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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Clifton Newman, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

RONALD WOOD, JR.,

Appellant.

Appellate Case No. 2022-000888

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

S. R. HUBBARD, III
Eleventh Judicial Circuit Solicitor

205 East Main Street
Lexington, SC 29072
(803) 785-8285

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court erred by failing to suppress the out-of-court and in-court identification of Appellant where the eyewitness allegedly viewed Appellant from approximately 30 yards away with her two children in the car while on the phone with 911 and purportedly staring at the person's face, yet the witness never gave any details about the face or tattoos, and provided merely generic descriptions of clothing, age, gender, and race?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

The show-up identification close in time to when the eyewitness saw the burglar was necessary and therefore not unduly suggestive. Further, the trial court's review of the Biggers factors is supported by evidence. Finally, Appellant conceded identity during both opening and closing arguments.

STATEMENT OF THE CASE

Appellant was indicted for first degree burglary and his trial, on June 13-15, 2021, was bifurcated because his prior burglary convictions were used to prove the aggravating factor. The jury found Appellant guilty of the burglary, the enhancing convictions were satisfactorily proven, and the presiding judge, the Honorable Clifton Newman, sentenced Appellant to twenty-three years' imprisonment for the first degree burglary conviction.

STATEMENT OF FACTS

The custodian for 911 recordings testified to the call for a burglary in progress. The caller described the burglar as a white male wearing blue jeans and a black "wife-beater" shirt. Tr. pp. 86-87.

The 911 caller was Mynnda Asbill and the residence burglarized was on Old Charlotte Road. Asbill grew up in this house, but now only her brother lived there, and he worked long hours so he was not home at all during the day. Asbill's mother, who owned the residence, lived in a trailer within walking distance. Asbill checked on the property and pulled up in her vehicle, with her children inside. She saw someone inside the house, moved her car to where she could watch both the front and rear exits, and called 911. She stepped out of her car. Tr. pp. 89-95. Asbill testified that while the burglar was inside the house, Asbill heard a thud and rattle, which she later realized was the dolly left behind by the burglar – Asbill testified that the dolly did not belong to anyone in the family. She identified the dolly in a photograph of the kitchen. Tr. p. 100; pp. 103-04.

Asbill noted the front door to the house was left ajar. She was on the phone with 911 when the burglar walked out of the house. Asbill made sure to get a good look at the burglar. She testified, "And I made sure I got a very good look at him. I looked at his face, that way I would know who I was talking about." She asked the burglar what he was doing there. The burglar did not respond but instead went to the backside of the house and then into the woods. Asbill explained she did not know the burglar, but she previously saw him in the area before. Tr. pp. 97-99 (direct quote p. 97, lines 19-24).

While the K-9 team was tracking, the team sent pictures of two people for Asbill to view, but neither of the two people was the burglar. One of them was Asbill's neighbor. Tr. pp. 105-06. About two hours after the burglary, Asbill was told someone was detained and she went to the

location where the suspect was detained; it was not far from the Asbill house. As soon as Asbill showed up, she knew the suspect was the burglar she saw back at the house. The only difference in appearance was Appellant was no longer wearing his black shirt. Tr. pp. 107-08. On cross-examination, Asbill agreed Appellant was wearing handcuffs when she saw Appellant. Tr. p. 117, lines 1-6. However, no testimony was elicited that Asbill was aware Appellant may have been bitten by the K-9.

Asbill then authenticated State's Exhibits 5-8, stills from the house's deer cam which shows the burglar outside the house and shows him pulling a dolly. The pictures are clear, it is easy to see the burglar, and the jury could judge for itself whether the individual in the picture was the same person as the defendant sitting at the table in front of them during trial.

Alexander Asbill lived at the house. He usually worked from 7 a.m. to 8 p.m., leaving the house was empty most of the day. Alexander confirmed the dolly found leaning against the kitchen table in his house was not his dolly. Viewing photographs of the kitchen that day, he confirmed he did not leave food from his refrigerator on the floor and did not leave the refrigerator door ajar. Tr. pp. 123-28.

Officer McKenzie Saunders responded to the burglary in progress. While in route, dispatch provided a description of the burglar as an older white male wearing jeans and a black t-shirt. Tr. p. 133. When Officer Saunders arrived, Asbill directed him to the woods where the burglar fled. After attempting to pursue the burglar himself, Officer Saunders called for a K-9 team. Tr. pp. 133-34. While waiting with Asbill, Officer Saunders showed her photos sent by the K-9 team of two different suspects, but Asbill told him that neither person was the burglar. Tr. p. 137.

Later, Officer Saunders drove his patrol car thru an area south of the crime scene. He saw a man matching the suspect's description. The man looked directly at Officer Saunders and then

pointed in the opposite direction. Officer Saunders testified the K-9 team detained this individual about four minutes later. The individual identified himself as Appellant. Tr. pp. 137-41.

Officer Saunders told Asbill that someone was detained. Asbill responded to the roadway where Appellant was detained. Officer Saunders noted Asbill identified Appellant as the burglar right away and was confident in her identification. Tr. p. 143.

Deputy Torell Jones chose Xander, one of the K-9s, for the track. The first track actually went to the trailer park where Appellant lived. On the track, Deputy Jones interviewed two different people encountered and sent their pictures to Asbill, although they did not quite fit the description. Tr. pp. 215-17. Later, Deputy Jones took Xander on a second track, starting at the woods behind the house where the burglar fled. Tracking through the area, Xander started to build speed, indicating Xander was getting close. A person told them an older white male just ran through their yard. Xander continued to pick up speed on his track when Deputy Jones looked up to see Appellant running away. Tr. pp. 219-20. They pursued Appellant, and Xander apprehended Appellant. Tr. pp. 220-24. Appellant was holding a black shirt and also had a red bandanna. The deer cam still photos depict Appellant with what looks like a red bandana in his back jeans pocket. State's Exhibits 5-8.

To what extent may it be said that identity was an issue at trial? Appellant's trial counsel led off his closing argument, advising the jurors, "Ron was there, and that's the reason we're here." Tr. p. 268, lines 18-20. Counsel theorized Appellant was merely milling around the area, happened upon what looked like an abandoned house, and being curious and nosy in nature entered the house, but lacked any intent to commit a crime when wandering into the residence. Tr. pp. 274-75.

Counsel's opening argument warrants scrutiny as well. Counsel argued:

> Now, we expect that you'll hear testimony that when

> [Appellant] first encountered a complete stranger, he asked a stranger that he had never met before, a stranger he did not know but who he later learned was Ms. Mynnda Asbill, he asked her, well, is the place vacant and did she know who the owner was?
>
> When this stranger threatened to call the cops, although [Appellant] didn't think he was doing anything wrong, Ron panicked, and he continued his walk through the woods.

Tr. p. 76, line 23 – p. 77, line 7. Later in opening, counsel advises the jury: "Now, [Appellant] readily admits that he walked around the outside of this abandoned home. And these pictures will show that [Appellant] walked around on the outside. But what you won't see is any picture that [Appellant] was on the inside of the home." Tr. p. 78, lines 16-20.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The conduct of a criminal trial is left largely to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (citing State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981)). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on an evidentiary matter absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence.").

Admission of eyewitness identification is a matter within the trial court's discretion and a reviewing court will not find error absent an abuse of discretion or commission of prejudicial legal error. State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003); State v. Mansfield, 343 S.C. 66, 78-79, 538 S.E.2d 257, 263 (Ct. App. 2000).

"Likewise, the determination of whether to admit an eyewitness's identification is at the discretion of the trial court." State v. Davis, 420 S.C. 50, 60, 800 S.E.2d 138, 143 (Ct. App. 2017) (citing State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000)). "This Court will not disturb the circuit court's admissibility determinations absent a prejudicial abuse of discretion." Id. (citing State v. Adkins, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003)). "'An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)).

ARGUMENT

The show-up identification close in time to when the eyewitness saw the burglar was necessary and therefore not unduly suggestive. Further, the trial court's review of the Biggers factors is supported by evidence. Finally, Appellant conceded identity during both opening and closing arguments.

Relying on factual arguments the trial court rejected and skipping a vital step in the proper analysis, Appellant claims that Asbill's identification of Appellant as the burglar should have been suppressed because it was a show-up identification. However, the identification was close in time to when Asbill saw the burglar and the procedure was necessary. Further, the trial court's findings under the Biggers factors are supported by evidence. Finally, in conjunction with overwhelming evidence of guilt, Appellant conceded the identification in both opening and closing arguments, and opened the door to Asbill's identification during opening argument by posing a different account of Asbill's confrontation with Appellant.

Neil v Biggers hearing

Mynnda Asbill was checking on her mother's house – Asbill's brother lived there, but worked long hours so the house was vacant by day. Asbill saw some movement inside and called 911. While she was on the phone with the operator, she saw the burglar come out of the house. He was an older white male with long hair, wearing jeans and a black shirt. Asbill testified she was paying close attention to him when he came out of the house. Tr. pp. 32-36. Asbill confronted the burglar and asked what he was doing. The burglar took off running through the woods behind the house. Tr. pp. 37-39. At one point, Asbill also realized there was a female behind her who also ran away before law enforcement arrived. Tr. p. 37.

Deputy Saunders arrived and Asbill provided a description of the burglar. While a K-9 team looked for the burglar, officers sent pictures of potential suspects. One was a neighbor Asbill knew.

The other picture was of someone other than the burglar. Tr. pp. 40-41. Roughly two hours later, Asbill was summoned by officers out to an area nearby where officers detained a suspect. Asbill immediately knew Appellant, the suspect, was the burglar. Appellant looked the same as when she saw him come out of the house, except he was not wearing the black t-shirt anymore. Tr. pp. 41-43.

Deputy McKenzie Saunders testified as the other witness in the Biggers hearing. He received a call for the burglary in process and heard a description of the burglar before arriving at the scene. He interviewed Asbill for further description and provided the description for the assembled K-9 unit. While the dogs tracked, the team provided a picture of one possible person to Deputy Saunders to show Asbill, who quickly told him that was not the burglar. Tr. pp. 49-51.

Approximately two hours after the call, law enforcement detained Appellant. When she arrived, Asbill identified Appellant without hesitation. Appellant was consistent with her description except that Appellant was holding, rather than wearing the black t-shirt. Tr. pp. 52-55.

At the conclusion of the hearing, Appellant argued the identification was unduly suggestive and argued Asbill was distracted at the time of the identification. Appellant's counsel made some vague estimation that Asbill was thirty yards away from Appellant at the time of identification, but this off-the-cuff estimation by defense counsel is not supported by testimony or competent evidence. Tr. pp. 55-56. The prosecution explained show ups are proper shortly after the crime while the eyewitness' memory is fresh. The prosecution noted, as in this case, a show-up may expedite the release of an innocent suspect. Tr. pp. 56-57. The prosecution noted Asbill's certainty in the identification and noted her testimony that she was focused on the burglar when he came out of the house. Tr. pp. 57-58.

The trial court agreed a show up identification may be proper in some circumstances and also applied the factors from State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000) to find the

identification was reliable. The trial court found it reasonable under the circumstances to allow Asbill to view Appellant. Tr. pp. 62-65. The trial court, acknowledging counsel's thirty-yard estimate, nonetheless determined "the distance was relatively close." Tr. pp. 63-64 (direct quote p. 63, lines 23-25). The trial court explicitly addressed Appellant's argument that Asbill was distracted, "The defense suggested that she was distracted. There's no indication that she was." Tr. p. 63, lines 21-23.

The issue is not preserved because the Jones exception does not apply.

The trial began after the ruling. During opening argument, defense counsel told the jury about an alleged conversation between Appellant and Asbill that constitutes a different version of the confrontation from what Asbill testified to pretrial, but nonetheless confirms the veracity of Asbill's identification of Appellant as the burglar.

The prosecution called a custodian of 911 records as the first witness and then Asbill testified as the State's second witness. When she testified about identifying Appellant as the burglar, Appellant did not renew the Biggers objection.

Appellant argues that the objection to the identification did not need to be renewed under State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (2021). Without agreeing that Jones extends to a pretrial hearing under Biggers, the Jones rule does not apply in the instant case. Jones found the objection to a pre-trial ruling from a Fourth Amendment suppression hearing did not need to be renewed before the jury and held that when a pretrial ruling is made for a constitutional issue, "the ruling is final and, **unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling**, no further objection is required to preserve the issue for appellate review." Id. at 144, 866 S.E.2d at 561 (Emphasis added).

In the instant case, Appellant in opening argument recounted a conversation between

Appellant and Asbill outside the burgled house that conceded Asbill's out of court identification of Appellant as the burglar was correct. Because Appellant conceded the identification during opening argument, this development or change would reasonably cause the trial court to alter its ruling on the Biggers hearing because any doubt about the propriety of the identification was erased by Appellant's concession. Therefore, a renewal of the Biggers motion was required for Appellant to preserve the issue for this Court's review.

The identification procedure was not unnecessarily suggestive

When evidence of an eyewitness identification is introduced during a criminal trial, a defendant may be deprived of due process of law if that identification was the product of unnecessarily suggestive circumstances arranged by government officials, such as law enforcement officers, and a very substantial likelihood of irreparable mistaken identification exists as a result of those suggestive circumstances. Neil v. Biggers, 409 U.S. 188, 197-198 (1972); see Perry v. New Hampshire, 565 U.S. 228, 232 (2012) (recognizing "a due process check on the admission of eyewitness identification" is applicable "when the police have arranged suggestive circumstances leading the witness to identify a particular person as the perpetrator of a crime").

Biggers provides a two-step test to determine the admissibility of an eyewitness identification. First the trial judge must determine if the identification procedure employed was both suggestive **and** unnecessary under the circumstances. Biggers, 409 U.S. at 199-200; see United States v. Stevens, 935 F.2d 1380, 1389 (3rd Cir. 1991) (explaining the question of whether an identification procedure is unnecessarily suggestive depends on both its suggestiveness and necessity). In making such a determination, factors to be considered include what procedure was employed, whether the utilized procedure was warranted by an emergency or the existence of exigent circumstances, and whether an alternative procedure could *practically* have been used that

would be less suggestive. See, e.g., Manson v. Brathwaite, 432 U.S. 98, 109 (1977) (recognizing the use of a single-person photographic lineup in the absence of an emergency or the existence of exigent circumstances was unnecessarily suggestive). If the identification procedure employed was not suggestive *or* was necessary under the circumstances involved, "the inquiry ends there and the court need not consider the second prong." State v. Wyatt, 421 S.C. 306, 310, 806 S.E.2d 708, 710 (2017). "[T]he analysis under the first prong is not complete without considering the necessity of the procedures." Id. at 312, 806 S.E.2d at 711.

Appellant misapprehends the first element, assuming that because it was a show-up identification, it was automatically unduly suggestive. This is an incorrect analysis because as discussed below, a show-up identification may be necessary for close-in time identifications. Amongst the various identification procedures that may be employed, multi-person photographic lineups are generally considered to be the least suggestive of the possible procedures. See Simmons v. United States, 390 U.S. 377, 383 (1968) (characterizing an identification procedure through which a witness is shown pictures of a number of individuals without being informed which one is the suspect as "the most correct" photographic identification procedure). Meanwhile, single person show-ups are disfavored because they are inherently suggestive. State v. Blassingame, 338 S.C. 240, 251, 525 S.E.2d 535, 541 (Ct. App. 1999). However, "[m]ost eyewitness identifications involve some element of suggestion[,]" and suggestiveness alone does *not* mandate the exclusion of identification evidence. Perry, 565 U.S. at 244; State v. Brown, 356 S.C. 496, 504, 589 S.E.2d 781, 785 (Ct. App. 2003) ("Suggestiveness alone does not mandate the exclusion of evidence.").

Show-up procedures are necessary when an immediate opportunity arises close in time to the witness's opportunity to view the suspect. "Police officers need not limit themselves to station house line-ups when an opportunity for a quick, on-the-scene identification arises. Such

identifications are essential to free innocent suspects and to inform the police if further investigation is necessary." United States v King, 148 F.3d 968, 970 (8th Cir. 1998); see Brisco v. Ercole, 565 F.3d 80, 91 (2d Cir. 2009) (explaining it was not unreasonable to conclude a show-up was not *unnecessarily* suggestive because "the procedure enabled the officers to determine whether they 'had their man' while the witness's memory was still fresh and while the maroon shorts were still available as evidence" and noting "the officers could resume their search for the offender" if no identification was made during the show-up). "Necessary incidents of on-the-scene identifications, such as the suspects being handcuffed and in police custody, do not render the identification procedure impermissibly suggestive." King, 148 F.3d at 970. "Whether such factors cast doubt on the accuracy of a positive identification is an issue for the jury." Id.

When the identification procedure involved was a show-up, the following factors should be considered to determine its propriety: (1) how quickly the show-up was conducted after the alleged crime; (2) whether the show-up was conducted near the scene of the crime; (3) whether the witness's memory was still fresh at the time of the show-up; (4) whether the suspect had time to alter his looks or dispose of evidence; and (5) whether the show-up may expedite the release of innocent suspects and enable the police to determine whether they need to continue searching for the true perpetrator. Brown, 356 S.C. at 503-504, 589 S.E.2d at 785; see also Willis v. Garrison, 624 F.2d 491, 493-494 (4th Cir. 1980) (acknowledging show-ups are inherently suggestive but recognizing prompt on-the-scene show-up identifications can promote fairness by enhancing the reliability of the identifications and permitting the expeditious release of innocent suspects). Significantly, the use of a show-up is less objectionable the closer the show-up is in time and proximity to the scene of the crime. Brown, 356 S.C. at 504, 589 S.E.2d at 785. A show-up may even be proper where the police refer to the suspect as a suspect and the suspect is handcuffed and in the presence of law enforcement officers.

Id.

In the instant case, (1) the show-up was conducted a little over two hours after the burglary; (2) the show-up occurred in an area nearby the burgled house according to Asbill; (3) Asbill, who viewed the burglar with the specific intent to identify him later, demonstrated a fresh memory of the burglar at the time she identified Appellant; (4) Appellant did not alter his looks or appearance beyond taking his black shirt off; and (5) if Asbill determined Appellant was not the burglar, he certainly would have been released – Asbill already advised law enforcement that neither of two individuals in separate photographs was the burglar.

The facts in the instant case demonstrate the necessity and utility of show-up procedures, the K-9 team sent pictures of two other individuals that Asbill quickly rejected as the burglar she saw. Meanwhile, Appellant was detained briefly before Asbill arrived, and if she had told law enforcement he was not the burglar, he would have been freed. On the other hand, the time of detention would have expanded if he was instead brought to the Sheriff's Office and waited while a non-suggestive six-pack photo-array needed to be assembled. The additional time would have also meant that Asbill's fresh recollection of when she viewed the burglar would have been diminished by this additional passage of time. So the circumstance demonstrates that the procedure was necessary and therefore, not unduly suggestive. The analysis should properly stop here since the procedure is necessary.

There was not a substantial likelihood of misidentification

In the event an identification procedure is found to have been unnecessarily and unduly suggestive, it must then—pursuant to the second step of the Neal v. Biggers two-prong inquiry—be determined whether the suggestiveness of the procedure resulted in a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012). Critically,

identification evidence may still be admissible if the State can prove by clear and convincing evidence the identification is reliable notwithstanding the suggestiveness of the identification procedure employed. State v. Govan, 372 S.C. 552, 559, 643 S.E.2d 92, 95-96 (Ct. App. 2007); see State v. Traylor, 360 S.C. 74, 82, 600 S.E.2d 523, 527 (2004) ("Even assuming an identification procedure is suggestive, it need not be excluded so long as, under all the circumstances, the identification was reliable notwithstanding the suggestiveness.").

When determining whether the identification is reliable, a court must look to the totality of the circumstances, and the following factors are pertinent to the inquiry: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the identification. Govan, 372 S.C. at 559, 643 S.E.2d at 96; see also State v. Scipio, 283 S.C. 124, 127, 322 S.E.2d 15, 17 (1984) ("The reliability of an identification is determined by the facts.").

Upon examining those factors, a court ordinarily should admit identification evidence and allow the jury to determine its worth "if the indicia of reliability are strong enough to outweigh the corrupting effect of the police-arranged suggestive circumstances[.]" Perry, 565 U.S. at 232; see Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983) (instructing the exclusion is a "drastic sanction" and should be "limited to identification testimony which is manifestly suspect").

In the present case: (1) Asbill had an unobstructed view of the burglar in clear daylight and the duration of the encounter lasted long enough for Asbill to confront the burglar; (2) Asbill testified she was extremely focused on the burglar when he came out of the house; (3) Asbill's description of the burglar was accurate – an older white male in jeans and a black t-shirt; (4) Asbill testified she was absolutely certain as soon as she saw Appellant that he was the burglar; and (5)

Asbill viewed Appellant at the show-up identification a little over two hours past when she first saw the burglar.

Asbill's testimony creates the indicia of reliability that outweighs any purported corrupting effect in law enforcement's show-up identification. Therefore, the drastic sanction of exclusion would be inappropriate; the jury should be allowed to judge the reliability of the identification for itself. Perry, supra; Harker; supra.

Examining Appellant's brief, Appellant's arguments in support of trial court error would require this Court to reassess the fact-based arguments presented to the trial court, including the claim Asbill was distracted, which the trial court explicitly rejected as unsupported by evidence. However, evidence supports the trial court's fact-based determination that the identification was reliable. See State v. Davis, 420 S.C. 50, 65, 800 S.E.2d 138, 145 (Ct. App. 2017) ("While meritorious disagreement exists on the Neil v. Biggers reliability factors, we cannot not say the circuit court committed a prejudicial abuse of discretion in admitting Brock's prior identification of Davis because its decision was supported by evidence.").

Counsel's opening argument opened the door to Asbill's testimony regardless of its admissibility under Biggers.

During opening argument, counsel asserted a conversation occurred between Appellant and Asbill in which Appellant was asking about who owned the house and whether it was vacant. Since counsel said a conversation occurred, counsel's opening argument opened the door to Asbill's testimony about her version of her confrontation with Appellant, regardless of the question of admissibility under Biggers. State v. Dunlap, 353 S.C. 539, 541, 579 S.E.2d 318, 319 (2003) (finding defendant opened the door to evidence of a prior conviction for distribution of an imitation substance when defense counsel, during opening argument, said defendant was hooked on crack

cocaine, but never sold it); State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012) ("When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.").

Error is harmless

"It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947). When a review of the entire record establishes an error is harmless beyond a reasonable doubt, an appellate court should not reverse a conviction. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

In the present case, likely due to the still photos that allowed the jury to make its own comparison, defense counsel conceded identity during closing argument and instead argued Appellant lacked the intent to commit a crime when he entered the house. The alleged error is not prejudicial to Appellant because Appellant did not contest identity but instead merely offered a different version of Appellant's activities at the burgled house. Further, any error is harmless because the jury had the stills from the deer-cam to compare to Appellant, who the jury had the opportunity to view during the trial. The jury saw him on those stills using the dolly that the burglar left inside the house. Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). In the present case, although properly admissible, Asbill's identification is superfluous in light of the deer-cam photographs and counsel's concessions.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

S. R. HUBBARD, III
Eleventh Judicial Circuit Solicitor

205 East Main Street
Lexington, SC 29072
(803) 785-8285

For BY: _____
David Spencer

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 24, 2023