

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO WILLIAMSBURG COUNTY  
R. Knox McMahon, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001365

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THE STATE,

Respondent,

v.

TERRY WILLIAMS,

Petitioner.

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**BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE

The Court of Appeals properly determined the trial court did not abuse its broad discretion by allowing the State, on re-direct examination, to question Petitioner's wife about two prior domestic violence incidents involving Petitioner pursuant to Rule 404(a)(1), SCRE, where defense counsel elicited testimony from Petitioner's wife regarding Petitioner's non-confrontational character during cross-examination.

## STATEMENT OF THE CASE

During its January 2014 term, the Williamsburg County Grand Jury indicted Petitioner 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 Petitioner's estranged wife and her boyfriend outside a bar in Greeleyville, South Carolina. On July 27, 2015, Petitioner 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 Petitioner 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 Petitioner 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, Petitioner filed a timely notice of appeal. In his brief before the South Carolina Court of Appeals, Petitioner argued the trial court erred in allowing the State, on re-direct examination, to question Petitioner's wife about two prior domestic violence incidents between Petitioner and his wife, both involving a firearm. Following briefing, the Court of Appeals affirmed Petitioner's convictions and sentence by unpublished opinion. State v. Terry Williams, 2018-UP-176 (Ct. App. filed May 2, 2018). In its opinion, the Court of Appeals found the trial court did not abuse its discretion by allowing the State to question Petitioner's wife about the two prior instances of domestic violence, citing to the following authority:

As to whether the trial court abused its discretion by allowing the State to question Williams's wife about the two prior instances of domestic violence pursuant to Rule 404(a)(1), SCRE: State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The

admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.”); 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 [court].”); Douglas, 369 S.C. at 429-30, 632 S.E.2d at 848 (“An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.”); Rule 404(a), SCRE (“Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except . . . [e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same.”); State v. Young, 364 S.C. 476, 484, 613 S.E.2d 386, 390 (Ct. App. 2005), aff’d as modified, 378 S.C. 101, 661 S.E.2d 387 (2008) (“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.”); State v. Robinson, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) (providing a party who opens the door to evidence “cannot complain of prejudice from its admission”).

Petitioner subsequently filed a timely petition for rehearing, which was denied by the Court of Appeals. Petitioner then filed his petition for a writ of certiorari with this Court, and thereafter, Respondent filed its return. This Court granted certiorari. Petitioner then filed his brief of petitioner and this brief of respondent follows.

## 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, Petitioner, whom she had known for fifteen years and had been married to for five years. (R. 322-23).

At some point during the evening, Petitioner came to Celestine's. (R. 238, 352). Moore saw Petitioner enter Celestine's and his mood noticeably changed. (R. 352-53). Moore remarked to McFadden he was sick of Petitioner "mean mugging" him. (R. 352-53). McFadden responded by noting Petitioner had already exited Celestine's and advising Moore to leave the situation alone. (R. 353-54). Moore replied he was tired of repeatedly seeing Petitioner 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).

Petitioner 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 Petitioner with his arms crossed. (R. 503-05). Petitioner 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). Petitioner 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 Petitioner was walking towards his vehicle, Moore followed behind him and asked Petitioner why he was constantly at the same locations as he and McFadden. (R. 358, 367). Petitioner, who had reached his vehicle, told Moore to stop approaching him and back away. (R. 366-68). McFadden then saw Petitioner with a gun and tried to walk in front of Moore. (R. 368-70). At that moment, Petitioner suddenly fired upon McFadden and Moore with his gun, striking McFadden in the foot and fatally wounding Moore in multiple places. (R. 370-72). Petitioner 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, Petitioner moved for immunity from prosecution pursuant to S.C. Code Ann. § 16-11-450. (R. 7-8). During this hearing, Petitioner 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 Petitioner 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 Petitioner, 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 Petitioner, arguing they were thirty-day offenses that were not admissible. (R. 177-78). Defense counsel acknowledged he may have potentially opened the door to such testimony during the immunity hearing when he asked about Petitioner'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 and the State affirmed it would. (R. 179).

During the State's case-in-chief, McFadden was called as a witness. On cross-examination, defense counsel began questioning McFadden about her earlier testimony the day before (presumably her testimony at the immunity hearing) regarding Petitioner's mood and actions based on knowing him for fifteen years. (R. 394-95). Defense counsel repeatedly mentioned "yesterday" and asked her think back on her testimony from the day prior. (R. 395-94). Defense counsel then 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) (emphasis added).

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 Petitioner to impeach her testimony and to rebut the character evidence elicited by defense counsel on cross-examination regarding Petitioner'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 Petitioner had been scared based on her

personal knowledge of Petitioner 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 Petitioner 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 that 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 admissible pursuant to Rule 404(a)(1), SCRE, to rebut the character testimony elicited by defense counsel as to Petitioner'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 Petitioner (with whom defense counsel had repeatedly met and discussed the case prior to trial), making this situation more unique than

the typical Rule 404(a)(1), SCRE, scenario. (R. 427-28). The trial court ruled the State was able to elicit testimony and evidence pertaining to the prior altercations between Petitioner and McFadden pursuant to Rule 404(a)(1), SCRE. (R. 427-28). The trial court also noted the evidence would likely be admissible pursuant to Rule 404(b), SCRE, as absence of mistake of accident. (R. 428). The court ultimately concluded the door had been opened to such testimony during McFadden's cross-examination by defense counsel about Petitioner's non-confrontational character and further opened by McFadden's replied on re-direct examination from the State, a ruling based on Rule 404(a)(1), 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 Petitioner of the lesser-included offense of 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 Court of Appeals properly determined the trial court did not abuse its broad discretion by allowing the State, on re-direct examination, to question Petitioner's wife about two prior domestic violence incidents involving Petitioner pursuant to Rule 404(a)(1), SCRE, where defense counsel elicited testimony from Petitioner's wife regarding Petitioner's non-confrontational character during cross-examination.**

Petitioner contends the Court of Appeals improperly affirmed Petitioner's convictions, arguing the trial court erred in allowing the State, on re-direct examination, to question Petitioner's wife Reva McFadden about prior domestic disturbances between McFadden and Petitioner. Specifically, Petitioner asserts the questions asked by defense counsel on cross-examination did not open the door to allow the State to introduce this evidence to rebut evidence of Petitioner's character pursuant to Rule 404(a)(1), SCRE, or as prior bad act evidence pursuant to Rule 404(b), SCRE.<sup>1</sup> Contrary to Petitioner's contentions, the trial court properly admitted testimony from Petitioner's wife regarding their prior domestic disputes pursuant to Rule 404(a)(1), SCRE, because Petitioner opened the door to such testimony during his cross-examination of McFadden by knowingly eliciting testimony regarding Petitioner's non-confrontational character. The Court of Appeals properly affirmed Petitioner's convictions. This Court should also affirm.

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. Page, 378 S.C. 476, 481, 663 S.E.2d 357, 359 (Ct. App. 2008). The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb such a ruling upon a showing of a "manifest abuse of discretion accompanied by probable prejudice." State v.

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<sup>1</sup> Although defense counsel and the trial court discuss Rule 404(b), SCRE, it is clear from a review of the record that the trial court's ruling was based on Rule 404(a)(1), SCRE, to allow the State to rebut Petitioner's character evidence of his non-confrontational nature.

Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); see also State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (holding appellate courts review errors of law only and are bound by the trial court’s factual determinations unless they are clearly erroneous).

Similarly, “[w]hether 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.” Page, 378 S.C. at 483, 663 S.E.2d at 360 (citing State v. Adcock, 194 S.C. 234, 234, 9 S.E.2d 730, 732 (1940)); see also State v. Hawes, 423 S.C. 118, 140, 813 S.E.2d 513, 525 (Ct. App. 2018) (holding the trial court did not abuse its discretion allowing the State to question its witness (Smith) regarding the previously excluded details in the written statement that supported Smith’s testimony once the defendant opened the door based on his “insinuations, innuendos, and omissions” during his examination of Smith regarding Smith’s statement to law enforcement); State v. White, 361 S.C. 407, 415-16, 605 S.E.2d 540, 544 (2004) (holding otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence). “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.” State v. Jackson, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005).

Pursuant to Rule 404(a), SCRE, evidence of a defendant’s character is generally not admissible to show a propensity to act in conformity therewith. See State v. Young, 378 S.C. 101, 106, 661 S.E.2d 387, 389 (2008) (“Evidence of a defendant’s character is generally not admissible to show a propensity to act accordingly.”). Nonetheless, it is well established that if a

defendant places his or her character in issue, the State may offer rebuttal evidence of the defendant's specific character trait in reply. Rule 404(a)(1), SCRE ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except [e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same"); Young, 378 at 106, 661 S.E.2d at 389 ("However, when the accused offers evidence of his good character regarding specific character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to particular bad acts or conduct.)

South Carolina courts have long recognized that a defendant may open the door to the admission of otherwise inadmissible evidence. See State v. Shands, 424 S.C. 106, 124, 817 S.E.2d 524, 533 (Ct. App. 2018) ("Because Shands opened the door about his past non-violent actions, the State was entitled to rebut his assertions with evidence of his prior conviction for a violent felony."); 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."); 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 Petitioner “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 Petitioner’s prior criminal domestic violence conviction.”); State v. Robinson, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) (“On cross-examination, Petitioner elicited testimony from Hunter that the El Rukns were involved in drug dealing. Since Petitioner 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 Petitioner’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) (“Petitioner next asserts error in allowing the solicitor to cross examine him and his psychiatric witnesses about Petitioner’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 Petitioner 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); State v. Gibert, 196 S.C. 306, 13 S.E.2d 451, 453–54 (1941) (“In our opinion, where the accused in a criminal case voluntarily puts his good character in evidence, and has made it one of the issues in the case, he may be cross-examined as to particular acts or conduct derogatory to his good character, but such examination must be confined to the nature of the charge against him.”). See also Bowman v. State, 422 S.C. 19, 809 S.E.2d 232 (2018) (internal quotations omitted) (“Indeed, conduct that would otherwise be improper may be excused under the ‘invited reply’ doctrine if the prosecutor’s conduct was an appropriate response to statements or arguments made by the defense. The idea of an invited response is used not to excuse improper comments, but to determine their effect on the trial as a whole. Once the defendant opens the door, the solicitor’s invited response is appropriate so long as it does not unfairly prejudice the defendant.”).

In the present case, the State was properly permitted to present evidence regarding Petitioner’s prior altercations with McFadden following defense counsel’s elicitation on cross-examination about Petitioner’s non-confrontational character pursuant to Rule 404(a)(1), SCRE. Defense counsel first called Petitioner’s wife, Reva McFadden, with whom he had met several times in preparation of Petitioner’s defense, 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 Petitioner’s peaceful and non-confrontational character. During the State’s cross-examination of McFadden, the solicitor

elicited testimony to rebut Petitioner'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 Petitioner'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 Petitioner'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 Petitioner's non-confrontational character. As anticipated (particularly in light of her pre-trial testimony at the immunity hearing), McFadden testified Petitioner 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). Petitioner placed his character in issue and 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 Petitioner presented testimony on his character—and, more specifically, his allegedly pacifist nature—the State was entitled to rebut this testimony. See Young, 378 S.C. at 106, 661 S.E.2d at 389 (internal citations omitted) ("Evidence of a defendant's character is generally not admissible to show a propensity to act accordingly. However, when the accused offers evidence of his good character regarding specific character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to particular bad acts or conduct."). Once Petitioner presented evidence of his non-confrontational character through his wife, the

State rightfully sought to introduce evidence to rebut Petitioner's non-confrontational character and the trial court properly ruled Petitioner had opened the door and such testimony was admissible pursuant to Rule 404(a)(1), SCRE.

By asking McFadden about Petitioner's non-confrontational character, Petitioner opened the door for the State to inquire into additional confrontations involving Petitioner, including the domestic disputes between McFadden and Petitioner. Petitioner was not permitted to elicit favorable responses from McFadden regarding his non-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 Petitioner. 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 Petitioner 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 Petitioner and McFadden.

Petitioner argues Rule 404(a)(1), SCRE, is inapplicable here because McFadden was called as State's witness during trial and therefore he did not place his character at issue. However, whether McFadden was called as a witness for the State or the defense is a distinction of little importance, particularly when viewing the record as a whole and considering that McFadden testified earlier as a defense witnesses, was on friendly terms with and still married to Petitioner at the time of trial, and had met with defense counsel numerous times in preparation of Petitioner's defense. It is clear that Petitioner placed his character at issue during trial during his questioning of McFadden, and accordingly, the State was permitted to respond to the specific character trait presented by Petitioner.

Petitioner also argues that defense counsel did not elicit character evidence, but rather, only to show Petitioner was scared during the incident. This argument rings hollow when considering the line of questioning asked by defense counsel and the responses from McFadden, all which directly related to Petitioner's character over the fifteen year period she had known him. Defense counsel questioned McFadden about her earlier testimony the day before (presumably her testimony at the immunity hearing) regarding Petitioner's mood and actions based on knowing him for fifteen years. Defense counsel repeatedly mentioned "yesterday" and asked her think back on her testimony from the day prior. Defense counsel then 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." These questions were clearly intended to elicit testimony regarding Petitioner's non-confrontational nature, and as a result of this line of questioning, McFadden did indeed testify about Petitioner's character for peacefulness, stating, "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). Once Petitioner elicited this character testimony, the State was permitted to respond accordingly to rebut this evidence.

Additionally, this case is distinguishable from State v. Young, 378 S.C. 101, 661 S.E.2d 387 (2008), where this Court disagreed with the Court of Appeals and held "the trial court erred in admitting Young's prior CDV and CSC convictions to impeach Young." Id., at 106, 661 S.E.2d at 390. In Young, the defendant, who was on trial for kidnapping and first-degree criminal sexual conduct, stemming from a drug transaction with a female victim, testified in his defense and stated he hated to see a woman cry. Id., at 103-05, 661 S.E.2d at 388-89. Following this testimony, the State argued Young had opened the door to admission of his prior convictions

for third-degree criminal sexual conduct and criminal domestic violence by introducing evidence of his good character towards women with his comment about hating to see a woman cry. Id., at 105, 661 S.E.2d at 389. The trial court agreed Young had placed a character trait in issue and allowed the State to impeach him by asking him about his prior convictions for third-degree criminal sexual conduct and criminal domestic violence. Id. The Court of Appeals affirmed the trial court's admission of the prior convictions for impeachment purposes. State v. Young, 364 S.C. 476, 613 S.E.2d 386 (Ct.App.2005). On certiorari, this Court modified the opinion of the Court of Appeals and held,

We find that Young's testimony that he hated to see a woman cry did not open the door for the admission of his prior CDV and CSC convictions. Reading Young's testimony in its proper context, Young was not offering evidence of a specific character trait towards women in general. Rather, the isolated statement used to justify admission of the prior CDV and CSC convictions was simply part of Young's narrative recounting his version of the events that occurred on the night in question. For this reason, the State was limited to presenting evidence admissible under Rule 609, SCRE, to impeach Young's credibility. Pursuant to Rule 609(a)(1), such evidence is limited to prior convictions for crimes punishable by imprisonment in excess of one year, subject to Rule 403. Additionally, Rule 609(a)(2) permits evidence of convictions for crimes involving dishonesty.

In this case, questioning Young generally on "another felony for which he ha[d] been convicted," as the trial court properly permitted in the first instance pursuant to Rule 609, SCRE, was entirely sufficient to impeach Young's credibility. We find that the State's use of a specific prior conviction for the same offense that Young was currently standing trial for was only a thinly-veiled attempt to show propensity, rather than a sincere attempt at impeachment of Young's credibility. For this reason, we hold that the trial court erred in admitting Young's prior CDV and CSC convictions to impeach Young.

Young, 378 S.C. at 106–07, 661 S.E.2d at 389–90. Despite assigning error to the admission of the prior convictions for impeachment purposed pursuant to Rule 404(a)(1), SCRE, this Court

determined the admission as harmless, “The jury took all the evidence into account and acquitted Young of CSC, indicating that the introduction of Young’s prior CDV and CSC convictions did not affect the jury. Furthermore, there was substantial evidence in the record on which the jury could have found him guilty on the other charges.” Id. at 107, 661 S.E.2d at 390. Unlike the passing comment in Young that the defendant hated to see a woman cry, here Petitioner elicited character specific testimony regarding his non-confrontational nature over a period of fifteen years, which can only reasonably be interpreted as character evidence. Accordingly, the State was permitted to rebut this character evidence elicited by Petitioner pursuant to Rule 404(a)(1), SCRE.

The Court of Appeals properly affirmed Petitioner’s convictions and this Court should similarly affirm.

CONCLUSION

For all the foregoing reasons, this Court should affirm Petitioner's convictions as the trial court did not abuse its broad discretion.

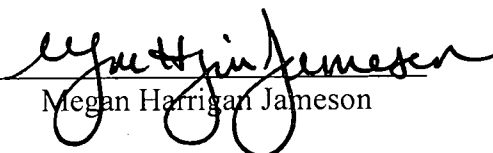
Respectfully submitted,

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January 8, 2019

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

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CERTIORARI TO WILLIAMSBURG COUNTY S.C. SUPREME COURT  
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001365

THE STATE,

Respondent,

v.

TERRY WILLIAMS,

Petitioner.


PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Brief of Respondent Petitioner by depositing two copies of the same in interagency mail, addressed to:

Appellate Defender Kathrine H. Hudgins  
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I further certify that all parties required by Rule to be served have been served.

This 8<sup>th</sup> day of January, 2019.

  
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