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STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY
The Honorable Frank R. Addy, Circuit Court Judge

APR 04 2017

SC Court of Appeals

Appellate Case No. 2016-000950

THE STATE,RESPONDENT,

v.

CHRISTOPHER JERMAINE WELLS,APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly allowed Investigator Cheek to testify that co-defendant David Lee Walker was serving a sentence for murder for this same incident because Appellant opened the door to such testimony and, more importantly, no prejudice emanated from the admission of this evidence.

STATEMENT OF THE CASE

Appellant was indicted during the April 2015 term of the Laurens County Grand Jury for murder, armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy. (R.384-385; 387-388; 390-391; 393-394) Appellant proceeded to a jury trial before the Honorable Frank R. Addy. He was ultimately convicted of armed robbery, conspiracy, and possession of a weapon during the commission of a violent crime, but acquitted of murder. The court sentenced him to life without possibility of parole pursuant to Section 17-25-45 of the South Carolina Code (2014).

STATEMENT OF FACTS

Lieutenant Marty Crain of the Lauren County Sheriff's Office responded to a call reporting a possible shooting and arrived at the scene to find David Lee Walker slumped over on the porch swing of a mobile home. (R.160–164.) Walker initially indicated his arm was broken, but he had in actuality been shot. (R.174.) Lieutenant Crain then proceeded inside the home and there he discovered Johnny Lee Cheeks (Victim) bleeding profusely from gunshot wounds to his neck and abdomen. (R.160–165.) Investigator Bryant Cheek arrived shortly after and spoke with Victim, Walker, and Victim's girlfriend Kelly Ball, who was also present at the scene. (R.275–276.) Walker informed Investigator Cheek that he had been attacked by two men he did not recognize; however, Victim indicated Walker had come to rob him. (R.276.) Victim ultimately died of his wounds. (R.278.) During the course of the investigation, Investigator Cheek began looking into what company Walker kept and eventually arrested Walker, Appellant, and Johnny Lee Saxon.

Appellant was charged with murder, armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy. (R.13, 21.) Prior to the start of trial, the court noted for the record that during an *in camera* discussion the State had been instructed not to discuss the fact that Walker had already been convicted in connection with this incident. (R.74.)

At trial, the State called Walker's niece Toris Moore to testify. She stated that on the night of the incident, Walker, Appellant, and Saxon came to her home. (R.101.) Walker asked her for her gun, stating they planned to rob someone and the only gun they had was Appellant's. (R.103.) Moore did not have a gun and sent them away empty-handed. (R.103.) Investigator Cheek also testified about the evening and his investigation. During cross examination, he acknowledged that Victim was a known drug dealer. (R.293.) Defense counsel then posed

questions to the investigator about the nature of drug dealers, asking whether it was true that “these drug folk are dangerous” and “when they get mad, they shoot.” (R.295.) He then asked whether “this case right here . . . fits that description.” (R.296.) The State objected and, outside the presence of the jury, argued that defense counsel’s insinuation that some other people may have been responsible for the shooting opened the door for allowing the State to question Investigator Cheek about Walker’s murder conviction. (R.297.) Ultimately, the trial court concluded Appellant did indeed open the door for the admission of evidence about Walker’s conviction. (R.299.) It also stated it would give a jury instruction indicating that Appellant’s case must stand alone and Walker’s conviction has no bearing on Appellant’s guilt. (R.299.) Accordingly, on redirect, Investigator Cheek clarified Victim identified Walker as his assailant. (R.303.) The solicitor then asked whether Walker was currently “serving time for this homicide,” and Investigator Cheek answered in the affirmative. (R.304.) The State rested and Appellant offered no evidence in his defense. (R.305, 319.) Prior to charging the jury, the trial court indicated it was including language about how the evidence against Appellant must be considered “separately and apart from the cases against any other defendant and the manner in which the case against any other defendant was resolved.” (R.350.) Appellant made no objection to the adequacy of this charge. (R.315.) The trial court thereafter charged the jury and Appellant took no exceptions. (R.369.)

Ultimately, the jury acquitted Appellant of the murder charge but found him guilty of armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy. (R.375.) The court subsequently sentenced him to life without possibility of parole pursuant to Section 17-25-45 of the South Carolina Code (2014).¹

¹ Appellant had a prior conviction for voluntary manslaughter.

ARGUMENT

The trial judge properly allowed Investigator Cheek to testify that co-defendant David Lee Walker was serving a sentence for murder for this same incident because Appellant opened the door to allowing this testimony and, more importantly, no prejudice emanated from the admission of this evidence.

Appellant argues the trial court erred in allowing into evidence testimony that Walker was currently incarcerated for the same homicide for which Appellant was on trial. However, defense counsel opened the door to the admission of this testimony through his questions to Investigator Cheek that suggested some unknown third party actually committed the crime. Further, and more importantly, Appellant can claim no prejudice as the testimony was consistent with defense counsel's characterization of the facts in his opening and closing statements and likely weighed in favor of the jury's ultimate acquittal of Appellant on the murder charge.

"It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence." *State v. Page*, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008). "Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially." *State v. Stroman*, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984). "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." *Page*, 378 S.C. at 483, 663 S.E.2d at 360. To warrant reversal, the admission of evidence must not only be in error, but also result in prejudice to the appellant. *State v. Gault*, 375 S.C. 570, 574, 654 S.E.2d 98, 100 (Ct. App. 2007). Accordingly, an appellant must demonstrate "there is a reasonable probability the verdict was influenced by the challenged evidence." *Id.*

At the outset, Appellant has failed to demonstrate prejudice resulting from the admission of Cheek's testimony. The challenged evidence indicates no more than Walker is incarcerated for the murder of Victim—a factual conclusion Appellant himself invited when he informed the jury during opening statements that the evidence would indicate Walker killed Victim: "And the testimony is going to be that both gentleman [sic] got shot. That's the evidence. It's not that hard who shot who. That's what the testimony will be, that these two gentlemen shot each other and, unfortunately, one lived and one didn't." (R.91.) Appellant nevertheless contends this evidence is damning because the State's case was "based on the testimony of Toris Moore placing Appellant with Walker and Saxon on the night of the incident." (R.8.) Essentially, the claimed error is that evidence Walker killed Victim improperly invited the jury to conclude Appellant was also present for the murder because Moore's testimony placed Walker and Appellant together and looking for a gun earlier that night. However, not only is Walker killing Victim consistent with Appellant's characterization of the events that transpired, but it is also inescapable that Walker was found with the dying Victim and that Victim informed law enforcement Walker shot him. The fact a jury similarly concluded Walker participated in Victim's murder is merely cumulative. Importantly, it cannot be ignored that Appellant was ultimately acquitted of the murder. Thus, the evidence indicating Walker is imprisoned for this murder only bolstered the defense's theory of the case and further invited the jury's ultimate conclusion that Appellant did not murder Victim.

Moreover, admission of this evidence offered Appellant the opportunity to impugn the credibility of the solicitor—whom defense counsel aptly attacked in closing arguments. In his opening statement, the solicitor informed the jury that "we don't know who did the shooting," and that should not matter. (R.85.) However, not only did the solicitor elicit evidence that Walker was incarcerated for this murder, he also clarified through the investigator's testimony

that Victim, Moore, and Wells *all* indicated Walker was the shooter. (R.303–304.) Thus, defense counsel began his closing, “But when this prosecutor stood up in this opening statement and t[old] you he do[esn’t] know who shot [Victim], he does know. They told him, David Lee Walker.” (R.336.) Accordingly, Appellant likely benefitted from the admission of this evidence as it encouraged the jury to disbelieve the State’s characterization of the murder and scrutinize its candor.

Turning to the merits of the trial court’s ruling, there was no abuse of discretion in allowing the State to elicit testimony regarding Walker’s incarceration. Appellant’s questions to Investigator Cheek were designed to cast an inference that a dispute with an unknown drug dealer led to Victim’s murder. The trial court properly concluded within its sound discretion that the State was permitted to refute that suggestion with evidence that the assailant was Walker, as indicated by his present incarceration and all the other testimony elicited. Further, the trial court of its own accord included a prophylactic instruction clarifying that the jury was not to consider the result of Walker’s trial as proof of Appellant’s guilt. This explication was one of the first statements of the law given by the court. Moreover, Appellant never objected to the instruction as insufficient to ameliorate any conceivable prejudice that could emanate from the testimony. Accordingly, the trial court did not abuse its discretion in allowing in evidence that Walker was currently incarcerated for the murder of Victim.

CONCLUSION

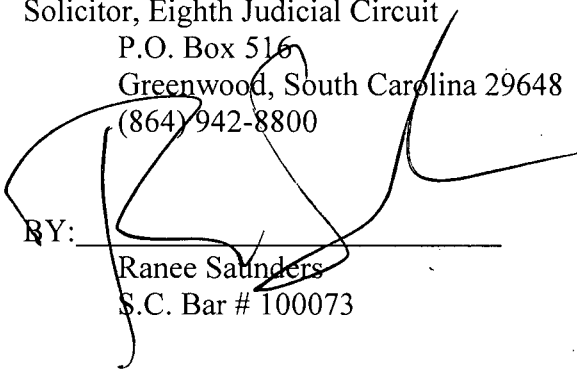
Based on the foregoing, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

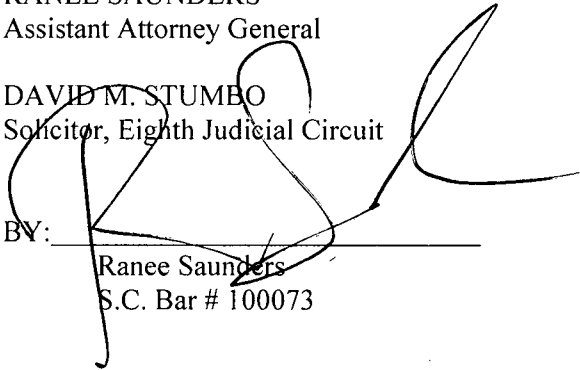
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

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