STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2015-001727

THE STATE,

Respondent,

v.

TERRY WILLIAMS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

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

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, South Carolina 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not abuse its broad discretion in allowing the State, on re-direct examination, to question Appellant's wife about two prior domestic violence incidents involving Appellant when defense counsel asked the witness a question specifically designed to elicit a response pertaining to Appellant's character.

STATEMENT OF THE CASE

During its January 2014 term, the Williamsburg County Grand Jury indicted Appellant Terry Williams for murder, assault and battery of a high and aggravated nature, and possession of a firearm during the commission of a violent crime following the shooting of Appellant's estranged wife and her boyfriend outside a bar in Greeleyville, South Carolina. On July 27, 2015, Appellant proceeded to a jury trial in the Williamsburg County Court of General Sessions with the Honorable R. Knox McMahon, circuit court judge, presiding. On July 30, 2015, the jury convicted Appellant of the lesser included offense of voluntary manslaughter along with assault and battery of a high and aggravated nature and possession of a firearm during the commission of a violent crime. Judge McMahon sentenced Appellant to concurrent terms of imprisonment of thirty years for voluntary manslaughter, twenty years for assault and battery of a high and aggravated nature, and five years for possession of a firearm during the commission of a violent crime. Thereafter, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On the evening of November 9, 2013, Reva McFadden and her boyfriend Larry Moore, Jr. went to a local Greeleyville establishment, Celestine's (also known as Viola's Place), to socialize and play pool. (R. 226-27, 234-35, 349-51, 524). The couple, who had been dating for approximately nine months, often came to Celestine's on the weekends. (R. 322, 335, 349, 486). McFadden was separated from her husband, Appellant, whom she had known for fifteen years and had been married to for five years. (R. 322-23).

At some point during the evening, Appellant came to Celestine's. (R. 238, 352). Moore saw Appellant enter Celestine's and his mood noticeably changed. (R. 352-53). Moore remarked to McFadden he was sick of Appellant "mean mugging" him. (R. 352-53). McFadden responded by noting Appellant had already exited Celestine's and advising Moore to leave the situation alone. (R. 353-54). Moore replied he was tired of repeatedly seeing Appellant where they went and wanted to talk to him. (R. 353-55). McFadden pleaded with Moore to stay inside, but Moore exited Celestine's. (R. 354-55). McFadden followed shortly behind him. (R. 355, 358).

Appellant was outside Celestine's drinking a beer and socializing with Tabitha Greene, his cousin Damien McClorin, and Levonne Crocker when Moore approached him. (R. 497-98, 503). Moore stood in front of Appellant with his arms crossed. (R. 503-05). Appellant asked Moore, "what the fuck are you looking at?" and Moore responded, "these are my fucking eyes, I can look where I want to look." (R. 505). Appellant replied, "okay," then dropped his head and began walking towards his car. (R. 505-06). Moore told McFadden to go inside multiple times, but McFadden refused. (R. 506). The third time Moore told McFadden to go inside, Greene became nervous and decided to go inside herself. (R. 506-07, 521).

As Appellant was walking towards his vehicle, Moore followed behind him and asked Appellant why he was constantly at the same locations as he and McFadden. (R. 358, 367). Appellant, who had reached his vehicle, told Moore to stop approaching him and back away. (R. 366-68). McFadden then saw Appellant with a gun and tried to walk in front of Moore. (R. 368-70). At that moment, Appellant suddenly fired upon McFadden and Moore with his gun, striking McFadden in the foot and fatally wounding Moore in multiple places. (R. 370-72). Appellant then fled the scene in his truck. (R. 372, 374).

Greene had been inside Celestine's for less than thirty seconds when she heard "constant" and "consistent" shots being fired. (R. 509, 512). The patrons inside Celestine's locked the doors to prevent the shooter from entering. (R. 240-41). Less than two minutes later, a woman, presumably McFadden, banged on the locked door and pleaded for help. (R. 510). McFadden was eventually able to flag down a vehicle and get assistance loading Moore into her vehicle. (R. 376-77, 525-30). McFadden drove herself and Moore to the hospital, where Moore succumbed to his injuries and was pronounced dead. (R. 377, 532).

Prior to jury selection, Appellant moved for immunity from prosecution pursuant to S.C. Code Ann. § 16-11-450. (R. 7-8). During this hearing, Appellant proffered the testimony of McFadden, to whom he was still married and actively communicating with while out on bond, in support of his claim he was entitled to immunity. (R. 23-82). McFadden, who testified she had spoken with and met with defense counsel multiple times, testified Appellant was a "nice" and "real quiet" person who kept to himself and did not bother anyone. (R. 34, 37-41, 42-50-54, 78-82). On cross-examination from the State, she also acknowledged Appellant, whom she described as "sweet" and "loving," had pulled an AK-47 on her eleven months prior to Moore's

death and had also previously pulled a .22-caliber pistol on her six months prior to Moore's death; law enforcement was involved with both instances. (R. 42-82).

Following the trial court's denial of immunity pursuant to S.C. Code Ann. § 16-11-450, defense counsel moved to prevent the introduction of any testimony pertaining to prior instances of domestic violence between McFadden and Appellant. (R. 177-78). Defense counsel acknowledged he may have potentially opened the door to such testimony during the immunity hearing when he asked about Appellant's character for violence, but assured the court he was not "planning on doing that again." (R. 177-78). The trial court, referencing an in-chambers discussion, asked the State to request an in-camera hearing before attempting to elicit any such testimony. (R. 179).

During the State's case-in-chief, McFadden was called as a witness. On cross-examination, defense counsel asked, "Tell me why he was scared based upon the person, you know, for 15 years knowing when he's happy, when he's sad, things of that nature." (R. 396). McFadden responded, "Because he, he really never been in a confrontation in his whole entire life with anyone in an argument. He tries to stay away from people 'cause he's scared, and that's why when I say he always take his gun because he be scared." (R. 396). During the State's re-direct examination of McFadden, the following occurred:

> Q. Now you said that your husband was not known to get into any confrontations, right?
>
> A. Not that I know of, no.
>
> Q. Is that your sworn testimony that's he's not known to get into any confrontation that you know of?
>
> A. Yes.
>
> Q. That's your testimony?

A. Yes.

(R. 414-15). Immediately thereafter, the State asked the trial court to take up a matter outside the presence of the jury. (R. 415). Once the jury left the courtroom, the State sought to introduce evidence of the prior domestic violence instances between McFadden and Appellant to impeach her testimony and to rebut the character evidence elicited by defense counsel on cross-examination regarding Appellant's non-confrontational character. (R. 415). Defense counsel objected, arguing

> Your Honor, candidly that's just concerning to be perfectly honest because it appears as though the Solicitor through their own witness has tried to open the door through testimony to bring something in that would be prejudicial to my client who has not testified yet. So they open the door through their own witness and now say, ha, ha, since we opened the door through our witness through her answer we should now be able to bring in criminal domestic violence charges against Mr. Williams that may not be admissible if he took the stand himself because it's a 30 day misdemeanor charge. They're trying to open the door through their own witness. If solicitors could start doing that, then we would never have to call our own clients so they could just open the door through their own witnesses.

(R. 415-16). The trial court responded the door had been opened during defense counsel's cross-examination when McFadden was asked about whether Appellant had been scared based on her personal knowledge of Appellant and his character traits. (R. 416-17). Furthermore, the court noted the State was not seeking to introduce the actual convictions, but rather, trying to impeach McFadden's claim Appellant had never been involved in an argument with anyone in his life through evidence of their own prior domestic disputes. (R. 417-18). Based on defense counsel's argument to the trial court, it appeared his objection was based on the premise these charges were not admissible because they were thirty day misdemeanors and not crimes of dishonesty, and therefore, would not have been admissible pursuant to Rule 609, SCRE. (R. 417-25).

Additionally, defense counsel asked the trial court to limit the testimony pertaining to the prior domestic violence instances, arguing the underlying facts giving rise to the charges should not be admitted. (R. 424-25). The trial court responded, "I take it also as 404(b) testimony where the Solicitor's required to show clear and convincing standard of clear and convincing as to purpose, motive, intent, common plan and scheme. It could be a common plan or scheme when you take assault weapons and point it at an individual when has a, when he has a confrontation with them." (R. 425). Defense counsel objected to the incidents coming in pursuant to Rule 404(b), SCRE, arguing the domestic violence incidents could only be admissible as impeachment against McFadden. (R. 425-26).

The State replied the evidence was also admissible pursuant to Rule 404(a)(1), SCRE, to rebut the character testimony elicited by defense counsel as to Appellant's peacefulness. (R. 426-27). Defense counsel objected to the evidence coming in pursuant to Rule 404(a)(1), SCRE, while noting the State—not the defense—had called McFadden to testify. (R. 427). The trial court replied while the State had called McFadden, the character testimony had been elicited by defense counsel on cross-examination from the wife of Appellant, making this situation more unique than the typical Rule 404(a)(1), SCRE, scenario. (R. 427-28). The trial court also ruled the evidence was admissible pursuant to Rule 404(b), SCRE. (R. 428).

Thereafter, the jury returned to the courtroom and the following took place:

> Q. Ms. McFadden, when we left off I asked you was it your sworn testimony that your husband was never known to get in any kind of confrontation with another person during his entire life in your response to me. Was that your testimony, correct?
>
> A. When I said that I was meaning with someone else otherwise me.
>
> Q. Oh, okay. So you want to clarify that again. We want to make further clarification.

A. Can I?

Q. Yeah. In fact, he got into a confrontation with you about six months before the shooting, right? Didn't your husband—

A. Most likely, we always stayed in confrontation, me and him.

Q. May the 13th of 2013 you got into a confrontation with your husband, correct?

A. Could have.

Q. Okay. If I showed you a statement would that help your memory as far as dates?

A. Yes.

Q. All right.

A. Yes.

Q. May 13th, 2013, you got into a confrontation with your husband?

A. Yes.

Q. You called the police as a result of that confrontation, correct?

A. Yes.

Q. Your—you told the police at that time that your husband presented a weapon, a firearm to you, correct?

A. We had a firearm. We were fighting over it, both of us.

Q. I'm not talking about that one. I'm talking about this one.

A. (Reads document.) Yes.

Q. Okay. And that wasn't an incident where y'all were fighting over a firearm, was it? That was something else.

A. This was, this is something else.

Q. Right. All right. And in this incident that happened in May, this would have been six months, or five months before the shooting of Larry Moore, correct?

A. Yes, I actually thought it was earlier than that.

Q. May, June, July, August, September, October, November, right?

A .Uh-huh.

Q. Is that right?

A .Yeah.

Q. Six months? All right. And your husband had a gun that time, correct?

A. That's what I said.

Q. All right. And then there was a separate incident that happened December 22nd 2012 where there was a confrontation between you and your husband?

A. Maybe that's what I'm talking.

Q. All right. Let me let you look at the incident report, see if that refreshes your memory.

A. (Witness reads document.)

(R. 429-32). Defense counsel objected, and after a brief discussion at the bench, the State continued with its questioning of McFadden:

Q. Ma'am, I've shown you the incident report from the December 2012 incident that happened between you and your husband.

A. Yes.

Q. All right. And you told police that he presented a firearm to you on that occasion?

A. Yes.

Q. And that was a different firearm from the thing that happened in May of 2013, correct?

A. Yes.

(R. 431-32).

Following the presentation of all evidence, the jury convicted Appellant voluntary manslaughter, assault and battery of a high, and aggravated nature and possession of a firearm during the commission of a violent crime.

ARGUMENT

The trial court did not abuse its broad discretion by allowing the State, on re-direct examination, to question Appellant's wife about two prior domestic violence incidents involving Appellant when, prior to the questioning, defense counsel elicited testimony from that witness regarding Appellant's character.

Appellant asserts the trial court erred in allowing the State, on re-direct examination, to question Appellant's wife Reva McFadden, about prior domestic disturbances between McFadden and Appellant. Appellant asserts the questions asked by defense counsel on cross-examination did not open the door to allow the State to introduce this evidence as either prior bad act evidence or to rebut character evidence. Contrary to Appellant's contentions, the trial court properly admitted testimony from Appellant's wife regarding their prior domestic disputes because Appellant opened the door to such testimony during his cross-examination of McFadden when he elicited testimony regarding Appellant's non-confrontational character. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only and are bound by the trial court's factual findings unless they are clearly erroneous. State v. Young, 364 S.C. 476, 484, 613 S.E.2d 386, 390 (Ct. App. 2005) (internal citations omitted), aff'd as modified, 378 S.C. 101, 661 S.E.2d 387 (2008). "This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases." Id. (citing State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001); State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct.App.2004)). On review, appellate courts do not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. Id. (citing State v. Mattison, 352 S.C. 577, 583, 575 S.E.2d 852, 855 (Ct. App. 2003)).

The admission or exclusion of evidence is left to the sound discretion of the trial court. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001); Mattison, 352 S.C. 577, 575 S.E.2d 852.

Pursuant to Rule 404(a)(1), SCRE, evidence of a defendant's character is generally not admissible to show a propensity to act in conformity therewith. Nonetheless, it is well established that if a defendant places his or her character in issue, the State may offer evidence of the defendant's bad character in rebuttal. Young, 364 S.C. at 484-85, 613 S.E.2d at 390-91.

South Carolina courts have long recognized that a defendant may open the door to the admission of otherwise inadmissible evidence. See State v. Page, 378 S.C. 476, 482, 663 S.E.2d 357, 359 (Ct. App. 2008) ("[A]fter Page's cross-examination of Detective, the State moved to admit McKnight's unredacted statement on the basis that Page had opened the door to this testimony due to his questions on Detective's investigative techniques and the sufficiency of evidence linked to Page. It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence."); Young, 364 S.C. at 493, 613 S.E.2d at 395 ("Because Young set before the jury his concern for the victim's safety and chastity, the State was entitled to rebut his assertions with evidence of his prior abuse and the criminal results of his concupiscence. Young opened the door to the convictions for criminal domestic violence and criminal sexual conduct."); State v. Dunlap, 353 S.C. 539, 541, 579

S.E.2d 318, 319 (2003) ("[Petitioner's counsel's] opening statement created the impression that petitioner had no prior connection to the sale of narcotics. In reality, petitioner was not a mere drug user, but an individual who sought to 'elevate' his status to that of a drug dealer. . . . We therefore agree. . . . that petitioner's counsel opened the door to the introduction of evidence rebutting the contention that petitioner was merely an addict."); State v. Beam, 336 S.C. 45, 52-53, 518 S.E.2d 297, 301 (Ct. App. 1999) ("When a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. A party may not complain of error caused by his own conduct." (internal citations omitted)); State v. Taylor, 333 S.C. 159, 175, 508 S.E.2d 870, 878 (1998) ("However, 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. Robinson, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) ("On cross-examination, appellant elicited testimony from Hunter that the El Rukns were involved in drug dealing. Since appellant opened the door to this evidence, he cannot complain of prejudice from its admission."); State v. Major, 301 S.C. 181, 186, 391 S.E.2d 235, 238 (1990) ("Having introduced evidence of his own good character on the issue of involvement in drugs, Major thereby became subject to cross-examination on that assertion. We therefore hold that the trial judge committed no error when he allowed the State to inquire further into Major's character on this point."); State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) ("Once appellant's counsel initiated the questioning concerning McDowell's prior acts of theft, the State was free to question him as to the details of any prior crime involving the stealing of money. The scope of redirect rests in the discretion of the trial court. We hold the trial court properly admitted McDowell's testimony."); State v.

Doby, 273 S.C. 704, 710, 258 S.E.2d 896, 899-900 (1979) ("Appellant next asserts error in allowing the solicitor to cross examine him and his psychiatric witnesses about appellant's two prior convictions for trespassing in public women's restrooms, and in admitting a note he had left in one of those restrooms into evidence. We hold that appellant opened the door to this cross examination by direct testimony regarding his passive character and lack of mature sexual desires."); State v. Allen, 266 S.C. 468, 481-82, 224 S.E.2d 881, 886 (1976) ("By presenting character witnesses, defendant placed his good character and general reputation in issue; by submitting evidence of his criminal past, with the admitted purpose of establishing his propensity for nonviolence, defendant placed this specific character trait in issue."), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

In the present case, defense counsel first called Appellant's wife, Reva McFadden, as a defense witness during a pre-trial hearing in support of immunity pursuant to S.C. Code Ann. § 16-11-450. During this hearing, defense counsel elicited testimony from McFadden regarding Appellant's peaceful and non-confrontational character. During the State's cross-examination of McFadden, the solicitor elicited testimony to rebut Appellant's purported non-violent character, including two prior domestic violence instances. After the denial of immunity, defense counsel admitted he had opened the door to character testimony regarding Appellant's non-confrontational character, but assure the trial court he was not planning on doing so during trial.

During trial, the State called McFadden to testify. On cross-examination, defense counsel again elicited testimony about Appellant's propensity for violence, asking McFadden to, "Tell me why he was scared based upon the person, you know, for 15 years knowing when he's happy, when he's sad, things of that nature." (R. 396). This question by defense counsel was specifically designed to elicit—and did elicit—a response pertaining to Appellant's non-confrontational

character. As anticipated (particularly in light of her pre-trial testimony at the immunity hearing), McFadden testified Appellant had a peaceful character, stating, "[H]e really never been in a confrontation in his whole entire life with anyone in an argument. He tries to stay away from people 'cause he's scared, and that's why when I say he always take his gun because he be scared." (R. 396). Appellant opened the door to testimony regarding prior disputes between McFadden and himself when he asked McFadden a question specifically designed to elicit a response regarding his propensity for violence.

Once Appellant presented testimony on his character—particular his allegedly pacifist nature—the State was entitled to rebut this testimony. See Young, 364 S.C. at 484–85, 613 S.E.2d at 390–91 ("Generally, evidence of a defendant's character is not admissible to show a propensity to act in conformity therewith; however, it is well settled that if a defendant places his character in issue, the State may offer evidence of the defendant's bad character."). Once the State sought to introduce evidence to rebut Appellant's non-confrontational character as presented through McFadden, the trial court properly ruled Appellant had opened the door and such testimony was admissible.

By asking McFadden about Appellant's non-confrontational character, Appellant opened the door for the State to inquire into additional confrontations involving Appellant, including the domestic disputes between McFadden and Appellant. Appellant was not permitted to elicit favorable responses from McFadden regarding his con-confrontational character beneficial to himself and then bar the State from presenting any testimony to rebut this assertion based on McFadden's other interactions with Appellant. See State v. Kennedy, 143 S.C. 318, 321-22, 141 S.E. 559, 560 (1928) (finding previously inadmissible testimony elicited during redirect examination was properly admitted in response to questioning by the appellant of the same

witness along similar lines during cross-examination). Therefore, the trial court did not abuse his discretion in admitting the testimony regarding prior domestic violence instances between Appellant and McFadden. Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment and conviction of the lower court.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, South Carolina 29150
(803) 436-2185

BY: Megan Harrigan Jameson
Megan Harrigan Jameson

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

ATTORNEYS FOR RESPONDENT

May 25, 2017

STATE OF SOUTH CAROLINA
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R. Knox McMahon, Circuit Court Judge

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TERRY WILLIAMS,

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CERTIFICATE OF SERVICE

The undersigned certifies this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, South Carolina 29150
(803) 436-2185

BY: Megan Harrigan Jameson
Megan Harrigan Jameson

Office of the Attorney General

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

ATTORNEYS FOR RESPONDENT

May 25, 2017

STATE OF SOUTH CAROLINA
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R. Knox McMahon, Circuit Court Judge

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THE STATE,

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v.

TERRY WILLIAMS,

Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 25th day of May, 2017.

Keely Carter
Legal Assistant

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