



# The Supreme Court of South Carolina

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June 28, 2019

The Honorable Julie J. Armstrong  
100 Broad St. Ste. 106  
Charleston, SC 29401-2210

## REMITTITUR

Re: The State v. Denzel M. Heyward  
Lower Court Case Nos. 2014GS1000763, 2014GS1000765, and  
2014GS1000767  
Appellate Case No. 2018-000981

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,

CLERK



cc: ~~Mr. Robert~~ Michael Dudek, Esquire  
Donald Michael Mathison, Esquire  
Alan McCrory Wilson, Esquire  
James Clayton Mitchell, III, Esquire  
Scarlett Anne Wilson, Esquire  
Jonathan Scott Matthews, Esquire

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

The State, Respondent,

v.

Denzel Marquise Heyward, Petitioner.

Appellate Case No. 2018-000981

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Charleston County  
Roger M. Young, Sr., Circuit Court Judge

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Opinion No. 27887  
Heard March 27, 2019 – Filed May 15, 2019

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**REVERSED AND REMANDED**

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Chief Appellate Defender Robert Michael Dudek and  
Appellate Defender Donald Michael Mathison, both of  
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant  
Attorney General Jonathan Scott Matthews, and Assistant  
Attorney General James Clayton Mitchell, III, all of  
Columbia, for Respondent.

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**JUSTICE HEARN:** Petitioner Denzel Heyward was indicted for murder, attempted murder, armed robbery, and possessing a firearm during a crime of violence for an incident that resulted in the death of Kadeem Chambers. The jury could not reach a verdict as to murder, but found Heyward guilty of the remaining charges. The trial court sentenced him to an aggregate term of 65 years. Heyward appealed, asserting the court erred by admitting a photo lineup identification and by finding his counsel opened the door to the admission of testimony that he had previously committed domestic violence. The court of appeals affirmed. *State v. Heyward*, 422 S.C. 488, 812 S.E.2d 432 (Ct. App. 2018). We now reverse and remand for a new trial.

### FACTS/PROCEDURAL BACKGROUND

During the trial, Quasantrina Rivers—the mother of Heyward's child and a cooperating codefendant—testified that she drove Heyward and Dashaun Simmons—another codefendant—to a residence in Ridgeville where Heyward retrieved a gun. She then drove the men to an acquaintance's house on Johns Island. Another car containing two men (Chambers and his brother, Jujuan Hemingway) drove up, and after speaking to one of the occupants, Heyward "bum rushed"<sup>1</sup> him and pushed him against the car. Simmons then approached the car from the woods carrying a rifle and forced the two men to lay on the ground. Heyward and Simmons demanded to know "where everything was at," but the men responded they had nothing. Thereafter, Heyward stomped his foot on the back of Hemingway's head, and Simmons fired a shot in his direction. Heyward and Simmons forced the men to open the trunk of their car and took a suitcase from it. Chambers then began to "tussle" with Simmons when two shots rang out, striking Chambers. Heyward and Simmons fled with Rivers, who drove them back to Ridgeville. The group spent much of the next two days there before Rivers ultimately turned herself in to police. Chambers passed away at the hospital. Hemingway testified similarly regarding the events of the night in question.

Prior to trial, Heyward sought to prohibit Rivers from testifying that he had allegedly physically abused her during their relationship. In moving to exclude the testimony, he argued he had no prior convictions for domestic violence and the allegations had no bearing on any element of a crime charged, resulting only in undue prejudice.

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<sup>1</sup> "To attack or seize with an overpowering rush." "bum-rush." *Merriam-Webster.com*, 2019. (Last Visited April 2, 2019). *available at* <https://www.merriam-webster.com/dictionary/bum-rush>.

The State explained it wanted to introduce the evidence to help the jury understand the complicated relationship between Heyward and Rivers, including the fact that despite agreeing to testify against Heyward, she continued to visit him frequently in jail. According to the State, the allegations demonstrated his ability to manipulate her. Further, it helped explain why Rivers allegedly drove Heyward and Simmons to retrieve a gun, drove them to and from a robbery, and then took two days to turn herself in to police. The State asserted allegations of domestic violence would not cause the jury to assume Heyward committed murder.

The trial court determined the State was attempting to introduce the evidence to demonstrate Heyward's bad character, which Rule 404(b), SCRE, is designed to prevent. The court stated it would not allow Rivers to testify about prior incidents of abuse on direct examination, but noted the testimony could be permitted to rehabilitate her.

At trial, the State called Rivers' mother, Sidearis Singleton, who testified about Rivers' behavior after the incident and her decision to turn herself in. On cross-examination, Heyward asked Singleton whether Rivers had attempted suicide before, whether she knew if Rivers had mental health issues, and whether Rivers had ever accused Singleton's husband of sexually assaulting her. Singleton answered she did not know to each question.

On redirect, the State asked Singleton who had abused Rivers. Heyward objected, and the court stated: "[w]ell, you raised the—you raised the issue. I guess she would—you introduced it, so—." The court then held an off-record bench conference at Heyward's request. The State proceeded with questioning, asking Singleton who had physically harmed Rivers in any way. She responded that Heyward had committed domestic violence against Rivers. Singleton testified Heyward had a history of physically abusing Rivers and she had seen Rivers after some of the abuse, noticing her hair had been pulled out and her lip was busted or swollen. Rivers later testified her relationship with Heyward included some violence, and she also recounted several instances of Heyward "fighting" her physically on the day of the incident.

The jury deliberated for approximately eight hours, sending multiple notes to the court, and were given an *Allen*<sup>2</sup> charge after reporting they could not reach an agreement. At 1:20 a.m., the jury returned verdicts convicting Heyward and Simmons of attempted murder, armed robbery, and the weapons charge. The jury

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<sup>2</sup> *Allen v. United States*, 164 U.S. 492 (1896).

could not reach a unanimous verdict on the murder charge. Heyward requested the court continue sentencing due to the late hour, but the State asserted it would be a great hardship for Chambers' family to have to come back another day. Chambers' family submitted pictures, a video recording, and a victim impact statement for sentencing purposes. The State asked for consecutive sentences. The court stated the evidence demonstrated lying in wait and "total disregard for other human beings." Consequently, the trial court found the maximum penalty was warranted and sentenced both Heyward and Simmons to 30 years for attempted murder, 30 years for armed robbery, and 5 years for the weapons charge, all to be served consecutively.

Heyward appealed, and the court of appeals affirmed. *Heyward*, 422 S.C. 488, 812 S.E.2d 432. The court held, in relevant part, that Heyward had failed to preserve the domestic violence testimony issue for review by not stating his objection for the record, but even if he had, counsel opened the door to the testimony. The court of appeals further determined that even if the circuit court erred, the testimony was cumulative to that of Rivers regarding physical abuse. We granted certiorari to review the decision.

### ISSUE<sup>3</sup>

Did the circuit court err in finding defense counsel's questioning of Singleton opened the door to testimony about prior instances of domestic violence Heyward committed against Rivers?

### STANDARD OF REVIEW

A trial court's determination that a party has opened the door to the introduction of otherwise inadmissible evidence is within the sound discretion of the trial judge and is reviewed for abuse. *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). This occurs when a trial court's conclusions lack evidentiary support or are controlled by an error of law. *State v. Collins*, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014).

### DISCUSSION

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<sup>3</sup> We also granted certiorari as to Heyward's other question: whether the circuit court erred by admitting Hemingway's identification of Heyward. We now dismiss the writ as improvidently granted as to this issue.

Heyward argues the trial court erred by permitting testimony he previously abused Rivers because counsel did not open the door to its admission. He contends the issue is preserved for review because the substance of his objection was clear from the context of both the pre-trial hearing and the objections made at trial. Heyward asserts the prejudice from admission was substantial because it bolstered Rivers' credibility—which was central to the State's case—and painted him in a negative light.

The State contends the issue is not preserved because Heyward's counsel failed to state his objection on the record after the bench conference. The State notes counsel also failed to object when Rivers testified her relationship with Heyward included violence. The State argues that regardless, the door was opened to Singleton's testimony regarding domestic violence because Heyward's counsel asked her about whether Rivers had been abused, as well as her mental health and state of mind. Finally, the State asserts any error was harmless due to the significant evidence of Heyward's guilt.

A specific objection to an evidentiary ruling is required unless the grounds are apparent from context. Rule 103(a)(1), SCRE. However when this Court can discern the basis of the objection from the record, the issue is preserved for review. See *State v. Byers*, 392 S.C. 438, 444-47, 710 S.E.2d 55, 58-59 (2011).

A party may introduce otherwise inadmissible evidence in rebuttal when an opponent introduces evidence as to a particular fact or transaction. *State v. Young*, 364 S.C. 476, 486-87, 613 S.E.2d 386, 391-92 (Ct. App. 2005). However, we are wary of a "thinly-veiled attempt to show propensity" by way of the open-door doctrine. *State v. Young*, 378 S.C. 101, 106, 661 S.E.2d 387, 390 (2008). Testimony in response must be "proportional and confined to the topics to which counsel had opened the door." *Bowman v. State*, 422 S.C. 19, 42, 809 S.E.2d 232, 244 (2018).

Initially, while counsel failed to state the grounds for his objection to Singleton's testimony on the record—which he had done following other bench conferences during the trial—we believe the context of the pre-trial hearing and what was said on the record makes the grounds for the objection apparent. It is clear the possibility of counsel opening the door to testimony regarding domestic violence against Rivers was on everyone's mind. The circuit court extensively discussed the issue before trial; the State was looking for an opportunity to introduce the allegations; Heyward's counsel took care not to ask Singleton about physical abuse or Rivers' relationship with Heyward; and counsel immediately objected when the State sought to elicit the testimony from Singleton. The trial court no doubt

understood the basis for the objection, but responded counsel had raised the issue, indicating the court believed the door had been opened. While counsel did not specify the basis for the objection and the ruling for the record after the bench conference, the context of the entire trial demonstrates the issue was raised and ruled upon, preserving it for appellate review. See *Byers*, 392 S.C. at 444-47, 710 S.E.2d at 58-59.

As to the merits, we do not believe counsel opened the door to allegations Heyward physically abused Rivers. Counsel asked Singleton whether Rivers had attempted suicide, struggled with mental health issues, and accused Singleton's husband of sexual assault. None of these issues arise out of the same fact or transaction as past incidents of physical abuse Heyward may have committed against Rivers. *Young*, 364 S.C. at 486-87, 613 S.E.2d at 391-92. Moreover, the testimony the State elicited in response was not proportional or confined to the doors counsel had opened through his questioning of Singleton; *i.e.*, her suicide attempts, mental health, or sexual abuse. *Bowman*, 422 S.C. at 42, 809 S.E.2d at 244. Singleton proceeded to testify Heyward repeatedly physically abused Rivers, resulting in specific physical injuries. We believe the State thereby used the open-door doctrine to introduce propensity evidence, just as the circuit court recognized during the pre-trial hearing. *Young*, 378 S.C. at 106, 661 S.E.2d at 390. Consequently, we find no evidentiary support for the court's decision, which amounted to an abuse of discretion. *Collins*, 409 S.C. at 530, 763 S.E.2d at 25.

The State asserts any error was harmless in light of the evidence adduced at trial as a whole. We cannot agree, as the evidence of Heyward's guilt was not overwhelming. Further, while Rivers subsequently testified her relationship with Heyward included some violence and she recounted specific events from the day of the incident, Singleton's testimony had the effect of corroborating Rivers' testimony as a whole. Rivers was indeed the State's most important witness, and as a result, we cannot conclude Singleton's testimony was harmless because it later became cumulative. The evidence was introduced solely to demonstrate Heyward's poor character, and given the close case presented, we are unable to find the error was not prejudicial.

### CONCLUSION

Accordingly, we **REVERSE** and **REMAND** the case for a new trial.

**BEATTY, C.J., KITTREDGE, FEW and JAMES, JJ., concur.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Denzel Marquise Heyward, Appellant.

Appellate Case No. 2015-000709

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Appeal From Charleston County  
Roger M. Young, Sr., Circuit Court Judge

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Opinion No. 5537  
Heard November 16, 2017 – Filed February 14, 2018

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**AFFIRMED**

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Donald Michael Mathison of the Richland County Public Defender's Office and Chief Appellate Defender Robert Michael Dudek, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General James Clayton Mitchell, III, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

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**LOCKEMY, C.J.:** Denzel Heyward appeals his convictions for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime. Heyward argues the trial court erred in (1) admitting a photo lineup identification into evidence; (2) admitting evidence of domestic violence by Heyward against a witness; and (3) commencing sentencing proceedings at 1:30

a.m. and permitting victim impact testimony unrelated to the crimes for which Heyward was convicted. We affirm.

## **FACTS/PROCEDURAL BACKGROUND**

Heyward was indicted in January 2014 for the murder of Kadeem Chambers, the attempted murder of Jujuaïn Hemingway, armed robbery, and possession of a weapon during the commission of a violent crime. A jury trial was held November 10-15, 2014.

At trial, Quasantrina Rivers<sup>1</sup> testified for the State. According to Rivers, on the night of May 16, 2012, she drove Heyward and Dashaun Simmons<sup>2</sup> to Johns Island, South Carolina. Rivers testified she and Heyward had a disagreement that night and she was forced into the car. Rivers drove Heyward and Simmons to the home of "Skrill," a friend of Heyward. When they arrived, Heyward entered Skrill's home and returned with a duffel bag containing a gun that he then placed in the trunk of Rivers' car. Rivers then drove Heyward and Simmons to the home of Lorenzo Mehciz. According to Rivers, Chambers and Hemingway arrived at Lorenzo's home in another car shortly thereafter. Rivers testified Heyward approached Chambers and "bum-rushed" him, slamming him against his car. Simmons, armed with a gun, then ran towards the men and ordered Chambers and Hemingway to get on the ground. Heyward and Simmons repeatedly asked Chambers and Hemingway, "Where is the money at" and the men replied they didn't have anything. Rivers testified Heyward "stomped" Hemingway's head while he was on the ground multiple times. Simmons then fired a shot towards Hemingway who was still lying on the ground. According to Rivers, Chambers began tussling with Simmons on the ground and two more shots were fired, both striking Chambers. Heyward and Simmons ran back towards Rivers' car, placed the gun in the backseat, and Rivers drove the car away from the scene. Chambers and Hemingway also ran from the scene. Chambers was found by officers shortly after the shooting bleeding heavily in his wrecked car. Chambers told an officer he was shot by "Fat." Several witnesses stated Heyward's nickname is "Fat." Chambers later died at the hospital.

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<sup>1</sup> Rivers is the mother of Heyward's daughter.

<sup>2</sup> Simmons was indicted on identical counts as Heyward and the two men were tried together.

After the shooting, Rivers drove Heyward and Simmons back to Skrill's house. Rivers testified Heyward talked to Lorenzo on the phone after the shooting and instructed Lorenzo not to discuss what happened.<sup>3</sup> Verna Lockhart-Carter, Lorenzo's mother, also testified at the trial. The shooting took place outside the home she shared with Lorenzo. Lockhart-Carter testified she arrived home on the night of May 16, 2012, and Lorenzo was outside talking to Heyward.

On May 17, 2012, just hours after the shooting, Hemingway gave descriptions of the assailants to investigators. On May 18, 2012, investigators presented Hemingway with a six-person photo lineup containing Heyward's photo. Hemingway failed to make an identification. The following day, investigators presented Hemingway with a second photo lineup also containing a photo of Heyward. Hemingway identified Heyward. Hemingway was unable to identify Simmons or Rivers in subsequent photo lineups. Heyward was subsequently arrested.

The jury found Heyward guilty of attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime. A mistrial was declared as to the murder charge. The trial court sentenced Heyward to consecutive sentences of thirty years for attempted murder, thirty years for armed robbery, and five years for the weapons charge. This appeal followed.

## **STANDARD OF REVIEW**

"In criminal cases, this [c]ourt sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

## **LAW/ANALYSIS**

### **I. Admission of photo lineup identification**

Heyward argues the trial court erred in admitting the photo lineup identification made by Hemingway. We disagree.

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<sup>3</sup> Rivers was charged with accessory after the fact to murder, attempted murder, and armed robbery. The State agreed to reduce Rivers' bond in exchange for her proffered statement.

The decision of whether to admit or exclude evidence is within the sound discretion of the trial court. *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). Likewise, the determination of whether to admit an eyewitness's identification is at the discretion of the trial court. *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). This court will not disturb the trial court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003).

In *Neil v. Biggers*, the United States Supreme Court set forth a two-pronged test to determine whether due process requires the suppression of an eyewitness identification. 409 U.S. 188, 198-200 (1972). To ensure due process, *Neil v. Biggers* requires courts to assess, on a case-by-case basis, the following: (1) whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, (2) whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012).

"Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation." *Id.*

In the instant case, a *Neil v. Biggers* hearing was held prior to trial to determine the admissibility of the photo lineup identification made by Hemingway. At the hearing, Hemingway testified he got a "good look" at the two men involved in the shooting because they were "right in [his] face." Hemingway further testified he was not truthful with investigators regarding the first photo lineup he was shown. According to Hemingway, he recognized Heyward in the first lineup but didn't tell investigators because he was "scared," "angry," and "hadn't accepted the fact that [Chambers] was gone." Hemingway subsequently testified he thought investigators "[knew] something [he] didn't know" because they kept "showing me the same picture."

Defense counsel moved to suppress the lineup arguing it was unduly suggestive because Heyward's photo appeared in both lineups shown to Hemingway. The trial court agreed, but ruled the lineup was reliable. The court found persuasive Hemingway's testimony that he "was able to identify [Heyward] on the first day,

but just chose to just not verbalize that because he was angry [, which] suggests to me that he was not, in fact, influenced by the second lineup."

On appeal, Heyward argues the trial court erred in (1) failing to consider the *Neil v. Biggers* reliability factors after finding the photo lineup was unduly suggestive, and (2) relying exclusively on Hemingway's explanation for his dishonesty.

We find the trial court did not abuse its discretion in admitting Hemingway's identification of Heyward. The court's finding the lineup was reliable was supported by the evidence. Hemingway had ample opportunity to view Heyward at the time of the crime as evidenced by his testimony that he was able to observe Heyward for between five and ten minutes. Hemingway noted he stood next to Heyward when he was asked to open the trunk of his car. As to his level of certainty, Hemingway testified he was able to get a "good look" at Heyward because he was right in his face. Hemingway was also able to describe Heyward's height, facial hair, and clothing. In addition, given Hemingway identified Heyward one day after the crime was committed, the length of time between the crime and the identification was not so prolonged to be unreliable.

In addition, as to Heyward's second error claim, we note the trial court heard all of the testimony and determined Hemingway was untruthful when he claimed he did not see Heyward in the first photo lineup. Because the trial court was in a better position to judge Hemingway's credibility, we do not believe the court abused its discretion in finding Hemingway recognized Heyward in the first photo lineup. *See State v. Tutton*, 354 S.C. 319, 325-26, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity.").

Even assuming the trial court erred in admitting Hemingway's photo lineup identification, we find Heyward was not prejudiced by its admission. Defense counsel was able to cross examine Heyward on both the suggestiveness and the reliability of the lineups. *See Liverman*, 398 S.C. at 143-44, 727 S.E.2d at 428-29 (finding any error in the admission of identification evidence to be harmless where the reliability of the identification evidence was fully vetted at trial, the weaknesses in the evidence were exposed on cross-examination, and defense counsel reminded the jury of those weaknesses during closing arguments). The photo lineup identification was also cumulative to the eyewitness testimony given by Rivers and Hemingway's in-court identification of Heyward. Accordingly, we affirm the trial court's decision to admit the identification.

## II. Evidence of domestic violence

Heyward argues the trial court erred in admitting evidence he physically abused Rivers. We disagree.

Prior to trial, defense counsel moved to exclude any testimony regarding allegations made by Rivers that Heyward had physically abused her. The solicitor stated Heyward had control over Rivers and she was "sort of under the spell of Denzel Heyward." The trial court noted an incident of abuse that happened the night of the shooting would be different from an incident of abuse months prior. The court held it had not been presented with any argument to support the admission of the domestic violence allegations pursuant to Rule 404(b), SCRE. The court also noted the door could be opened by the defense, which would make the evidence admissible.

Sidearis Singleton, Rivers' mother, testified for the State at trial. In her testimony, Singleton recounted her conversation with Rivers where she told Rivers to turn herself in to the authorities after learning about the shooting. On cross examination, defense counsel questioned Singleton about whether she was aware Rivers had attempted suicide. He also asked Singleton whether she was aware if Rivers had ever accused Singleton's husband of sexual assault. Next, defense counsel asked Singleton if she was aware Rivers had worked as a stripper. The solicitor objected to that question based on relevancy and defense counsel argued the question was relevant to Rivers' mental state. The court sustained the objection.

On redirect, the State asked Singleton who had abused Rivers. Defense counsel objected without specificity and the court stated "[w]ell you raised the -- you raised the issue. I guess she would -- you introduced it, so --." Subsequently, an off-the-record bench conference was held. Thereafter, Singleton testified Rivers was abused by Heyward. According to Singleton, Rivers was abused more than once and her injuries included a busted lip and pulled out hair. Rivers later testified she endured a violent relationship with Heyward as the aggressor.

On appeal, Heyward argues (1) the court erred in ruling defense counsel had opened the door to the abuse testimony, and (2) the court should have excluded the evidence under Rules 404(B) and 403, SCRE because it was inflammatory, prejudicial, and had no probative value.

A party who opens the door to evidence cannot complain of its admission. *State v. Robinson*, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991). "[W]hen 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. Beam*, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999). "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." *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008).

We find the trial court did not abuse its discretion in admitting Singleton's testimony regarding domestic violence. First, we note defense counsel's objection during Singleton's testimony was not specific and no objection was made following the off-the-record bench conference. *See State v. New*, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999) (holding a general objection which does not specify the particular ground on which the objection is based is insufficient to preserve the issue for review); *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review."). Second, we find defense counsel opened the door to the issue of abuse during the cross-examination of Singleton. Finally, we find Singleton's testimony as to the abuse suffered by Rivers was cumulative to Rivers' own testimony regarding abuse. We note no objection was made during Rivers' testimony on direct examination that Heyward was abusive towards her during their relationship.

### **III. Sentencing**

Heyward argues the trial court erred in commencing sentencing proceedings at 1:30 a.m. and permitting victim impact testimony unrelated to the crimes for which he was convicted. We disagree.

Following the dismissal of the jury at 1:30 a.m., Heyward asked the trial court to "delay sentencing due to the hour to the extent we've all been here." The State asked the court to proceed with the sentencing because the victim's family was from out of town and one family member had to work the following day. The State argued it would "be a great hardship for these folks to come back for sentencing." The trial court denied Heyward's request and proceeded with sentencing. The State presented the court with victim impact testimony in the form of pictures of Chambers, a video tribute prepared by Chambers' family, and a letter read by Chambers' sister.

On appeal, Heyward argues (1) his due process rights were violated by the late hour of his sentencing; (2) he was not given adequate notice of the materials the victims would present to the court; and (3) the court erroneously allowed testimony focusing on Chambers' death when the jury did not convict Heyward of Chambers' murder.

We find these arguments are not preserved for our review. Heyward did not object to the court conducting sentencing at a late hour as a violation of his due process rights. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (stating a party cannot argue one ground below and then argue another ground on appeal). Furthermore, Heyward did not raise any objection to the presentation of the victim impact testimony. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].").

## **CONCLUSION**

We affirm Heyward's convictions for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime.

**AFFIRMED.**

**HUFF and HILL, JJ., concur.**