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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE, RESPONDENT

v.

TRAVONTAE J. MITCHELL, APPELLANT

INITIAL BRIEF OF RESPONDENT
Appellant No. 2023-001323

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TABLE OF CONTENTS

Table of Authorities……………………………………………………………………………..ii

Appellant's Statement of Issues on Appeal………………………………………………………iii

Respondent's Counter-statement of Issues on Appeal……………………………………………iv

Statement of Facts…………………………………………………………………………………1

Statement of the Case……………………………………………………………………………...2

Arguments

1. The trial court made it clear that it had no intention of sentencing the Appellant to a life sentence without the possibility of parole; therefore, since the trial court had no intention in sentencing the Appellant to a life sentence without the possibility of parole *Aiken v. Byars* did not apply, no error occurred in the trial court's sentencing the Appellant to a forty-five-year period of incarceration ……………………………………………………4

2. The cross-examination of the codefendant opened the door regarding Appellant's involvement in a second shooting which was mentioned initially without objection by the Appellant; therefore, no error exists, Appellant was not entitled to a mistrial…………….9

3. The trial court announced to the jury that Appellant did not have a "rap sheet;" therefore, there exists no prejudice, so no error was made by the trial court in the admission of the Appellant's arrest photograph……………………………………………………………12

4. The trial court did not violate the United States Supreme Court decision of *Bruton v. United States,* since the confession of Che Ransom did not reveal if the Appellant was involved in the planning of the robbery/murder of the victim......……………………………………17

CONCLUSION……………………………………………………………………………..21

TABLE OF AUTHORITIES

Cases

Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968) 17
Bunch v. Smith, 685 F.3d 546 (6th Cir. 2012) 8
Conner v. City of Forest Acres, 363 S.C. 460, 611 S.E.2d 905 (2005) 13
Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011(2010) 7
Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012) 6, 7
Parr v. Gains, 309 S.C. 477, 424 S.E.2d 515 (Ct. App. 1992) 10
Richardson v. Marsh, 481 U.S. 200, 107 S.Ct. 1702 (1987) 19
Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005) 7
Schneble v. Florida, 405 U.S. 427, 92 S.Ct. 1056, (1972) 20
State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (2001) 11
State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007) 5
State v. Finley, 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019) 5
State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999) 14
State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007) 13
State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) 10
State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (2012) 11
State v. Miller, 266 S.C. 409, 223 S.E.2d 774 (1976) 20
State v. Moyd, 321 S.C. 256, 468 S.E.2d 7 (Ct. App. 1996) 12
State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 13
State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983) 10
State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998) 10
State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991) 11
State v. Slocumb, 426 S.C. 297, 827 S.E.2d 148 (2019) 8
State v. Smicklevich, 268 S.C. 411, 234 S.E.2d 230 (1977) 5
State v. Smith, 428 S.C. 417, 836 S.E.2d 348 (2019) 7
State v. Stephens, 398 S.C. 314, 728 S.E.2d 68, 71 (Ct. App. 2012) 15
State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984) 11
State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986) 14
State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005) 10
State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 5
State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). 10

Rules

Rule 401, SCRE 14

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred in sentencing Appellant to terms of imprisonment of forty-five and thirty years, where Appellant was sixteen years old at the time of the offenses, but the court failed to give Appellant's sentence individualized consideration and failed to consider the mitigating factors of youth required by *Aiken v. Byars,* 410 S.C. 534, 765 S.E.2d 572 (2014)?

2. Whether the court erred where it denied Appellant's mistrial motion, where State's witness Shamontae Graham testified that Appellant had a gun during a "second shooting" the day of this crime, since this was highly prejudicial testimony that could only be remedied by granting a mistrial?

3. Whether the court erred in admitting mugshots of Appellant and his codefendants, since the photographs were irrelevant to any matter at issue, and they were very prejudicial to Appellant since they had the impermissible tendency to invite speculation about other criminal conduct?

4. Whether the court erred by admitting the statement of Appellant's nontestifying codefendant, Che Ransom, since the hearsay violated Appellant's Confrontation Clause rights and *Bruton v. United States,* 391 U.S. 123 (1968)?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in not giving Appellant individualized consideration, and not considering mitigating factors of youth when it was clear that the trial court was not going to sentence the Appellant to a period of incarceration of life without the possibility of parole, which pursuant to *Aiken v. Byars* is the only time these factors should be considered?

2. Did the trial court err in the denial of the Appellant's motion for mistrial when the door of a prior shooting incident was opened by the Appellant's co-defendant during cross-examination without objection?

3. Did the trial court err in allowing the Appellant's booking photo from this incident into evidence when the photo was relevant for identification and the trial court announced to the jury that none of the Defendants had a prior record; therefore, the admission of these photographs caused no prejudice?

4. Did the trial court violate the United States Supreme Court decision of *Bruton v. United States* when the confession of co-defendant Che Ransom did not reveal Appellant's involvement in the planning of this crime, and the Appellant's confession was also read during trial?

STATEMENT OF THE CASE

On January 25, 2023, a Horry County Grand Jury indicted the Appellant for three counts of attempted murder and murder. (R. *). Appellant was accused in being involved in the murder of Jamie Johnson (victim) and the attempted murder of Jacob Hill (Jacob), Britney Milam (Britney), and Orlin Lopez (Orlin). These accusations stem from a September 12, 2020, shooting occurring in Conway, South Carolina.

On May 22, 2023, the Appellant appeared with his counsel Clay Pinkerton before the Honorable Benjamin H. Culbertson for trial. Appellant's trial was held simultaneously with his co-defendants Che Leon Ransom (Che) and Don Leequin Brown. Representing the State of South Carolina was Assistant Solicitors, Nancy Livesay and Christopher Helms of the Fifteenth Circuit Solicitor's Office. After four days of testimony, a jury of his peers found all three men guilty of each charge brought before the jury. (T. p. 792 l. 21 – p. 794 l. 20).

After the reciting of the verdict, Appellant, along with his other co-defendants, appeared before the trial judge for sentencing. The trial judge came to the conclusion that nothing during this trial led him to believe that these defendants' sentences should be more or less than their co-defendant Tronahz Whittington (Tronahz) whose was tried earlier, so the trial court sentenced each defendant to a forty-five (45) year period of incarceration for the offense of murder; and thirty (30) years for each count of attempted murder. The trial court ordered that each of these sentences were to be served concurrently. (T. p. 706 l. 1-12).

Appellant has timely filed a notice of appeal; the brief of Respondent follows.

STATEMENT OF FACTS

On September 12, 2020, Jamie Johnson (victim) along with Jacob Hill (Jacob), Orlin Lopez (Orlin) and Britney Milam (Britney) were traveling down a back road in Conway, South Carolina. Following them were the defendants Travontae Mitchell (Appellant), Don Leequin Brown (Don), Che Leon Ransom (Che), Shamonte Graham (Shamonte), Mikkie McLeod (Mikkie), and Tronahz Whittington (Tronahz). Once they arrived at a stop sign defendants blocked them off so they could not drive forward. Then the defendants got out of their vehicle shooting at the car being driven by the victim. They shot the engine making the car unmovable, then while the victim was attempting to back up he was shot in the head. (T. p. 185 l. 8-10; p. 222 l. 17-21). After the shooting each defendant got into their vehicle and sped away.

During trial the surviving victims testified as to what occurred during the incident. Jacob testified that once they were cut off at the stop sign, one person got out of the driver's seat and three or four got out of the back seat. (T. p. 220 l. 16-21). Jacob stated that each of the individuals shooting looked like teenagers or in their early 20's (T. p. 221 l. 1-2). Jacob also testified that when the victim looked behind him to back up he was shot in the back of the head. The rest of the passengers in this car ducked for cover. (T. p. 222 l. 17-21).

Britney testified that Tronahz was in the passenger seat, he got out of the passenger seat with three others getting out of the back seat. (T. p. 295 l. 13-18). She testified that she saw a person with white pants with a short gun and another individual with a mole under his eye carrying a gun. (T. p. 297 l. 4-15). She stated that everyone was standing in a row shooting. (T. p. 298 l. 7-13).

Shamontae and Mikkie both testified. Shamontae is the brother of the Appellant. Shamontae testified that they were at a friend's house when he and the Appellant needed a ride

home. (T. p. 357 l. 16). Tronahz then called someone to borrow their car. (T. p. 357 l. 17-18). They ended up driving behind the victim when Tronahz stated that he knew the victim and that he should have some weed so he wanted to rob him. (T. p. 357 l. 24 – p. 358 l. 1). As the victim stopped at a stop sign, Tronahz told the driver to pull in front of him. (T. p. 358 l. 9-10). Shamontae testified that Appellant was wearing gray pants that could be mistaken for white pants due to the sun's reflection. (T. p. 366 l. 10-13; p. 373 l. 1-2). Shamontae also testified that no one else was wearing gray pants, but Mikkie was wearing gray shorts. (T. p. 373 l. 11-13). Shamontae stated that the Appellant got out of the car but then got right back in. (T. p. 380 l. 6-10). Shamontae testified that the Appellant did have access to a gun for protection.

Mikkie also testified that he was sixteen at the time the crime occurred. (T. p. 615 l. 7-9). He testified that Appellant was wearing white pants. (T. p. 623 l. 10-11). Mikkie testified that when they saw the victim, Tronahz told them "There goes Jamie. He owes me money." (T. p. 625 l. 20). Mikkie also testified during the trial of Tronahz, and in Tronahz's trial Mikkie stated that Tronahz, Appellant, and Che got out of the vehicle shooting.

Detective Drew Edwards testified during trial about his questioning of co-defendant Che Ransom. After being informed of his *Miranda* rights Che did speak to Detective Edwards. (T. p. 484 l. 9-11). During questioning Che told Detective Edwards that he had a KelTec 9mm handgun when the incident occurred. (T. p. 490 l. 24-25). He told Detective Edwards that when the incident occurred he attempted to shoot, however the gun jammed so he got back into the car. He "racked the slide" and fired shots as they were pulling off. (T. p. 491 l. 6-8).

Detective Ken Marcus of the Horry County Police Department also testified. After reading Appellant his *Miranda* rights he gave Detective Marcus a statement. Appellant told detective Marcus that he was in the back seat when the shooting occurred. (T. p. 515 l. 12-13). Appellant

told him that he hopped out of the vehicle and then got back in. (T. p. 515 l. 14-18). Appellant told detective Marcus that he did not have a weapon, nor did he fire one. (T. p. 515 l. 19-22).

Crime Scene Investigator Dennis Lewis also testified. Investigator Lewis was called to the scene to collect evidence. (T. p. 562 l. 25 – p. 563 l. 2). At the scene Investigator Lewis collected nine spent shell casings. (T. p. 572 l. 18-20). Agent Jana Weaver of the South Carolina Law Enforcement Division (SLED) also testified. Agent Weaver was found qualified as an expert in the field of firearm identification. (T. p. 670 l. 20-21). Agent Weaver testified that she received nine shell casings from the Horry County Police Department. (T. p. 671 l. 13-16). Through her identification she was able to determine that three guns were fired at the scene. (T. p. 674 l. 8-11). Six of the 9mm bullets that were found were fired by the same gun. (T. p. 674 l. 21-23). Two of the bullets were fired from a .223. (T. p. 674 l. 24 – p. 675 l. 4). And one bullet was fired from a different 9mm. (T. p. 675 l. 5-7).

Patty Bellamy Assistant Coroner for the Horry County also testified. Ms. Bellamy testified that an autopsy was ordered through the Coroner's office. This autopsy revealed that the cause of death was a single gunshot wound to the head. (T. p. 605 l. 10-17).

ARGUMENTS

1. **The trial court made it clear that it had no intention of sentencing the Appellant to a life sentence without the possibility of parole; therefore, since the trial court had no intention in sentencing the Appellant to a life sentence without the possibility of parole *Aiken v. Byars* did not apply, no error occurred in the trial court's sentencing Appellant to a forty-five-year period of incarceration.**

Relevant Facts

After the jury verdict each defendant appeared before the trial court for sentencing. During sentencing the trial court made the following statement.

> "Gentlemen, I don't see any justifiable reason to sentence you to any more than the other codefendant who was found guilty. Likewise, I don't see any justifiable reason to sentence you to any less than the codefendant." (T. p. 806 l. 1-5).

The co-defendant the trial court was referring to was Tronahz Wittington who was tried separately and convicted of the identical charges as the Appellant. The trial court proceeded to give each defendant a forty-five-year period of incarceration for the murder and thirty years for each count of attempted murder to be served concurrently. (T. p. 806 l. 6-11).

Since the Appellant was sixteen when he committed this crime, he now argues that the trial court violated the South Carolina Supreme Court decision of *Aiken v. Byers* by not considering the hallmark features of youth, and just applied a sentence identical to his co-defendant. The Respondent argues that since it was clear the trial court was not intending to give Appellant a life sentence without the possibility of parole, *Aiken v. Byars* did not apply. The South Carolina Supreme Court was clear that the factors that must be considered in *Aiken v. Byars* must only be done prior to sentencing a juvenile to life without parole.

<u>Standard of Review</u>

In criminal cases the appellate court sits to review error of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827. 829 (2001). On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant,* 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment, the appellate court's standard of review extends only to the correction of errors of law. *State v. Finley,* 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

Discussion

In *Miller v. Alabama,* the United States Supreme Court held that a mandatory life sentence without the possibility of parole for a juvenile offender violated the Eighth Amendment prohibition against cruel and unusual punishment. *Miller v. Alabama,* 567 U.S. 460, 465, 470, 132 S.Ct. 2455, 2460, 2463 (2012). In *Miller* the United States Supreme Court stated:

> **Mandatory life without parole** for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Id., 567 U.S. at 477, 478, 132 S.Ct. at 2467, 2468. (emphasis added).

In the case of *Aiken v. Byars,* the South Carolina Supreme Court applied the *Miller* factors to South Carolina juveniles sentenced to life without parole sentences. In *Aiken* the South Carolina Supreme Court determined, "whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of **life without the possibility of parole** is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment. *Aiken v. Byars,* 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014)(emphasis added).

The Appellant claims that the trial court erred by not considering the *Aiken* factors prior to sentencing. The Respondent argues that *Aiken v. Byars* is clear that these factors are not mandatory unless you are intending to sentence a juvenile to life without parole.

In reviewing all the juvenile cases that were decided by the United States Supreme Court prior to *Aiken* relating to Eighth Amendment violations, they all were regarding life sentences or sentences of death. *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183 (2005)(sentencing a juvenile to death is a violation of the Eighth Amendment); *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011(2010)(The Eighth Amendment prohibits a sentence of life without parole for a juvenile convicted of a nonhomicidal offense); *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455 (2012)(a juvenile cannot be sentenced to a mandatory term of life imprisonment without the possibility of parole until the sentencing court considers the hallmark features of youth). *Aiken v. Byars,* applied the logic and created criteria that must be considered before a trial judge sentences a juvenile to a life sentence without the possibility of parole. All of the above referenced cases refer to a life sentence without parole, they say nothing about being sentenced to a length of time, but still having the possibility of being released in the future.

In *State v. Smith* the South Carolina Supreme Court ruled that the sentencing statue imposing a mandatory minimum sentence of thirty years imprisonment on those convicted of murder regardless of whether they are a juvenile or an adult does not violate the Eighth Amendment.[1] *State v. Smith,* 428 S.C. 417, 836 S.E.2d 348 (2019). In *Smith* the Supreme Court made this finding,

> It is clear neither the Eighth Amendment nor *Miller* speaks directly to the issue of the constitutionality of mandatory minimum sentences. In so holding we join the overwhelming majority of jurisdictions that has found mandatory minimum sentences constitutional under the Eighth Amendment and *Miller.*

Id., 428 S.C. at 421, 836 S.E.2d at 850.

[1] The Appellant Terrell Artieth Smith was sentenced to thirty-five years for murder.

Seven months prior to the *Smith* decision the South Carolina Supreme Court decided *State v. Slocumb. Slocumb,* is serving a one-hundred and thirty (130) year sentence for two counts of criminal sexual conduct in the first degree, burglary in the first degree, armed robbery, kidnapping, and escape. Slocumb committed all of these offenses when he was a juvenile. The Appellant in *Slocumb* argued that the United State Supreme Court decisions of *Miller* and *Graham* does not allow de facto life sentences. In *Slocumb,* the South Carolina Supreme Court decided[2],

> We decline to extend *Graham's* explicit holding based solely on the general rationale underlying the opinion without further input from the Supreme Court as to how the Eighth Amendment applies to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time.
>
> Rather than predict what the Supreme Court may or may not do, we believe the proper course is to respect the Supreme Court's admonition that lower courts must refrain from extending federal constitutional protections beyond the line drawn by the Supreme Court.

State v. Slocumb, 426 S.C. 297, 312, 313, 827 S.E.2d 148, 156 (2019)

It is clear in *Slocumb* the South Carolina Supreme Court did not wish to intrude into the decision of the United States Supreme Court in *Graham* and *Miller,* and the Appellant in *Slocumb* will never be released from prison. The Appellant in the present case received a forty-five (45) years sentence. He will be released when he is sixty-one years old. If the South Carolina Supreme

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[2] In *Slocumb* the South Carolina Supreme Court followed the rational found in the Sixth Circuit United States Court of Appeals case of *Bunch v. Smith* when the Court of Appeals wrote, "At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? There is language in the *Graham* majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years. Without any tools to work with, however, we can only apply *Graham* as it is written. *Id., quoting, Bunch v. Smith,* 685 F.3d 546, 552 (6th Cir. 2012).

Court only wishes to follow the United States Supreme Court in *Slocumb* the identical perameters hold true in the present case. *Miller* and *Aiken* is clear, the criteria is only allowed prior to a life sentence without the possibility of parole. That did not happen in the present case. The trial court revealed that he was not going go give a life sentence; therefore, the *Aiken* criteria did not apply. There exist no violation by the trial court sentencing the Appellant without considering the *Aiken* criteria, since a life without parole sentence was not given. The sentencing of the Appellant should be upheld.

2. **The cross-examination of the codefendant opened the door regarding Appellant's involvement in a second shooting which was mentioned initially without objection by the Appellant; therefore, there exist no error, Appellant was not entitled to a mistrial.**

<u>*Relevant Facts*</u>

During the cross-examination of co-defendant Shamontae by trial counsel of defendant Che Ransom. Shamontae was asked about the Appellant having a handgun at the scene. Shamontae made the following statement.

> "Yes sir. But a clarification: I didn't know he had it at the scene. I found out he had a gun at the second scene where me and my family was attacked, and they asked me questions about both interviews." (T. p. 421 l. 14-17).

When Shamontae made this statement there were no objections by Appellant's trial counsel. During re-direct the Assistant Solicitor Nancy Livesay asked about his prior testimony in the trial of Tronahz Whittington. Once Shamontae's mother and the Appellant were in the courtroom watching, he changed his testimony. (T. p. 435 l. 9 – p. 436 l. 21). Shamontae once again on his own discussed the second shooting occurring on highway 501. (T. p. 436 l. 22-24). This then prompted an objection from Appellant's trial counsel. The trial court sustained the objection. Once again, the Assistant Solicitor asked Shamontae about his prior testimony during the trial of Tronahz Whittington and if he saw the Appellant with a gun. Shamontae again without being prompted by

anyone mentioned the second shooting. (T. p. 438 l. 17-18). Appellant's counsel then objected and moved for a mistrial. (T. p. 438 l. 22-23). The trial court instead decided to give the jury a curative instruction. (T. p. 442 l. 5-7).

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 545 S.E.2d 827 (2001). On appeal, the appellant court is limited to determining whether the trial judge abused his discretion. *State v. Reed,* 332 S.C. 35, 503 S.E.2d 747 (1998). An abuse of discretion occurs when the trial court's ruling is based on an error of law. *State v. McDonald,* 343 S.C. 319, 540 S.E.2d 464 (2000). The test to determine whether sound grounds exist for declaring a mistrial after the jury is sworn is whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in a just judgment. *State v. Prince,* 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

Discussion

The Appellant argues that the trial court erred in not granting a mistrial when the information came out that the Appellant was involved in a second shooting that occurred that same day. Respondent argues that this information was brought out by the trial counsel of the co-defendant, and there was no objection for the Appellant. The Appellant cannot now raise this issue on appeal. Objections to the admission of evidence must be when the evidence is presented at trial to preserve error for appeal. *Parr v. Gains,* 309 S.C. 477, 481, 424 S.E.2d 515, 518 (Ct. App. 1992). Failure to object to comments made during argument precludes appellate review of the issue. *State v. Walker,* 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005). By the Appellant failing to object when that matter was first raised by his codefendant, the door was opened to any testimony regarding that second shooting.

Codefendant's counsel asked about a prior time when Shamontae testified that the Appellant had a gun on his person. Without any prompting from any counsel during his testimony, Shamontae decided to mention the prior shooting. There was no objection to this statement by the Appellant when it was made. At this time the door was opened regarding the shooting getting out before the jury. A party cannot complain of an error which his own conduct has induced. *State v. Stroman,* 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984). Petitioner cannot complain of prejudice from evidence he has brought before the jury. *State v. Brown,* 344 S.C. 70, 543 S.E.2d 552 (2001). A party will be unsuccessful in opposing the admission of evidence if that party was the one who opened the door. *State v. Robinson,* 305 S.C. 469, 409 S.E.2d 404 (1991). This information was originally brought through the cross-examination of the Appellant's co-defendant without objection. Therefore, he allowed this information to come before the jury originally. Assistant Solicitor Livesay was then allowed to ask about any information regarding this incident on re-direct examination. She still did not raise any inquiries about this shooting. She asked about Shamontae's prior testimony when he admitted that he saw the Appellant with a gun. Shamontae once again decided to raise the second shooting incident on his own without any prompting from the Assistant Solicitor.

Appellant argues that the trial court erred in not granting his mistrial. Respondent believes that Appellant was not entitled to a mistrial since they allowed the testimony into evidence. The trial court was also correct in denying their motion for mistrial. A mistrial should be granted only when absolutely necessary. *State v. McEachern,* 399 S.C. 125, 146, 731 S.E.2d 604, 614 (2012). Since the door was opened by the Appellant's co-defendant without an objection, Respondent argues that they have not revealed to the court any prejudice that existed from this information;

therefore, they were not entitled to a mistrial. Before a defendant may receive a mistrial, he or she must show both error and resulting prejudice. *Id.*

The Respondent believes Appellant opened the door to any questioning regarding the prior shooting. The trial court was correct in offering a curative instruction. The trial judge should exhaust other available methods to cure prejudice before aborting trial. *State v. Moyd,* 321 S.C. 256, 262, 468 S.E.2d 7, 11 (Ct. App. 1996). The information that was brought up was offered without any prompting by either the co-defendant's counsel or the Assistant Solicitor. And since there was no objection to this information when it was brought up initially, there exists no prejudice. Where the prejudicial effect is minimal, a mistrial need not be granted in every case where incompetent evidence is received and later stricken and a curative instruction is given. *Id.*

According to the record, the information regarding the prior shooting was initially brought before the jury during the cross-examination of the co-defendant's counsel. Once this information was revealed there was no objection made by the Appellant. Once the Appellant failed to object to this evidence, he waived any argument regarding prejudice. The trial court was correct in not granting a mistrial since one was not needed. The curative instruction was sufficient since there was really no information given regarding this other shooting other than a short sentence by Shamontae in which he stated that they were protecting themselves. The trial court was correct in denying the motion for a mistrial, and this decision should be upheld by this Court.

3. **The trial court announced to the jury that Appellant did not have a rap sheet; therefore, there exists no prejudice so no error was made by the trial court in the admission of the Appellant's arrest photograph.**

Relevant Facts

During the trial the State called Sandy Love an employee of the Horry County Detention Center to testify. The witness was called in order to get into evidence booking photographs of the

three defendants. This was done to reveal how the defendants looked at the time of the offense and to verify the identification given by the surviving victims. Ms. Love was also called to reveal an alias given by Appellant during booking. When the State attempted to enter these photographs, Appellant's counsel objected stating that these photographs were irrelevant and prejudicial due to the fact they raise the speculation regarding any prior record that these defendants might have.

Arguments were held outside the presence of the jury. It was then determined that none of the Defendants had a prior record; therefore, the photographs were not "mugshots" but booking photos from when they were arrested. The court decided to inform the jury that the State stipulates that none of the defendants have a rap sheet from which any alias could be derived.

Standard of Review

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may disturb a ruling admitting or excluding evidence only upon the showing of a manifest abuse of discretion accompanied by probable prejudice. *State v. Gillian,* 373 S.C. 601, 613, 646 S.E.2d 872, 878 (2007). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and resulting prejudice, *i.e.* there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence. *Conner v. City of Forest Acres,* 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005).

Discussion

The Respondent argues that the trial court did not err in allowing the booking photos into evidence because they were relevant to the matter at issue and not prejudicial because they did not invite speculation as to any prior criminal conduct. The Respondent will argue that these photos

were relevant to identification, and they did not prejudice the Appellant due to the fact the trial court informed the jury that the Appellant nor his co-defendant's information come from a rap sheet.

Relevant evidence is defined as, "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. The State sought to introduce these photos in order to match the description given by the surviving victims of the defendants at the time the event occurred since none of the surviving victims knew any of the defendants. These identifications were necessary and relevant. These photographs were booking photos not "mug shots," taken at the time of arrest and not after any convictions.

However, "mug shots" are admissible if (1) the state has a demonstrable need to introduce the photograph; (2) the photograph shown to the jury does not suggest the defendant has a criminal record; and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication. *State v. Ford,* 334 S.C. 444, 450, 513 S.E.2d 385, 388 (Ct. App. 1999), *citing, State v. Tate,* 288 S.C. 104, 341 S.E.2d 380 (1986). The photographs had a demonstrable meaning as to identification. They did not suggest any criminal records because they were made at the time of booking for this particular offense, and the court cured any speculation that might have existed with the jury when he informed them that the State stipulated that the photos or aliases did not come from any rap sheet. The attention was not drawn from its origin as they were from the time the Defendants were booked in the County Detention Center for this offense which the jury already knew they were arrested.

In *State v. Ford* the Court of Appeals found mug shots in a lineup to be admissible because, "the state had a demonstrable need to introduce the photos and because there was nothing about

the photographs or the way they were introduced that suggested Ford had a prior criminal record. *Id.* This is identical to the present case. The photos that were introduced provided a demonstrable need for the identification of the defendants. Nothing in these photos suggested that any of the defendants had a prior record.

The Appellant argues that the admission of these photographs was very prejudicial because they had the tendency to invite speculation of prior criminal conduct. These photographs were from the current offense. There was no mention about any prior offenses committed. These photographs were admitted to match the person with the identification that was given by the victims after the incident. They were submitted for no other purpose. There was never any mention of any past criminal offenses, and the jury was only informed that the photos came from booking at the county detention center, which the jury already knew these individuals were arrested for these crimes or they would not be on trial.

The Appellant admits that the State stipulated that the defendant's did not have rap sheets; however, he argues that the booking photos, "implied the defendants were a bunch of criminals who were well-known by jail personal, but apparently just not been convicted yet." (App. brief pg. 23-24). There is nothing in the record revealing this type of implication was made by any witness presented by the State. This statement is pure speculation and should not even be considered by this Court. A court weighing the prejudicial effect of evidence against its probative value must base it determination upon the entire record and upon the particular facts of the case before it. *State v. Stephens,* 398 S.C. 314, 320, 728 S.E.2d 68, 71, 72 (Ct. App. 2012). This allegation by the Appellant against the State is baseless and not a part of the facts presented nor was there anything in the record revealing this allegation.

As the Court of Appeals decided in *Stephens,*

> A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in "exceptional circumstances." We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of highly subjective factors of the probative value or the prejudice presented by evidence. If judicial self-restraint is ever desirable it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.

Id.

To make a determination as to a violation of Rule 403, this court is obligated to look at the entire record to make a fair observation as to what prejudice exists, if any, in allowing a particular piece of evidence, and whether or not the probative value outweighs any prejudice that may occur. It is obvious that the probative value outweighs any prejudice because there was no prejudice in the introduction of these photographs. They were just booking photos from an arrest that they were currently on trial for so the jury was well aware that they were arrested and booked, because they were on trial for these exact crimes. There was no mention of any prior offenses, the trial court even informed the jury that the State stipulated that there existed no rap sheet for any defendant in this case. There was also no mention by any witness about how well known these defendants were to law enforcement. This type of speculation has no place in this case, and it must not be considered by this court. All that must be considered are the decisions of the trial court and the evidence placed in the record. Any further allegations made regarding this case should be excluded.

It is clear by the record that there exists no prejudice in the introduction of these photographs; they were needed in matching the descriptions given by the surviving victims to law enforcement. This was necessary since none of the victims knew any of the defendants. It was made clear through a State stipulation that none of the defendant's had a rap sheet so the jury knew

that none of the defendants had prior criminal offenses. Allowing these photos was not in error and the decision of the trial court should be upheld.

4. **The trial court did not violate the United States Supreme Court decision of *Bruton v. United States,* since the confession of Che Ransom did not reveal the Appellant was involved in the planning of the robbery/murder of the victim.**

Relevant Facts

During the trial, Detective Drew Edwards was called to testify about the statement given to him by codefendant Che Ransom. During his testimony he made reference to the Appellant being in the car when "a plan was originated." And since the defense from the Appellant was mere presence Appellant believes Che's statement implicating him in this crime violates the United States Supreme Court decision of *Bruton v. United States.* Appellant argues that he was implicated in this crime through a statement made by his co-defendant without his co-defendant taking the stand, therefore, in violation of the confrontation clause.

Standard of Review

Admission of codefendant's confession that implicated defendant at joint trial constituted prejudicial error even though trial court gave clear, concise, and understandable instruction that confession could only be used against codefendant and must be disregarded with respect to defendant. *Bruton v. United States,* 391 U.S. 123, 88 S.Ct. 1620 (1968).

Discussion

The Appellant argues that during the testimony of Detective Drew Edwards, who interviewed co-defendant Che Ransom that he was implicated in the planning of this murder. The Appellant argues that this implication of him from a co-defendant that did not testify was in violation of the confrontation clause which is not allowed pursuant to the United States Supreme Court case of *Bruton v. United States.* However, the Respondent argues that the Appellant was

never implicated during the statement by Che. The statement that Detective Edwards revealed during his testimony implicated only Che and Tronahz Whittington in the planning of this crime. The Appellant was never mentioned in the planning.

During the trial the State called to the stand Detective Drew Edwards of the Horry County Police Department. Detective Edwards was called to the stand to talk about the interview of codefendant Che Ransom. After being read his *Miranda* rights, Che confessed that he was at the scene and that he made a plan with Tronahz, and that he got out of the car in an attempt to shoot, however, his gun jammed, so he got back into the car, fixed his gun, and shot at the victims as they were driving away. (T. p. 491 l. 6-8).

During his testimony Detective Edwards testified as follows regarding what was told to him by Che:

Q: Now did he tell you whether or not there was a plan?

A: Yes.

Q: What did he tell you was the plan?

A: He said he knew the victim in this case from Snapchat and they had – he had saw that he had weed money, and a plan was formulated to rob him for money and/or weed.

Q: So he told you he had a plan?

A: Yep.

(T. p. 492 l. 11-17).

During his cross-examination trial counsel for Che Ransom the following testimony was given by Detective Edwards.

Q: All right. Well, you talked about this plan to rob. Was the – who originated this supposed plan to rob Jamie?

A:	I believe he said Tronahz Whittington.

Q:	So he told you Tronahz wanted to rob Jamie; correct?

A:	Yes.

Q:	Okay. And that plan originated after they were already in the car; correct?

A:	Yes.

(T. p. 497 l. 1-8).

During his testimony Detective Edwards never mentioned that the Appellant was part of the plan devised to rob the victim. Within his brief the Appellant argues that the mention of the word "they" implied that everyone in the car was a part of this plan. However, according to Detective Edwards's testimony, Che knew the victim prior to this incident, and he knew that he sold marijuana and had money. He mentioned that the plan was originated by Tronahz and that they planned the robbery. Detective Edwards never mentioned anyone else being a part of this plan but Che and Tronahz; therefore, there was no violation of *Bruton.*

In the United States Supreme Court decision of *Richardson v. Marsh,* they made a distinction between that case and *Bruton.* In *Richardson* the United States Supreme Court decided.

> There is an important distinction between this case and *Bruton,* which cause it to fall outside the narrow exception we have created. In *Bruton*, the codefendant's confession "expressly implicat[ed]" the defendant as his accomplice. Thus, at the time that confession was introduced there was not the slightest doubt that it would prove "powerfully incriminating." By contrast, in this case the confession was not incriminating on its face, and became so only when liked with evidence introduced later at trial (the defendant's own testimony).

Richardson v. Marsh, 481 U.S. 200, 208, 107 S.Ct. 1702, 1707 (1987)

It is clear that this plan was developed between Che and Tronahz. The only way the Appellant became implicated was from his own statement placing him at the scene. The statements of the surviving victims stating that the person with the white pants was shooting and the only defendant

wearing white pants was the Appellant. The jury could easily determine that this plan did not originally involve the Appellant. As determined by the South Carolina Supreme Court in *State v. Miller,*

> In determining whether any admission of the codefendant in this case was sufficiently prejudicial to require reversal, the probable impact of the admissions on the minds of an average jury must be determined and, 'unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal is not required.'

State v. Miller, 266 S.C. 409, 412, 223 S.E.2d 774 (1976), *quoting, Schneble v. Florida,* 405 U.S. 427, 432, 92 S.Ct. 1056, 1060 (1972).

The testimony of Detective Edwards never implied that a plan was devised by the Appellant to rob the victim, and the Appellant's name was never mentioned. It was obvious that this plan was devised by Che along with Tronahz. The Appellant argued that he was merely present and was not involved with this crime, and a mere presence jury instruction was given by the trial court. (T. p. 75 l. 13-16). The conviction of the Appellant was not due to the testimony of Detective Edwards, because the Appellant was never implicated. Appellant was convicted because of the overwhelming evidence placing him at the scene actively shooting at the victims. Since Appellant failed to reveal that he was implicated in any statements made by Che during his confession, no violation of *Bruton* occurred so the decision of the trial court to allow this testimony should be upheld.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction and sentence of the lower court should be affirmed.

Respectfully submitted,

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