STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

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The State, Respondent,

v.

Romeo Brown, Appellant.

Appellate Case No. 2012-212217

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# INITIAL BRIEF OF RESPONDENT

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## APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did Appellant's testimony that he did not "know" the deceased open the door to allow the State to question Appellant about a prior altercation with the deceased that the trial court previously ruled inadmissible pursuant to Rule 404(b)?

2. Did the trial court err in allowing the State to present reply testimony about a prior altercation between Appellant and the deceased as impeachment evidence when the prior altercation was a collateral matter to the case at trial and the trial court erred in allowing the State to question Appellant about the prior altercation?

(FBOA, p. 3).

## RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Did the trial judge fairly allow the State to impeach the defendant with evidence of a prior altercation with the victim after Appellant testified and denied knowing the victim or having the altercation as the impeachment was not that the prior altercation occurred, but the fact that Appellant's testimony conveyed a false impression that he never knew or had any difficulties with the victim. [Appellant's Issues I and II].

## STATEMENT OF THE CASE

An Orangeburg County grand jury indicted Appellant in March 2011 for the murder of Alexander Harrison. (R. pp. * ). The grand jury also indicted Appellant in April 2012 for possession of a firearm by a person convicted of a violent crime. (R. pp. * ). In March 2012, the State filed and served a notice of intent to seek a life without parole sentence pursuant to the recidivist statute, S.C. Code § 17-25-45. (Tr. p. 926, line 18 – p. 928, line 9). Byron E. Gipson, Esq., represented Appellant on the charges. A jury trial was held May 22-25 and 29-30, 2012, before the Honorable Diane Schafer Goodstein. The jury convicted as charged. (Tr. p. 921, lines 16-25). Judge Goodstein sentenced Appellant to life imprisonment without the possibility of parole pursuant to the recidivist statute, and five (5) years, concurrent, for the possession of a firearm conviction. (Tr. p. 941, lines 2-20). This appeal follows.

## RESPONDENT'S STATEMENT OF FACTS

The victim, Alexander Harrison (hereinafter "victim" or "Alex"), was shot to death in the front yard of Randy Ryant's home on Wednesday, October 27, 2010 at approximately 8:30 pm.

Mr. Ryant's front yard had developed into a gathering place for people to mingle, play cards, socialize and drink. Mr. Ryant is married to Appellant's sister, Tammy Ryant. Appellant was often at the Ryant home to visit his sister and her children, but did not generally stay outside. (Tr. p. 116, line 1-p. 120, line 2). Mr. Ryant testified that on the night of the murder, he saw "Bernie, Vandy, Ricco, Brandy, Eric, Alex," and several others, but he did not recall seeing Appellant in the yard. Mr. Ryant was absent from the home at the time of the murder having left to go to a local store for more beer. (Tr. p. 121, line 12 – p. 123, line 4).

Joe Thomas, Sr., testified that he knew victim and had seen Appellant several times at the Ryant's home. (Tr. p. 140, line 19- p. 141, line 10). At the time, he did not know Appellant by name, but recognized his face. (Tr. p. 141, line 11 – p. 142, line 8). Mr. Thomas testified that victim was at his table in the yard when he heard a shot. He looked toward victim. Appellant "was kneeling on top of him with the gun pointed" at him. Mr. Thomas testified, "Alex said, please don't shoot me again. And he shot him and got up and ran." (Tr. p. 151, line 9 – p. 152, line 15). Mr. Thomas was positive that the shooter was Appellant. (Tr. p. 152, lines 16-22). He also identified Appellant in a photo lineup and in court. (Tr. p. 156, line 16 – p. 157, line 21).

Vandy Morgan testified he saw Appellant approach the yard as he was walking to his car, and subsequently heard a shot. He did not, however, see the actual shooting. (Tr.

p. 189, line 16 – p. 191, line 24). Mr. Morgan did hear, however, victim say, "you shot me one time, please don't shoot me no more," then Mr. Morgan heard a second shot. (Tr. p. 200, line 24 – p. 201, line 4).

Issac Morgan (son to Joe Thomas and cousin to Vandy Morgan) also testified that he was in the yard with victim and several friends. Morgan testified he had known the victim for years and had known Appellant for a "couple of months" before the shooting. (Tr. p. 225, line 24 – p. 227, line 16). He heard the two shots, and eventually ran to his friend, Alex, but Alex was already gone. (Tr. 229, line 2 – p. 231, line 7).

Ulysses Daniels testified that while sitting at a table in the Ryants' front yard, he noticed Appellant at a short distance, standing, with a gun clearly visible. (Tr. p. 252, lines 1-5). The people at the table scattered. Alex ran toward Appellant. Mr. Daniels did not see but heard the first shot. Mr. Daniels looked back and saw Appellant "standing over Alex and [he] fired the last shot." (Tr. p. 252, lines 11-13; p. 253, lines 14-19). Mr. Daniels recalled that, when Appellant initially approached, he asked Donell Ryant "what was he doing over there," referencing victim. (Tr. p. 253, line 22- p. 254, line 2).

Brandy Mack testified that she was also at the Ryant's house on the night of the murder. She did not know Appellant by name, but did recognize him from seeing him earlier. (T. p. 286, lines 2-21; p. 292, lines 15-23). She also casually "knew of" Alex and saw him arrive that evening. (Tr. p. 288, lines 3-14). She subsequently heard a gunshot and fell to the ground. She looked up and saw Appellant fire the second shot. (Tr. p. 291, lines 13-25). She also identified Appellant from a photographic lineup and in court. (Tr. p. 293, line 22 – p. 296, line 20).

Shawn Guinyard similarly testified to Appellant's expressed animosity. Mr. Guinyard testified that he noticed Appellant approaching and spoke to him. Appellant "said,what is he doing over here? He said, ain't I told you? That's when Alex stood up" and "[w]hen Alex stood up he shot him." (Tr. p. 318, lines 21-25). (See also Tr. p. 333, lines 9-21, Appellant stated "I'm going to show you," just before shooting victim).

Investigators recovered two bullet casings from the yard near victim's body. (Tr. p. 350, lines 1-3). Subsequent testing indicated they were both fired from the same gun. (Tr. p. 417, lines 16-23). Forensic pathologist Dr. Janice Edwards Ross testified that Alex died due to loss of blood from two gunshot wounds, one to the back and one to the abdomen. (Tr. p. 404, lines 8-10). One bullet entered the right back area and traveled through the left side of the chest. The other entered the abdomen and lodged in the backbone. (Tr. p. 397, lines 6-20). The abdominal wound was a contact wound. (Tr. p. 400, lines 5-22).

The State presented testimony from Appellant's cousin, Dennis Jones, that Appellant left the Orangeburg area on the night of the murder, October 27, 2010. Mr. Jones testified that Appellant called him and requested a ride at approximately 9:30 pm. Mr. Jones was cleaning an office and waited to that was completed. Mr. Jones testified he picked Appellant up at the "Four Way" at approximately 10:30 pm (Tr. p. 438, line 14 – p. 441, line 22).[1] Mr. Jones further testified that Appellant asked to be taken to a rest area on Interstate 26 toward Columbia, and that Mr. Jones dropped him off as requested. (Tr. p. 442, line 9 – p. 443, line 5).

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[1] Appellant admitted in his testimony that the "Four Way" convenience store was within walking distant from his trailer.. (Tr. p. 703, lines 1-12). Further, his trailer was just beyond the Ryant home, and the Ryant home could be seen from his neighborhood. (See Tr. p. 658, lines 7-13).

Appellant presented a defense. Appellant called his nephew, Tedriks Green, who testified that on the night in question the two went to a local restaurant, then watched baseball at Mr. Green's house. Mr. Green testified that he took Appellant to Appellant's home at approximately 11:00 pm. (Tr. p. 617, line 16- p. 622, line 20). Appellant also called his neighbor, Erica Smith, who testified Appellant came by her house late at night, somewhere around ten or eleven o'clock, on the night of the murder. Ms. Smith testified she heard a car door shut just prior to his arrival. She also testified that they played cards. (Tr. p. 643, line 23 – p. 647, line 16; p. 664, lines 6-8). Appellant testified similarly, adding that he went home after leaving Ms. Smith's trailer, and went to bed. (Tr. p. 704, line 1 – p. 711, line 23).

Appellant admitted that he had gone to Anderson shortly after the murder, but testified that he returned upon hearing about a warrant for his arrest on October 29, 2013. (Tr. p. 714, lines 11-22). Appellant also admitted he did not turn himself in (though he testified he was in the process of getting money together for a lawyer before doing so). (Tr. p. 715, lines 16-25). Appellant was arrested on November 4, 2013, hiding in a friend's home. (Tr. p. 716, line 8 – p. 717, line 2; p. 750, line 13 – p. 756, line 22).

## ARGUMENT

**The trial judge fairly and properly allowed the State to impeach the defendant with limited evidence of a prior altercation with victim after Appellant testified that he neither knew the victim nor had the altercation. Appellant's testimony opened the door to the evidence as Appellant's testimony conveyed a false impression to the jury that he never knew or had any specific difficulties with the victim. The trial judge did not abuse her discretion in allowing the State to address the false impression on cross-examination and to present reply testimony as the false impression went directly to a critical point of proof – identification of the Appellant as the shooter.**
**[Appellant's Issues I and II].**

Appellant contends the trial judge erred in finding the Appellant's testimony that he did not know the victim opened the door to both questions on a prior incident between Appellant and victim, [Appellant's Issue I, FBOA, p. 7], and limited reply testimony on the prior incident, [Appellant's Issue II, FBOA, p. 11]. The record shows no abuse of discretion.

Relevant Facts:

The facts of the prior incident at issue were initially presented to the trial judge by the State in an *in camera* request to present testimony under Rule 404(b), SCRE. The State sought to offer the evidence in proof of identity, motive and/or intent. (Tr. p. 239, line 9- p. 240, line 10). The State presented one witness, Ulysses Daniels. Mr. Daniels testified that he knew both Appellant and the victim. (Tr. p. 234, lines 2-25). He testified that, several months before the murder, he was sitting in the Ryants' front yard (the same yard where the murder would later occur) with victim. Appellant approached victim and questioned him about taking marijuana from Appellant's nephew. According to Mr. Daniels, Appellant pushed victim, then pulled out a gun and "hit him across the head with it." (Tr. p. 235, lines 14-17). The two fought over the gun. Mr. Daniels testified that he asked Randy Ryant to intervene and Mr. Ryant "told the two of them ... if they didn't cut

it out he was going to call the police…." (Tr. p. 235, line 13- p. 236, line 1). The police were called and someone came by and took the gun after which both Appellant and victim left. (Tr. p. 237, lines 1-7; p. 238, lines 3-9). When asked whether the animosity between the two would have continued, Mr. Daniels testified:

> ... I would think so, because, you know, Alex stopped coming over there and Romeo did, too, you know, but that night, you know, Alex came back over there, you know, because, you know everything had done been, you know, well, I guess everybody thought that it was done resolved, you know, gone away, or whatever.

(Tr. p. 236, line 22 – p. 237, line 2).

The trial judge found the fact the witness testified the matter had been resolved cut against finding the testimony of the prior evidence admissible under Rule 404(b). However, the judge cautioned "it may become relevant at some other point, perhaps in rebuttal…." (Tr. p. 241, line 9 – p. 242, line 17).

Mr. Daniels then testified before the jury only as to the facts surrounding the murder. Mr. Daniels testified that while sitting at a table in the Ryants' front yard, he noticed Appellant at a short distance, standing, with a gun clearly visible. (Tr. p. 252, lines 1-5). The people at the table scattered. Victim ran toward Appellant. Mr. Daniels did not see but heard the first shot. Mr. Daniels looked back and saw Appellant "standing over Alex and [he] fired the last shot." (Tr. p. 252, lines 11-13; p. 253, lines 14-19). Mr. Daniels recalled that when Appellant initially approached, he asked Donell Ryant "what was he doing over there," referencing victim. (Tr. p. 253, line 22- p. 254, line 2).

Shawn Guinyard similarly testified to Appellant's expressed animosity. Mr. Guinyard testified that he noticed Appellant approaching and spoke to him. Appellant "said, what is he doing over here? He said, ain't I told you? That's when Alex stood up"

and "[w]hen Alex stood up he shot him." (Tr. p. 318, lines 21-25). (See also Tr. p. 333, lines 9-21, Appellant stated to victim,"ain't I told you" and further stated, "I'm going to show you," just before shooting victim).

In all, three individuals specifically identified Appellant as the shooter: Ulysses Daniel, (Tr. p. 252, lines 11-13); Brandy Mack, (Tr. p. p. 291, lines 13-25); and, Shawn Guinyard (Tr. p. 318, lines 21-25). Two of the three, Daniel and Guinyard, specifically testified to words between the two indicating an existing history. (Tr. p. 253, lines 22 – p. 254, line 2; p. 333, lines 9-21). Appellant's defense was he was with his nephew and a neighbor on the night of the murder. Appellant's nephew and neighbor testified to same. (Tr. p. 617, line 16- p. 622, line 20; p. 643, line 23 – p. 647, line 16; p. 664, lines 6-8). Appellant also testified in his defense. Appellant testified similarly to the nephew and the neighbor, adding that he went home after leaving Ms. Smith's trailer, and went to bed. (Tr. p. 704, line 1 – p. 711, line 23). He also specifically denied the murder, denied having a "fight" with victim on October 27, 2010, and denied being at the Ryants' home on October 27, 2010. (Tr. p. 717, line 21 – p. 718, line 8; p. 720, lines 21-22).

On cross-examination, the assistant solicitor asked about a number of people that were in the yard at the Ryant home, including Joe Thomas, Vandy Morgan, Issac Bernard, Ulysses Daniels, Brandy Mack and Monique Shawn Guinyard. Appellant qualified how he knew or didn't know these individuals. (See Tr. p. 734, line 2 – p. 737, line 20). However, when asked if he knew the victim, he simply said, "No, sir," that he "d[id]n't know him at all." (Tr. p. 737, lines 20-25). The assistant solicitor then asked to be heard outside the presence of the jury.

After the jury retired to the jury room, the assistant solicitor requested permission to ask about the prior incident. (Tr. p. 738, lines 13-22). Defense counsel complained that the solicitor failed to ask a "follow up question" as he had with other witnesses, such as would elicit whether or how Appellant knew the individual. (Tr. p. 738, line 24 – p. 739, line 13). The trial court granted the solicitor's request over defense counsel's objection. (Tr. p. 740, lines 11-22).

Upon resuming cross-examination, the assistant solicitor asked again if Appellant's answer was "no" that he did not know the victim, to which Appellant responded affirmatively. (Tr. p. 741, lines 11-15). Appellant then asked to "say something," to which the solicitor replied that he had one other question to "get[] us back on track of where we were…." (Tr. p. 741, lines 18-19). Defense counsel asked: "Well, could he clarify, I guess, what he was about to say? I'm not sure he's going to say it." (Tr. p. 741, lines 21-22). The assistant solicitor offered that he was merely bringing the jury back to the relevant point after a fifteen minute break to which the judge replied, "I understand. … I think you that you can bring him back to that point, and you've done that." (Tr. p. 741, line 23 – p. 742, line 2). The solicitor then asked Appellant if he struck the victim on the right side of his check with a hand gun in the Ryants' front yard in June 2010, to which Appellant responded, "No." (Tr. p. 742, lines 5-11). The following exchange occurred:

Q. You deny that?

A. Yes, sir.

Q. Okay. Do you deny having an altercation with him on that day in reference to a bag of marijuana belong to your nephew, Snook?

A. Yes, sir.

Q. And do you deny that Mr. Daniels observed, Ulysses Daniels observed that altercation.

A. No, I don't know Ulyssess.

Q. You don't know him?

A. What I'm saying , when I say - - excuse me, sir, but when I say I don't know a person as far as, you know, I been to your house and, you know, we ride together and, you know, etcetera, things like that, I don't know nobody personally like that. You know, I seen people, you knew we may speak to each other or something and, you know, as a pass by, you know like that.

Q. Okay.

A. But as far as knowing them like - - no.

Q. Let me ask you this, I asked you the question earlier about Ulysses Daniels, the guy that testified in the orange jump suit, did you know him before the other day, had you seen him before?

A. Yes, I seen him before.

Q. Okay. But you didn't know him?

A. I don't know him.

Q. Okay. Alright. But you would deny that you had that altercation with Mr. Harrison back in June of Two thousand ten, is that correct?

A. Yes, sir.

Q. And that your brother-in-law actually had to call the police to get y'all to break that up out in his yard?

A. Yes, sir.

(Tr. p. 742, line 12-p. 743, line 20). That exchange concluded the questions on cross about the June 2010 incident.

On re-direct, defense counsel asked Appellant to explain the difference in what it means to "know" someone. Appellant was allowed to explain his understanding of knowing someone either by sight or to know something more about them. Defense counsel then asked if Appellant was "familiar" with the victim, to which Appellant replied, "yes, sir." (Tr. p. 763, line 11 – p. 764, line 14). But when asked, "did you know him, meaning have conversation with him and know him," Appellant responded, "Oh, no sir, no, sir." (Tr. p. 764, lines 17-19).

Prior to the reply, Appellant argued that the either the Court or defense counsel could ask additional questions of Appellant and there may not be a need to present evidence on the June incident. (Tr. p. 776, line 13 – p. 778, line 2). The trial judge reviewed the questions previously asked on cross:

> And did you all have a fight? No. Did you have an altercation? No. Did y'all have an altercation over pot that belonged to your nephew, I think, and he said, no. And as I recall, his answers to everything that had to do with this alleged incident four months earlier was, no.
>
> ...
>
> He didn't know about it, he didn't have any information about, he didn't; participate in it ... as I recall, those were his responses.

(Tr. p. 778, lines 10-20).

Defense counsel agreed with the judge's summary. (Tr. p. 778, lines 15-21). The judge found:

> ... this is not character, what we're not, we're not cross-examining on the issue of character, this is plain old garden variety impeachment. Opened the door, I don't know him, yes, you do...

(Tr. p. 778 lines 22-25).

In reply, the State presented one witness, Randy Ryant, Appellant's brother in law and owner of the property where the murder occurred, to testify about the prior June

altercation. When asked if Appellant and victim knew each other, Mr. Ryant testified: "They know each other as being in the yard, yeah, sure, as being in the yard, but knowing each other by talking around the table, no." (Tr. p. 792, lines 22-24). He clarified they did not socialize together. (Tr. p. 792, line 25 – p. 793, line 6). Mr. Ryant testified in June 2010, after a fish fry at the Ryant house, it was brought to his attention that an altercation was occurring in the front yard. As a result, he went to the yard and saw Appellant and victim Alex "tussling." (Tr. p. 793, line 7 – p. 794, line 16). During the "tussle," Appellant called to Ryant's son, D.T., to "come get the gun." (Tr. p. 794, lines 23-34; p. 795, lines 4-6). Ryant instructed his son not to go. (Tr. p. 794, line 24 – p. 795, line 1). Ryant instructed Appellant and victim to stop the fight, and, when the fight continued, Ryant called the sheriff's department. Both Appellant and victim left before the responding officers arrived. Ryant declined to name either Appellant or victim at that time. (Tr. p. 795, line 9- p. 796, line 10). Ryant noted that victim had an injury to his right cheek after the fight had occurred. (Tr. p. 796, lines 11-25). In cross-examination, defense counsel underscored that after the June fight, "they were in one another's presence on multiple occasions" again in the Ryants' front yard. (Tr. p. 799, lines 12-24; p. 802, lines 4-6). No other testimony was presented on reply concerning the incident.

Discussion:

"The [a]dmission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 - 248 (2000) (*citing State v. Huggins,* 325 S.C. 103, 481 S.E.2d 114 (1997)). Likewise, "[t]he scope of cross-examination is within the discretion of the trial judge, whose decision will not be reversed on appeal absent a showing of prejudice." *Id*

(*citing State v. Sherard,* 303 S.C. 172, 399 S.E.2d 595 (1991)). The same is true for the admission of reply testimony. *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 - 341 (1986) ("admission of reply testimony is within the sound discretion of the trial judge"). "An abuse of discretion occurs when the trial court's ruling is based on an error of law," *State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013) (*citing State v. Washington,* 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008)), or when the ruling lacks factual support in the record, *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010). *See also State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 609 (Ct. App. 2012) (same).

In allowing cross-examination on the June 2010 incident, the trial judge found that, while evidence of the prior incident had been previously disallowed, based on Appellant's own testimony, the assistant solicitor could ask questions about the incident, noting, "I do not believe at this point that I can limit that cross-examination. I think for impeachment purposes I can't limit that any longer. I know I have done it throughout this trial but I do not think at this point that I can." (Tr. p. 740, lines 11-15). In allowing reply, the trial judge found this was not impeachment by a prior bad act to reflect on character, but "this is plain old garden variety impeachment. Opened the door." (Tr. p. 778, line 22 – p. 779, line 21). The trial judge's ruling is well supported by the facts and the relevant law. As the record shows the trial judge did not abuse her discretion, this Court should affirm.

Appellant's argument the trial judge erred is centered on the principle that when a witness denies a prior bad act which is collateral to the charge at bar, "[t]he inquiring party is not permitted to introduce evidence in contradiction or impeachment." *State v.*

*DuBose*, 288 S.C. 226, 231, 341 S.E.2d 785, 788 (1986); *State v. Beckham*, 334 S.C. 302, 320-321, 513 S.E.2d 606, 615 (1999) (*citing State v. DuBose*). *See also* Rule 608(b), SCRE ("Specific instances of the conduct of a witness, for purpose of attacking or supporting the witness' credibility, other than conviction of a crime..., may not be proved by extrinsic evidence."). However, the factual situation at issue shows that principle does not apply. Simply, the State's impeachment was on contradiction not character. Further, the contradiction was on a fact that was not collateral, but on-point relevant to proof of identification of Appellant as the shooter. *DuBose*, 288 S.C. at 231, 342 S.E.2d at 788 ("Collateral matters, in this sense, are such as afford no reasonable inference as to the principal matter in dispute.") (*quoting State v. Brock,* 130 S.C. 252, 254, 126 S.E. 28, 29 (1924). *See also* 1 McCormick On Evid. § 45 (7th ed.) (database updated March 2013) ("A matter is deemed 'collateral' if the matter itself is irrelevant to establish any fact of consequence in the litigation, i.e., irrelevant for a purpose other than mere contradiction of the prior witness's in-court testimony."). Further, "there is no abuse of discretion" in allowing reply testimony, "if the testimony is arguably contradictory of and in reply to earlier testimony." *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 - 341 (1986) (*citing State v. Stewart,* 283 S.C. 104, 320 S.E.2d 447 (1984)). When analyzed through the correct lens, the record demonstrates the questions were proper and the proof in reply was not barred by the collateral evidence prohibition.

As an initial matter, Respondent agrees that the prosecution could not have presented the evidence in its initial case. (See FBOA, p. 13). Indeed, the State requested to do so, and the trial judge denied admissibility at that time. (Tr. p. 241, line 9 – p. 242, line 17). Respondent notes, though, that the trial judge cautioned at the same time that

the testimony *could become relevant for reply* and it became so. (Tr. p. 242, lines 8-17). Thus, Appellant was well aware the State could not introduce the prior bad act under Rule 404 (b) when he made the decision to deny knowing the victim. Further, Appellant was aware he ran the risk of the prior act becoming admissible. He should not be entitled to any relief. *See generally State v. Faulkner*, 274 S.C. 619, 622, 266 S.E.2d 420, 422 (1980) (denying relief where, after defense alibi witnesses recanted testimony at trial, "Appellant sought to take advantage of the recanting witnesses' testimony twice, once in support of his alibi defense and again as the basis for a motion for mistrial. We have held a criminal defendant should not be allowed to profit from his own mistakes."). At any rate, the specific testimony at issue supports the trial judge's ruling.

Appellant testified in his direct examination that he did not shoot the victim, did not fight with victim in the Ryant yard on October 27, 2010, and denied even being at the Ryant home on October 27, 2010. (Tr. p. 717, line 21 – p. 718, line 8; p. 720, lines 21-22). On cross-examination, as correctly prompted by this blanket denial, Appellant was asked, without objection, if he knew the victim. He denied knowing the victim. This created a false impression before the jury. Moreover, the false impression was on a critical point of proof – identification. *See State v. Lane*, 749 S.E.2d 165, 167 (Ct.App. 2013) ("The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes."). Appellant's knowledge of the victim was important for several points, not the least of which is because two of the three eyewitnesses testified to words exchanged that indicated prior knowledge. Here, Appellant's own testimony – denying both knowledge of the victim or participation in the June incident – made the questions on cross appropriate. *See State v.*

*Taylor*, 333 S.C. 159, 175, 508 S.E.2d 870, 878 (1999) ("because appellant 'opened the door' about his relationship with his wife, the solicitor was entitled to cross-examine him about the relationship, even if the responses brought out appellant's prior criminal domestic violence conviction"); *State v. Doby*, 273 S.C. 704, 710, 258 S.E.2d 896, 900 (1979) (finding no error in trial court allowance of cross-examination questions on "appellant's two prior convictions for trespassing in public women's restrooms" where "appellant opened the door to this cross examination by direct testimony regarding his passive character and lack of mature sexual desires."); *State v. (Hollie) McEachern*, 399 S.C. 125, 731 S.E.2d 604 (Ct.App. 2012) (finding no error in cross-examination of defendant on forfeiture where in direct testimony in drug trial defendant "specifically proclaimed none of the money found in her pocketbook was drug money. Thus, Hollie opened the door to admission of evidence that she agreed to forfeit the money in question, and we therefore find no error in the admission of this evidence.").

Further, because the reply directly contradicted Appellant on this specific point, it, too, was clearly proper and admissible. *See State v. Groome*, 274 S.C. 189, 191, 262 S.E.2d 31, 32 (1980) (finding proper the co-defendant's reply supporting contact between co-defendant and defendant which contradicted the defendant's testimony "he had not seen the witness for 'a good substantial period of time, maybe two months, maybe three months,' prior to his arrest, as an obvious attempt to disclaim any contact with his co-conspirator"). *Accord United States v. Leavis*, 853 F.2d 215 (4th Cir. 1988) ("The prosecution was entitled, as the district court held, to rebut the false impression Leavis was creating by his testimony."); *People v. Hodges*, 99 A.D.3d 629, 630 (N.Y.A.D. 1

Dept. 2012) ("By creating an issue of alleged police brutality, defendant opened the door to rebuttal evidence tending to negate that claim.").

The fact that the evidence could also be considered character evidence is not a bar to admissibility. "While the State may not attack a criminal defendant's character unless he has placed it in issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation." *State v. Faulkner*, 274 S.C. at 621, 266 S.E.2d at 421 (internal citations omitted). Because the cross and the reply testimony centered on impeachment by contradiction, the bar to character evidence did not apply. *Compare State v. Bolin*, 180 S.E. 809, 811 -812 (1935) (questions on prior incident of violence not involving victim constituted improper character evidence as "when a defendant becomes a witness in his own behalf, his character as to veracity is thereby uncovered, but not his general moral character."). While Appellant argues the State need not have presented testimony of the prior incident to prove Appellant "knew" the victim, (FBOA, p. 10), it would not account for the prior discord. Additionally, the information on reply was limited and did not encompass the detail in Mr. Grant's testimony demonstrated in the 404(b) proffer. For example, there was no proof offered to establish the nephew's connection, if any, to marijuana – a decidedly collateral issue.

Lastly, the record shows overwhelming evidence of guilt. Three eyewitnesses testified that Appellant shot Alex. Further, forensic evidence supported their account, including the recovered shells indicating one gun, (Tr. p. 417, lines 16-23), and the contact wound, (Tr. p. 400, lines 5-22). On this record, even if some error could be found, it would not be prejudicial. *See Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587,

589 (2010) ("In order for this Court to reverse petitioner's convictions and sentences, however, we must find that the trial court's error prejudiced petitioner. Since Murdaugh was merely one of six eye witnesses to identify petitioner as the shooter, there were other witnesses whose testimony was consistent with that of the identifying witnesses, and physical evidence linked petitioner in the murder, her testimony was merely cumulative to other overwhelming evidence of guilt. As such, reversal is not warranted here."). Appellant is not entitled to any relief.

## CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 25, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORAGNEBURG COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Romeo Brown, Appellant.

Appellate Case No. 2012-212217

# DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following be included in the Record on Appeal:

(1) Trial Transcript pages:
116-123;
140-142;
151-152;
156-157;
189-191;
200-201;
225-227;
229-231;
234-242;
252-254;
286;
288;
291-296;
318;
333;
350;
397;

400;
404;
417;
438-443;
617-622;
643-647;
658;
664;
703-711;
714-720;
734-743;
750-756;
763-764;
776-779;
792-796;
799;
802;
921;
926-928;
941.

(2) Indictments.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this designation contains no matter which is irrelevant to this appeal.

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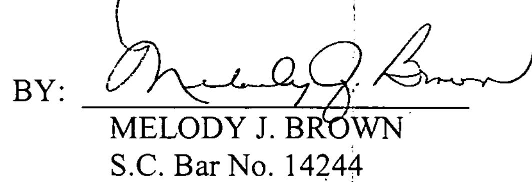
BY: 
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The State, Respondent,

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PROOF OF SERVICE

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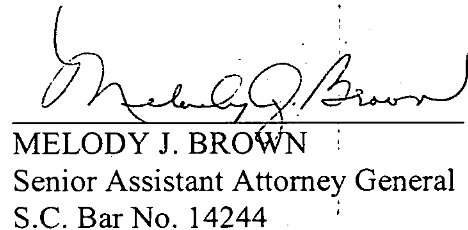
I, Melody J. Brown, certify that I have served the *Initial Brief of Respondent* and *Designation of Matter* on Appellant by depositing two (2) copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Kathrine H. Hudgins, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

This 25th day of November, 2013.



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ALAN WILSON
ATTORNEY GENERAL

November 25, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Romeo Brown
Appeal from Orangeburg County
Appellate Case No. 2012-212217

Dear Ms. Kitchings:

Enclosed please find the original plus one (1) copy of ***Initial Brief of Respondent*** and ***Designation of Matter***, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/mv

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Enclosures

cc: Kathrine H. Hudgins, Appellate Defender
The Honorable David M. Pascoe, Jr., First Circuit Solicitor
Sandi Wofford, Victim Services

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