



The Supreme Court of South Carolina

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October 22, 2014

The Honorable Lynn W. Lancaster
PO Box 287
Laurens SC 29360-0287

REMITTITUR

Re: The State v. Kevin Shane Epting
Lower Court Case No. 2009GS3000190, 2009GS3000191
Appellate Case No. 2012-212346

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Daniel E. Shearouse
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CLERK

cc: LaNelle Cantey DuRant, Esquire
William M. Blich, Jr., Esquire



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

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Kevin Shane Epting, Petitioner.

Appellate Case No. 2012-212346

Appeal from Laurens County
D. Garrison Hill, Circuit Court Judge

Memorandum Opinion No. 2014-MO-040
Heard September 25, 2014 – Filed October 22, 2014

DISMISSED AS IMPROVIDENTLY GRANTED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Attorney General William M. Blich, Jr., all of Columbia,
for Respondent.

PER CURIAM: After careful review of the record, appendix, and briefs, the writ of certiorari is

DISMISSED AS IMPROVIDENTLY GRANTED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kevin Shane Epting, Appellant.

Appeal From Laurens County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2012-UP-152
Heard February 13, 2012 – Filed March 7, 2012

AFFIRMED

Appellate Defender LaNelle DuRant, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Attorney General Salley W. Elliott, Assistant
Attorney General William M. Blicht, all of
Columbia, and Solicitor Jerry W. Peace, of
Greenwood, for Respondent.

PER CURIAM: Kevin Shane Epting appeals from his convictions of first-degree burglary and assault and battery of a high and aggravated nature (ABHAN), arguing the trial court erred in prohibiting him from: (1) introducing evidence of third-party guilt, and (2) cross-examining the victim on a 911 call she made two months prior to the incident. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to third-party guilt: Holmes v. South Carolina, 547 U.S. 319, 330-31 (2006) (overruling the application of limits on third-party guilt evidence only to the extent that limits should not rely on the strength of the prosecution's evidence against the defendant, but rather on the strength of the evidence proffered by the defendant to establish third-party guilt); State v. Gregory, 198 S.C. 98, 104, 16 S.E.2d 532, 534 (1941) ("[E]vidence which can have (no) other effect than to

cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (quoting 16 C.J. 560)); id. at 104, 16 S.E.2d at 535 ("[B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party." (quoting 20 Am. Jur. Evidence § 265 (1939))); id. (holding "[r]emote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose" and a defendant is not "permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty"); State v. Burgess, 391 S.C. 15, 23, 703 S.E.2d 512, 517 (Ct. App. 2010) (stating Holmes v. South Carolina preserves Gregory as the appropriate standard for evaluating the admissibility of evidence of third-party guilt); State v. Williams, 380 S.C. 336, 343, 669 S.E.2d 640, 644 (Ct. App. 2008) (holding a trial judge is given broad discretion in ruling on the admissibility of evidence, and the admission of evidence will not be disturbed on appeal absent an abuse of that discretion); State v. Rice, 375 S.C. 302, 317, 652 S.E.2d 409, 416 (Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) (ruling evidence offered by a defendant as to the commission of the crime by another person must be limited to facts that are inconsistent with the defendant's guilt, and the evidence must raise a reasonable inference or presumption as to the accused's innocence).

2. As to cross-examination: State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008) ("Whether a person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge."); id. at 481, 663 S.E.2d at 359 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); id. at 483, 663 S.E.2d at 360 ("Error is harmless where it could not reasonably have affected the trial's outcome."); State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008) (holding a violation of a defendant's Sixth Amendment right to confront a witness is not per se reversible error, and this court must determine if the error was harmless beyond a reasonable doubt).

AFFIRMED.

FEW, C.J., and HUFF and SHORT, JJ., concur.