

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to the Court of Appeals
Appeal from York County
Honorable Jocelyn J. Newman, Circuit Court Judge
—————

Opinion No. 2022-UP-228 (S.C. Ct. App. Filed May 25, 2022)

Lower Court Case No. 2018-GS-46-03992
—————

THE STATE,

RESPONDENT,

V.

RICKEY DEAN TATE,

PETITIONER.

APPELLATE CASE NO. 2019-001856
—————

APPENDIX
—————

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INDEX

INDEX i

STATE V. TATE OP. NO. 2022-UP-228 (S.C. CT. APP. FILED MAY 25, 2022).....1

PETITION FOR REHEARING.....3

ORDER DENYING PETITION FOR REHEARING7

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Rickey Dean Tate, Appellant.

Appellate Case No. 2019-001856

Appeal From York County
Jocelyn Newman, Circuit Court Judge

Unpublished Opinion No. 2022-UP-228
Submitted April 1, 2022 – Filed May 25, 2022

AFFIRMED

Appellate Defender Sarah Elizabeth Shipe, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua Abraham Edwards, both of
Columbia; and Solicitor Kevin Scott Brackett, of York,
all for Respondent.

PER CURIAM: Rickey Dean Tate appeals his conviction for possession with intent to distribute (PWID) cocaine base and sentence of life imprisonment without parole. On appeal, Tate argues the trial court abused its discretion by admitting

testimony that he was on supervised release when he was arrested for the PWID charge.

Because Tate opened the door by introducing the entire body camera footage to the jury, the trial court did not abuse its discretion by allowing limited testimony through repetition of a statement disclosed in the footage that Tate was on supervised release at the time of his arrest. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *id.* ("This Court is bound by the trial court's factual findings unless they are clearly erroneous."); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *State v. Page*, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008) ("It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence."); *id.* at 483, 663 S.E.2d at 360 ("Whether a person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial [court]."); *Ellenburg v. State*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006) ("Once the defendant opens the door, the [State's] invited response is appropriate so long as it is does not unfairly prejudice the defendant."); *State v. Heyward*, 426 S.C. 630, 637, 828 S.E.2d 592, 595 (2019) ("Testimony in response must be 'proportional and confined to the topics to which counsel ha[s] opened the door.'" (quoting *Bowman v. State*, 422 S.C. 19, 42, 809 S.E.2d 232, 244 (2018))).

AFFIRMED.¹

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RICKEY DEAN TATE,

APPELLANT

APPELLATE CASE NO. 2019-001856

Appeal from York County

Honorable Jocelyn J. Newman, Circuit Court Judge

Opinion No. 2022-UP-228

PETITION FOR REHEARING

On May 25, 2022, this Court affirmed appellant’s conviction for possession with intent to distribute (PWID) cocaine base and sentence of life imprisonment without parole where appellant argued the trial court abused its discretion by admitting testimony that he was on supervised release when he was arrested for the PWID charge. Pursuant to Rule 221(a), SCACR, appellant respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

In its opinion affirming appellant’s conviction and sentence, this Court found that “[b]ecause [appellant] opened the door by introducing the entire body camera footage to the jury, the trial court did not abuse its discretion by allowing limited testimony through repetition of a

statement disclosed in the footage that [appellant] was on supervised release at the time of his arrest.” *State v. Tate*, No. 2022-UP-228 (S.C. Ct. App. filed May 25, 2022). In its opinion the Court cited *State v. Heyward*, 426 S.C. 630, 828 S.E.2d 592 (2019), in support of its finding appellant opened the door testimony that he was on supervised release when he was arrested.

In *Heyward*, our Supreme Court held that defense counsel did not open the door to testimony about defendant’s alleged prior physical abuse of a cooperating codefendant, and that trial court’s error in allowing the state to use that doctrine to allow propensity evidence was not harmless. 426 S.C. 630, 828 S.E.2d 592 (2019). In that case the Court found testimony about defendant’s alleged prior physical abuse of cooperating codefendant was not proportional or confined to the doors counsel opened through his cross examination of codefendant’s mother regarding her suicide attempts, mental health, or sexual abuse. *Id.* at 637-38, 828 S.E.2d at 595.

Here, as in *Heyward*, the state used the “open-door doctrine” to introduce propensity evidence. Counsel may have opened to the later portion of the video, but the door was not open to allow the state to use Officer Christopher Rowe’s testimony to highlight to the jury that appellant was on supervised release when he was arrested for these charges. Defense counsel’s objection at trial was to Rowe’s testimony and not to the video. Rowe’s testimony improperly emphasized to the jury what could be heard on the video. Rowe’s testimony was not “proportional or confined” to the door defense counsel opened during cross-examination. *See Heyward*, at 637, 828 S.E.2d at 595.

In *State v. Young*, 378 S.C. 101, 661 S.E.2d 387 (2008), our Supreme Court held that defendant’s testimony did not open the door to evidence of prior convictions for criminal domestic violence and criminal sexual conduct for impeachment purposes. The error was ultimately found to be harmless. In that case, the defendant testified opening himself up to impeachment evidence.

While the Court found he did not put his character in evidence he certainly came very close when he testified that he “hated to see a female cry.” Here, appellant asserted his constitutional right to remain silent and did not introduce his character into evidence and it makes this error more egregious.

Rowe’s testimony was introduced, by the state, solely to demonstrate appellant’s poor character. Evidence that appellant was on supervised release had no probative value in this case and instead was used by the state to prejudice appellant. Rowe’s testimony improperly signaled to the jury that it should consider that appellant had already been convicted of a crime and had only recently been released, instead of focusing on the state’s lack of evidence tying appellant to the drugs found in this case. The jury, according to their verdict, declined to believe the other drugs found at the house belonged to appellant. The state slipping in the fact that appellant had previously been convicted right at the end of Rowe’s testimony was extremely prejudicial to appellant.

The error was not harmless. Evidence of appellant’s guilt was not overwhelming. The case against appellant hinged on whether the jury believed appellant attempted to discard drugs out of the window when the police arrived to search the home. Appellant was not a resident of this “known drug house,” and was simply in the wrong place at the wrong time. State’s witness, Brandi Eades, readily admitted she had used and sold cocaine base out of that home. The residents of the home were the more probable culprits.

Respectfully Submitted,


SARAH E. SHIPE
Appellate Defender

This 9th day of June, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

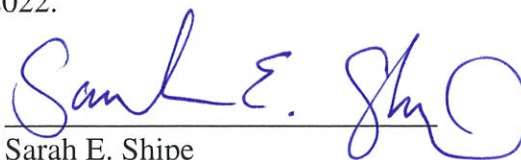
RICKEY DEAN TATE,

APPELLANT

APPELLATE CASE NO. 2019-001856

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Rickey Dean Tate, #261418, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of June, 2022.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Rickey Dean Tate, Appellant.

Appellate Case No. 2019-001856

ORDER

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

 _____ C.J.
 _____ J.
 _____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Sarah Elizabeth Shipe, Esquire
Joshua Abraham Edwards, Esquire
Kevin Scott Brackett, Esquire
The Honorable Jocelyn Newman

FILED
Jun 23 2022