

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

DOCKET NUMBER: S24A1063

**TABITHA WOOD,
PETITIONER-APPELLANT,**

v.

**STATE OF GEORGIA,
RESPONDENT-APPELLEE.**

On appeal from the Superior Court of Hall County

Indictment 2023CR144-LHB

The Honorable Lindsay H. Burton, presiding

APPELLANT'S PRINCIPAL BRIEF

TABITHA WOOD

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STATEMENT OF JURISDICTION

The Supreme Court of Georgia, rather than the Court of Appeals of Georgia, has jurisdiction over this direct criminal appeal because the underlying offense of conviction, malice murder, is an offense for which the death penalty can be imposed. GA. CONST. Art. VI, Sec. VI, Par. III (8); see O.C.G.A. § 16-5-1 (e) (1) (“A person convicted of the offense of murder shall be punished by death, by imprisonment for life without parole, or by imprisonment for life.”). Furthermore, the Supreme Court of Georgia has appellate jurisdiction due to their being a final judgement at the trial court level. O.C.G.A. § 5-6-34(a)(1).

As to the timeliness of this appeal, Ms. Wood then filed a timely motion for new trial on April 21, 2023. (Vol. 2 – 490). The trial court subsequently held a hearing on the matter and entered an order denying Ms. Wood’s motion for new trial on October 30, 2023. (Vol. 514-546). Ms. Wood subsequently filed a timely notice of appeal on November 29, 2023, (Vol. 1 – 1-3).

PROCEDURAL HISTORY

On March 17, 2023, the Appellant, Tabitha Wood, was convicted in the above-styled case of the offenses of Malice Murder, Felony Murder, Aggravated Assault, Exploitation of an Elder Person, Concealing Death of Another, and Financial Transaction Card Theft. (Vol. 2 - 451).¹ She was then sentenced with her conviction becoming final as to an entry of judgment on March 24, 2023. (Vol. 2 – 461-464). On Count 1, Malice Murder, Ms. Wood was sentenced to life in prison. Counts 2-5 for felony murder and the underlying felonies for felony murder were merged where the felony murder counts were merged into Count 1 for malice murder and the underlying felonies were merged into their respective felony murder counts. On Count 6 for concealing the death of another, Ms. Wood was sentenced to 10 years to serve in custody consecutive to Count 1. On Count 7 for financial transaction card theft, Ms. Wood was sentenced to 3 years in custody concurrent to Count 1. (Vol. 2 – 461-464).

Following her conviction, Ms. Wood then filed a timely motion for new trial on April 21, 2023. (Vol. 2 – 490). Ms. Wood then filed a lengthier amended motion for new trial on August 25, 2023. (Vol. 2 – 494-511). The trial court subsequently held a hearing on the matter and entered an order denying Ms. Wood’s motion for new trial on October 30, 2023. (Vol. 514-546). Ms. Wood subsequently filed a timely notice of appeal on November 29, 2023, (Vol. 1 – 1-3), and this appeal follows.

¹ Citations to the clerk record prepared for this appeal are “Vol.” followed by the e-filed docket volume number and page number(s).

The trial transcript begins at Volume 8 of the e-filed docket and starts over with page number 1. The motion for new trial hearing starts at Volume 20 of the e-filed docket and starts over with page number 1.

STATEMENT OF FACTS AND BACKGROUND

On June 7, 2022, Ms. Wood was at she and the decedent's (Mr. Kramer) home when law enforcement arrived in response to a missing person's report. (Vol. 10 – 377). At some point during that response, Ms. Wood came out to the porch where law enforcement was, which is when officers realized Ms. Wood was in distress. (Vol. 10 – 378). That's when Ms. Wood told them that Mr. Kramer was dead and had committed suicide; however, he had not committed suicide, which Ms. Wood admitted to at trial when she asserted that she fought Mr. Kramer in self-defense. (Vol. 10 – 391; Vol. 11 – 743-746). However, what she told police on June 7, 2022 was that she could not handle the way she was living anymore; that Mr. Kramer had been abusive and pointed a gun to her head multiple times previously; and that on the night in question, Mr. Kramer had pulled guns on her while they were drinking and hit Ms. Wood first with a lamp, resulting in a fight and the fatal incident. (Vol. 10 – 394, 397, 406-407). Ms. Wood testified to the same at trial. (Vol. 11 – 737-738, 742-746).

Ms. Wood's sole defense at trial was self-defense in conjunction with Battered Person Syndrome (hereinafter, "BPS")², which was how the trial court charged the jury regarding that defense. (Vol. 2 – 430-432, 435-437). Because the sole defense was self-defense, much of the evidence was not in dispute as there was no dispute as to whether Ms. Wood killed Mr. Kramer, and there was not a dispute in much of the physical evidence as there was clearly some type of fight on the fatal night. Regarding the physical evidence, it most certainly established that Ms. Wood killed Mr. Kramer. However, as to whether the killing was justified, the physical evidence was also consistent with self-defense in terms of Mr. Kramer coming at Ms. Wood first, based on

² Because BPS is a component of a self-defense claim, counsel will refer to the sole defense being self-defense throughout this brief.

the blood pattern analysis testified to at trial by the State's crime scene expert, Sergeant Cameron Durham. (Vol. 11 – 683-684, 688).

This case was not one of overwhelming evidence, as almost no physical evidence, such as blood, fingerprints, DNA, and other similar evidence, was ever tested. (Vol. 10 – 705, 709). Rather, it was a case of circumstantial evidence in terms of who started the fight and who hit who. (Id.) At its core, the determinative issue at trial was Ms. Wood's credibility as to her theory of self-defense, which is what the State attacked for much of trial to prove their theory beyond a reasonable doubt that it was not self-defense. (Vol. 12 – 869).

As part of the defense, Ms. Wood's trial counsel sought to admit three prior bad acts by Mr. Kramer against other women, which Ms. Wood had knowledge of, pursuant to O.C.G.A. § 24-4-404(b) ("Rule 404(b)). (Vol. 1 – 187). Additionally, trial counsel filed a brief and supplemental brief in support of the prior bad act evidence. (Vol. 1 – 224, 271). The trial court then issued an order regarding the prior bad act evidence where it found that upon a prima-facie showing of self-defense, the prior bad acts could be testified to by Ms. Wood to show the reasonableness of her fear for purposes of self-defense. (Vol. 1 – 289). At trial, when defense counsel sought to call witnesses regarding the prior bad acts, the trial court ruled that "Ms. Wood can testify as to her knowledge of these acts. The Court is not allowing the defense to then call, for instance, Ms. Sailors, Ms. Presley, or any of Ms. Willis' relatives to corroborate her statement" despite finding the evidence itself to be relevant and admissible. (Vol. 12 – 802).

At trial, Ms. Wood testified about the prior bad acts and her knowledge of those acts. (Vol. 12 – 834-841). The prior bad acts involved instances where Mr. Kramer had pulled guns on other women, stalked them, and otherwise abused and threatened them. While the trial court only allowed Ms. Wood to testify to the other-act evidence and prohibited the defense from calling

witnesses in support, defense counsel did proffer the testimony of Annette Willis, Dale Willis, and April Sailors at trial outside the presence of the jury, and the witnesses corroborated much of what Ms. Wood testified to. (Vol. 12 – 947-967). During that proffer, trial counsel renewed its objection to not being able to get into the specific other acts through its own witnesses aside from Ms. Wood. (Vol. 12 – 962).

In addition to the other act testimony, Dr. Marti Loring testified for the defense regarding BPS and its relation to the sole defense of self-defense. (Vol. 12 – 967). Prior to trial, the trial court ruled to “limit Dr. Loring’s testimony based on some of the things that she stated that are battered person syndrome/PTSD [and how that] can lead to bizarre thinking after the fact.” (Vol. 6 – 62).

To rebut Ms. Wood’s theory of defense, the State focused on attacking Ms. Wood’s credibility through cross-examination and by arguing the same. For example, the prosecution used their cross-examination and impeachment evidence to ask, “So you would agree with me, you’re not trying to get the truth out about why Leroy got beaten to death, you’re just making up a lie.” (Vol. 12 – 890). Ms. Wood responded, “No, I’m not making up a lie. It’s not a lie. You can call it a lie because I was saying it was Leroy. But those are the things that I had been experiencing from him, like I said, for the three years that I’ve been with him.” (Id.). The prosecution then continued cross-examining her about credibility, and ultimately again asked, “instead of letting your story out, you lied to each and every one of them.” (Vol. 12 – 895). This was the purpose of the prosecution to use Ms. Wood’s testimony on cross-examination to argue that she was a liar as to her story regarding Mr. Kramer.

During his closing argument, the prosecutor argued that Ms. Wood’s story was not true and that “a good hunk of the story she just told is absolute lies. I don’t know why they can’t just

admit that they're lies." (Vol. 13 – 1145). The prosecution argued that Ms. Wood was lying about what she said she knew about Mr. Kramer's past as well and that the jury couldn't believe her essentially because she was the only witness saying these things and was a liar. For example, in closing, the prosecution argued, "You see, the thing is Ms. Wood can get up there and say whatever she wants about Mr. Kramer. And remember, every bad thing that you heard about Mr. Kramer came from the woman who killed him, everything. It might have gone through Dr. Loring at one point, but every bad thing you heard about Mr. Kramer came from his murderer. If you're okay with that, fine, let her go. Dismiss the charges." (Vol. 13 – 1149). Thus, the prosecution's argument was that to find Ms. Wood not guilty, the jury would have to believe Ms. Wood regarding her story and what she knew about Mr. Kramer's violence toward other women. In fact, during closing arguments, the prosecution attacked Ms. Wood's entire story of being a victim of domestic violence and argued it's all "an absolute lie." (Vol. 13 – 1077). Thus, in context of the evidence, Ms. Wood's credibility regarding her past, her relationship with Mr. Kramer, and regarding what she knew about Mr. Kramer's violence to other women were all at issue in the determination of this case.

ENUMERATIONS OF ERROR

- I. The trial court erred in prohibiting Ms. Wood from presenting the testimony of the victims or witnesses concerning the three prior bad acts of Mr. Kramer, as such an error was an evidentiary error under Rules 404 and 405, which then deprived Ms. Wood of her right to present a complete defense and call witnesses in her defense under the Sixth Amendment to the U.S. Constitution. See O.C.G.A. §§ 24-4-404 and 405; see also U.S. CONST. Amend. VI.

Preservation Below: Ms. Wood preserved her objection to the trial court's prohibition on the prior bad act evidence by properly objecting to the ruling and limitation by the court and by maintaining the issue at the motion for new trial. See O.C.G.A. 24-1-103(a)(1); see also *Anthony v. State*, 298 Ga. 827, 831-832 (785 S.E.2d 277) (2016) (holding that a pretrial objection and a ruling on that objection preserved the matter for review under Rule 103(a)(1)).

STANDARD OF REVIEW

To obtain relief on appeal of an evidentiary issue under Rules 404 and 405, an appellant who properly objected at trial and preserved the issue must show that the trial court clearly abused its discretion by failing to admit the other-act evidence. *Bradshaw v. State*, 296 Ga. 650, 656 (769 S.E.2d 892) (2015) (quotations omitted). Furthermore, a trial court clearly abuses its discretion under Rule 404(b) when it makes a “clear error of judgment’ ... or appli[es] ... ‘the wrong legal standard.’” *Williams v. State*, 328 Ga. App. 876, 880 (763 S.E.2d 261) (2014) (citation omitted).

As to the alleged constitutional error involved in the evidentiary issue, such a question is a legal question reviewed *de novo*. *Williams v. State*, 299 Ga. 632 (791 S.E.2d 55) (2016).

Applying either standard, the Appellant is able to show error warranting reversal of his conviction.

ARGUMENT

The sole defense at trial was self-defense, and much of the evidence key to the essential elements was not in dispute. For example, the identity of Ms. Wood, her act of fighting with Mr. Kramer, and her intent (*mens rea*) were undisputed. Rather, the main issue for the jury in the trial was the issue of self-defense and whether the State could overcome Ms. Wood’s justification defense of self-defense beyond a reasonable doubt. Therefore, the jury was to determine whether the State proved that Ms. Wood was the primary aggressor – given her testimony that Mr. Kramer was the primary and initial aggressor in attacking her with a lamp and threats of guns first, (Vol. 11 – 737-738, 742-746), – or whether there was a reasonable doubt that Ms. Wood “reasonably believe[d] ... [her actions were] necessary to defend herself ... against [Mr. Kramer’s] imminent use of unlawful force.” O.C.G.A. § 16-13-21(a).

The trial court’s error in prohibiting Ms. Wood from presenting testimony and evidence of victims or witnesses concerning the three prior bad acts was harmful because it left Ms. Wood without any credibility regarding those prior acts once she was impeached on the stand, and such evidence was crucial to proving Mr. Kramer was the primary aggressor and that Ms. Wood was in reasonable fear for her life when she killed Mr. Kramer.

I. The trial court erred in prohibiting Ms. Wood from presenting the testimony of the victims or witnesses concerning the three prior bad acts of Mr. Kramer

Regarding the prior bad act evidence at issue, the trial court ruled, “Ms. Wood can testify as to her knowledge of these acts. The Court is not allowing the defense to then call, for instance, Ms. Sailors, Ms. Presley, or any of Ms. Willis’ relatives to corroborate her statement.” (Vol. 12 – 802). Notably, the Court ruled that the evidence concerning the three prior bad acts that Ms. Wood had knowledge of was relevant to the reasonableness of her fears and her theory of self-defense. (Vol. 1 – 289).

Ms. Wood testified about these three prior bad acts and her knowledge of those acts. (Vol. 12 – 834-841). The prosecution then conducted a thorough cross-examination of Ms. Wood that consumed about 62 pages of the record. (Vol. 12 – 866-927). From the start of their cross-examination, the prosecution immediately questioned Ms. Wood concerning her credibility about her story (not the just the incident itself, but her entire story ranging from her own life to Mr. Kramer and what she knew about his past violence). The prosecution posed the question, “Have you lied about your story before today” right off the bat about two to three pages into the cross-examination of Ms. Wood. (Vol. 12 – 869). Thus, it was clear that the prosecution’s theory was that Ms. Wood was a liar concerning her past with Mr. Kramer and what she knew about the three prior bad acts regarding other women. Throughout the cross-examination of Ms. Wood, the prosecution impeached Ms. Wood various times and presented impeachment evidence of Ms. Wood’s text messages during the relevant time to show that Ms. Wood continued to lie about the incident at issue. (Vol. 12 – 872, 880, 888, 891). Through their questioning, the prosecution continued to argue and insinuate that Ms. Wood was lying about everything she was telling the jury.

For example, the prosecution used their cross-examination and impeachment evidence to ask, “So you would agree with me, you’re not trying to get the truth out about why Leroy got beaten to death, you’re just making up a lie.” (Vol. 12 – 890). Ms. Wood responded, “No, I’m not making up a lie. It’s not a lie. You can call it a lie because I was saying it was Leroy. But those are the things that I had been experiencing from him, like I said, for the three years that I’ve been with him.” (Vol. 12 – 890). The prosecution then continued cross-examining her about credibility, and ultimately again asked, “instead of letting your story out, you lied to each and

every one of them.” (Vol. 12 – 895). The prosecution’s goal was to use Ms. Wood’s testimony on cross-examination to argue that she was a liar as to her story regarding Mr. Kramer

During his closing argument, the prosecutor argued that Ms. Wood’s story was not true and that “a good hunk of the story she just told is absolute lies. I don’t know why they can’t just admit that they’re lies.” (Vol. 13 – 1145). The prosecution argued that Ms. Wood was lying about what she said she knew about Mr. Kramer’s past as well and that the jury couldn’t believe her essentially because she was the only witness saying these things and was a liar. For example, in closing, the prosecution argued, “You see, the thing is Ms. Wood can get up there and say whatever she wants about Mr. Kramer. And remember, every bad thing that you heard about Mr. Kramer came from the woman who killed him, everything. It might have gone through Dr. Loring at one point, but every bad thing you heard about Mr. Kramer came from his murderer. If you're okay with that, fine, let her go. Dismiss the charges.” (Vol. 13 – 1149). Thus, the prosecution’s argument was that to find Ms. Wood not guilty, the jury would have to believe what Ms. Wood said regarding her story and what she knew about Mr. Kramer’s violence toward other women. In fact, during closing arguments, the prosecution attacked Ms. Wood’s entire story of being a victim of domestic violence and argued it’s all “an absolute lie.” (Vol. 13 – 1077).

The trial court’s prohibition on Ms. Wood calling the other act witnesses and victims violated Ms. Wood’s constitutional rights, such as her right to a complete defense and to call witnesses in her own defense. See *Chambers v. Mississippi*, 410 U.S. 284, 302 (93 S.Ct. 1038) (1973) (“Few rights are more fundamental than that of an accused’s right to present witnesses in his own defense.”); U.S. CONST. Amend. VI.

Furthermore, the trial court erred in prohibiting the defense from offering witnesses and testimony that were supportive of evidence that the trial court had already deemed relevant in terms of the prior bad acts. In doing so, the trial court ruled that it would be “improper bolstering” to call the other act witnesses and victims and rejected the defense’s argument that such evidence was admissible to rehabilitate and contradict the prosecution’s impeachment of Ms. Wood. (Vol. 12 – 939). Ms. Wood argues that such evidence was not improper bolstering; rather, she had the right to present witnesses in her own defense on matters already deemed relevant by the trial court. Generally, the Due Process Clause of the Fourteenth Amendment and Sixth Amendment “guarantee criminal defendants a meaningful opportunity to present a complete defense.” *State v. Burns*, 306 Ga. 117, 121-22 (829 S.E.2d 367) (2019); *Crane v. Kentucky*, 476 U.S. 683, 690 (106 S.Ct. 2142) (1986) (holding that exclusion of reliable evidence bearing on the credibility of a defendant’s confession would make the constitutional right to present a complete defense an empty promise).

While it is true that the right to present relevant evidence is not unlimited, such limitations must be reasonable where a defendant “does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.” *Burns*, 306 Ga. at 122. Here, the trial Court ruled that the inadmissible purpose that the trial court was excluding it for was based on inadmissible bolstering. (Vol. 12 – 939). Firstly, the idea of bolstering is not codified in any rule of evidence whatsoever, and the trial court did not cite any rule of evidence in its ruling at trial. As to how bolstering must be assessed, courts are to “consider the disputed testimony in context.” *Abney v. State*, 406 Ga. 448, 453 (831 S.E. 2d 778) (2019). Here, the context of the disputed testimony by Ms. Wood was whether she defended herself and whether the fear for her life was reasonable. The reasonableness of her

fears relied in part on what Ms. Wood knew about the decedent's violence to other women; therefore, the veracity of the other act evidence in this case was central to the issue of self-defense because if those other acts were true, then a jury could find her fears to be more reasonable than if the other acts were not true, as the prosecution argued by calling Ms. Wood's entire story a lie. (Vol. 13 – 1077, 1145).

Where testimony opines or speaks directly to witness credibility, such evidence may be considered improper bolstering; however, where the testimony produces “evidence consistent with information provided by [another witness]”, such evidence does not constitute improper bolstering. *Abney*, 306 Ga. at 455 (holding that a detective's testimony that his investigation of jail calls confirmed what another witness said about the same calls was not improper bolstering); *see also Davis v. State*, 306 Ga. 140, 148 (829 S.E.2d 321) (2019) (holding it was not improper bolstering for a detective to testify that certain evidence contradicted what Ms. Wood was stating); *see also Pender v. State*, 311 Ga. 98 (856 S.E.2d 302) (2021) (“testimony . . . responsive to questions about the manner in which the detective conducted his investigation and whether that investigation produced other evidence that was consistent with information provided by [a witness] does not constitute improper bolstering.”). Therefore, “when a witness's statement does not directly address the credibility of another witness, [] there is no improper bolstering.” *Harris v. State*, 304 Ga. 652, 657 (821 S.E.2d 346) (2018).

Here, the proffered testimony of the other act evidence that was excluded, (Vol. 12 – 947-961), did not directly address the credibility of Ms. Wood; rather, it offered evidence consistent with information provided by Ms. Wood to rebut the prosecution's theory that Ms. Wood lied about her entire story. Furthermore, Ms. Wood had the right to rebut the prosecution's impeachment with contradicting evidence that would have shown that Ms. Wood was not lying

about Mr. Kramer's prior violence and her knowledge thereof as it related to her reasonable fears. Certainly, the validity and credibility of those prior acts had a bearing on whether Ms. Wood's fears and actions at the time of the incident were reasonable, which would be required for the affirmative defense of justification.

When evidence of character of a victim (under Rule 404) concerns an essential element of a defense, O.C.G.A. § 24-4-405(b) ("Rule 405") allows for such evidence to be proven through extrinsic evidence. Here, the Court admitted the other act evidence under O.C.G.A. § 24-4-405(b) as extrinsic evidence. In such a scenario, "both Ms. Wood *and [her] witnesses* are permitted to testify on direct examination as to specific instances of Ms. Wood's conduct." *Giggins v. State*, 330 Ga. App. 350, 356 (767 S.E.2d 753) (2014) (emphasis added). Therefore, Ms. Wood was deprived of her right to present evidence in accordance with O.C.G.A. § 24-4-405(b) and her right to present a complete defense based on an erroneous ruling regarding bolstering.

Ultimately, the jury should've been able to determine the credibility of Ms. Wood witness and make that determination based on a complete presentation of the evidence, which would include calling witnesses regarding the other acts that Ms. Wood testified about. *See Miller v. State*, 305 Ga. 276, 278 (2019) ("It is not for this Court to resolve conflicts in evidence, determine the credibility of witnesses, weigh the evidence, or assess questions of justification; those matters are left firmly within the province of the jury."); *see also* O.C.G.A. § 24-6-620. While credibility itself may not be an element of any crime, credibility of a defendant in a trial where a defendant testifies "largely determines the jury's verdict because it affects the probative force of testimony directly relevant to a material element." *See* Ronald L. Carlson & Michael Scott Carlson, *Carlson on Evidence*, p. 348 (8th ed. 2023) Without be able to offer evidence

consistent with Ms. Wood's testimony concerning other acts, the jury was left with Ms. Wood's version of events after she was impeached by the prosecution. Even if such evidence was initially inadmissible, it should have been admitted upon Ms. Wood being impeached. Lastly, where there is any doubt as to the admissibility of such evidence, it would be better to admit such evidence and let the weight and credibility be assessed by the jury, which is "especially true where such evidence provides a clue to motives of . . . Ms. Wood in a criminal case." *Ochle v. State*, 218 Ga. 69, 73 (459 S.E.2d 560) (1995). Here, the evidence at issue went toward Ms. Wood's motives as to why she felt she had to defend herself.

Because the above evidentiary and constitutional error prevented Ms. Wood from receiving a fair trial, the error was harmful as it prevented the jury from adequately considering Ms. Wood's self-defense theory where the error reasonably could have contributed to the verdict. *Allen v. State*, 310 Ga. 411, 415 (851 S.E.2d 541) (2020) (where an error is properly preserved for appellate review, the prosecution can prevail and avoid reversal only if it establishes "that it was highly probable that the error did not contribute to the verdict.").

CONCLUSION

For the foregoing reasons, Ms. Wood respectfully requests this Court to **REVERSE** her conviction and the denial of her motion for new trial, and to further instruct the Superior Court of Hall County to allow Ms. Wood to present witnesses and testimony in support of the prior-bad act evidence that the trial court otherwise ruled was relevant evidence.

Respectfully submitted, this 10th day of June, 2024.

[/s/ Jake Shapiro](#)

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CERTIFICATE OF TIMELINESS

Pursuant to this Court docketing the case for appeal on May 20, 2024, I hereby certify this case was docketed on May 20, 2024. I further certify that this filing is timely because this brief was filed within twenty days of the docketing date as the actual deadline fell on a weekend.

Respectfully submitted, this 10th day of June, 2024.

[/s/ Jake Shapiro](#)

Jake Shapiro, Attorney for Appellant
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within Certificate of Interested Persons on Rachel Bennett by emailing a copy of the same to rachel.bennett@hallcounty.org and erosenwasser@law.ga.gov. I certify that there is an agreement via email with Elizabeth Rosenwasser and Rachel Bennett (via agreement with the Hall County District Attorney's Office) to allow documents to be served via email to suffice for service. Furthermore, I certify that I have e-filed the within Certificate of Interested Persons with the Supreme Court of Georgia via electronic filing with the SCED: E-Filing System.

At 4,264 words, this brief does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted this 10th day of June, 2024.

[/s/ Jake Shapiro](#)

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