the trial court abandoned its gatekeeping duty to consider all three preliminary prerequisites of Rule 702, SCRE. We find no reversible error.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). Before admitting expert testimony, the trial court must determine the following: "(1) whether the evidence will assist the trier of fact; (2) whether the expert has acquired the requisite knowledge and skill to qualify as an expert in that particular subject matter[;] and (3) whether the substance of the testimony is reliable." *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018). "The appellate court reviews a trial [court's] ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." *State v. Torres*, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010).

Galloway concedes the trial court performed the first two requirements of its gatekeeping function by finding the subject matter of the testimony was beyond the ordinary knowledge of the jury and by finding Dr. Price had acquired the knowledge to be qualified as an expert. Galloway argues the trial court erred in failing to give due consideration as to the third requirement, whether the substance of the testimony is reliable. 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. *Id.* (stating an appellate court reviews decisions regarding the admissibility of evidence under an abuse of discretion standard); Rule 403, SCRE (allowing relevant evidence to be excluded if its probative value would be substantially outweighed by other factors, including confusion of the issues or misleading of the jury).

II. RISK FACTORS OF CHILDHOOD SEXUAL ABUSE

Galloway argues the trial court abused its discretion in allowing Galloway-Williams to testify as an expert about the risk factors of childhood sexual abuse because the subject matter of the testimony was not beyond the ordinary knowledge of the jury. We disagree.

In *State v. Weaverling*, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999), this court found expert testimony regarding "common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts" was admissible. Our court found "[s]uch testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." *Id.* at 475, 523 S.E.2d at 794. In *Jones*, 423 S.C. at 636, 817 S.E.2d at 271, our supreme court likewise found "the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized." In addition, the court found expert testimony on "the behavior of nonoffending caregivers" was "contrary to what a reasonable person would expect." *Id.* at 637, 817 S.E.2d at 271. Thus, it affirmed the trial court's finding that the testimony "fell outside the scope of lay knowledge and was therefore admissible." *Id.* Most recently, in *State v. Acker*, Op. No. 5892 (S.C. Ct. App. filed Jan. 19, 2022) (Howard Adv. Sh. No. 3 at 48, 54-55), this court found an expert's testimony concerning risk factors such as substance abuse in the home, a child's age, a child's special needs or disabilities, and behavioral problems were beyond the ordinary knowledge of the jury. We likewise find the risk factors associated with childhood abuse admitted in this case

were not likely to be within the common knowledge of jurors. Thus, we find the trial court did not abuse its discretion in admitting the evidence.

III. FAILURE TO COMPLY WITH SUBPOENA DUCES TECUM

Galloway argues the trial court erred in qualifying Galloway-Williams as an expert and allowing her to testify despite her failure to comply with his subpoena duces tecum requesting articles and publications on which her opinions were based. We disagree.

In *Jones*, the court considered whether it was error to admit expert testimony where Jones alleged "there was no evidence demonstrating [the] opinions were accurate or reliable . . . [and the expert] failed to identify or name any studies supporting her opinions, nor did she state whether any of the literature she relied on had been peer reviewed." 423 S.C. at 638, 817 S.E.2d at 271–72. Our supreme court found no error where the "testimony focused on explaining the concept of delayed disclosure and the role of nonoffending caregivers in the dynamics of sexual abuse." *Id.* at 639, 817 S.E.2d at 272. Although the expert in *Jones* "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." *Id.* In addition, "she explained her opinions were supported by peer-reviewed professional journals and trade publications, all of which were uniformly accepted and recognized by child sexual abuse experts and professionals." *Id.*

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. *See State v. Morris*, 376 S.C. 189, 203, 656 S.E.2d 359, 367 (2008) ("The qualification of a witness as an expert is a matter largely within the trial court's discretion and will not be reversed absent an abuse of that discretion.").

IV. EVIDENCE OF PRIOR VIOLENCE

Galloway argues the trial court erred in admitting testimony about his violent behavior toward Waldrop, claiming the evidence was prior bad act evidence that

did not fall within any of the exceptions enumerated in Rule 404(b), SCRE or *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), and the trial court failed to conduct the mandatory balancing analysis. We find no reversible error.

When Victim initially testified about Galloway's violent acts toward Waldrop, Galloway objected under Rule 404(b), SCRE. The State replied it did not seek admission of the disputed evidence under Rule 404(b); rather, it contended it was "relevant evidence." The trial court overruled Galloway's objection and allowed Victim to testify. Galloway acknowledges he did not object to the admission of other evidence of bad acts later admitted, but he argues the other evidence admitted did not prejudice him because it supported his theory that Victim was making "outlandish" accusations and fabricating events.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, 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. "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." *State v. Fletcher*, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008).

"As a threshold matter, the trial [court] must initially determine whether the proffered evidence is relevant . . ." *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). Once the court finds the evidence is relevant, it must then determine if it fits within one of the enumerated exceptions to Rule 404(b). *Id.* at 154–55, 682 S.E.2d at 895. If the court finds the prior bad act evidence is clear and convincing and falls within an exception, it must then determine if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.* at 155–56, 682 S.E.2d at 896. This requires the trial court to conduct a balancing test, "which must be based on the entire record." *State v. Scott*, 405 S.C. 489, 506, 748 S.E.2d 236, 245 (Ct. App. 2013) (quoting *Clasby*, 385 S.C. at 156, 682 S.E.2d at 896). A trial court's failure to conduct the balancing test is error. *State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013). However, this error is subject to a harmless error analysis. *See State v. King*, 424 S.C. 188, 201, 818 S.E.2d 204, 211 (2018) (applying harmless error analysis where trial court erred in failing to conduct a Rule 404(b) analysis before admitting prior bad acts evidence).

In this case, 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. *See State v. Kirton*, 381 S.C. 7, 37–38, 671 S.E.2d 107, 122–23 (Ct. App. 2008) (stating the admission of inadmissible evidence is harmless where it is merely cumulative to other evidence that is admitted without objection).

V. GALLOWAY'S LETTER

Galloway argues the trial court erred in permitting Waldrop to testify about a letter Galloway allegedly wrote to her without producing the letter. We find no reversible error.

During testimony questioning Waldrop's thoughts and consideration of returning to Galloway, she testified Galloway wrote her a letter in which "he apologized for being mean to us and he wouldn't do it anymore and he really wanted us to come back." The State responded, "there is no letter, so there's no way to have better evidence"

"The question of whether to admit evidence under [Rules 1001 to 1004, collectively known as the best evidence rule,] is . . . addressed to the discretion of the trial court." *State v. Mitchell*, 399 S.C. 410, 421, 731 S.E.2d 889, 895–96 (Ct. App. 2012) (alteration in original) (quoting *State v. Halcomb*, 382 S.C. 432, 443–44, 676 S.E.2d 149, 154–55 (Ct. App. 2009)). "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 1002, SCRE. However, under Rule 1004, SCRE,

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if--

- (1) Originals Lost or Destroyed. . . ; or
- (2) Original Not Obtainable. . . ; or
- (3) Original in Possession of Opponent. . . ; or
- (4) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

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. *See Matter of Bilton*, 432 S.C. 157, 167, 851 S.E.2d 442, 447 (Ct. App. 2020) (explaining if improper evidence is admitted, "the next step is to determine whether the erroneous admission qualifies as a harmless error"); *id.* (explaining the analysis to determine if the erroneous admission of evidence was harmless requires the court to decide if the error contributed to the guilty verdict). 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).

CONCLUSION

Based on the foregoing, Galloway's convictions are

AFFIRMED.

GEATHERS, J., and HUFF, A.J., concur.