

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**ORIGINAL**

Appeal from Aiken County  
The Honorable William P. Keesley, Circuit Court Judge  
Appellate Case No.2018-000455

THE STATE,

RESPONDENT,

v.

WILLIAM TIAY CHANDLER,

APPELLANT.

**FINAL BRIEF OF RESPONDENT**

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ATTORNEYS FOR RESPONDENT

SC Court of Appeals

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## STATEMENT OF ISSUE ON APPEAL

The circuit court properly determined Appellant opened the door to questions on cross-examination regarding his prior criminal conviction, which went directly to Appellant's credibility, and the probative value of the testimony outweighed its prejudicial effect; however, any error in allowing the testimony was harmless beyond a reasonable doubt.

**STATEMENT OF THE CASE**

The State concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF FACTS

In 2016, the Aiken County Grand Jury indicted Appellant William Tiay Chandler on two counts of burglary in the first degree, two counts of possession of a firearm during the commission of a violent crime, and one count of failure to stop when signaled by a law enforcement officer. The matter was called for a jury trial on February 26, 2018, before the Honorable William P. Keesley, Circuit Court Judge.

Prior to trial, Appellant moved to exclude portions of his taped statement to law enforcement. In the pre-trial hearing, Investigator Stuart Graybeal (“Inv. Graybeal”) of the Aiken County Sheriff’s Office testified he was assigned to work a series of burglaries in the vicinity of Wagner, South Carolina. On June 9, 2016, Inv. Graybeal was monitoring the police radio and heard there was an on-going pursuit of a vehicle driven by a possible suspect in the burglaries. When he responded to the scene, he was advised the vehicle had wrecked, and several suspects had absconded on foot. (Trial Transcript [TT], pp. 73-77; Record on Appeal [R.], pp. 73-77).

On June 14, 2016, Inv. Graybeal conducted a recorded interview of Appellant at the Aiken County Detention Center. Before asking him any questions, Inv. Graybeal advised Appellant of his Miranda<sup>1</sup> rights, which Appellant indicated he understood, and Appellant signed a written waiver of those rights. Inv. Graybeal testified Appellant never asked to stop the interview or speak with an attorney, and prior to making any statements, Appellant acknowledged no one had promised him anything in exchange for his statement, or coerced him into giving a statement. (TT, pp. 77-83, State’s Exhibits 80 [CD Audio], 81 [Interview Transcript], 82 [Miranda Waiver]; R., pp. 77-83).<sup>2</sup>

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<sup>1</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>2</sup>State’s Exhibit 80 [Cd Audio] has been transported to the Court for consideration. State’s Exhibit 81 [Interview Transcript] was not admitted as evidence at trial, but was before the circuit court for purposes of the pre-trial motion hearing.

The circuit court found Appellant freely, knowingly and voluntarily waived his Miranda rights at the beginning of the interview, and he was not coerced or promised any reward for making a statement. The State then agreed to redact references in the audio recording to Appellant's probation from a prior conviction, and the court denied Appellant's motion to redact other portions of the audio recording.<sup>3</sup> (TT, pp. 84-96; R., pp. 84-96).

The State presented testimony from the burglary victims, the police officers involved in the pursuit and ultimate capture of Appellant, and the officers involved in the investigation. (TT, pp. 135-291; R., pp. 135-291). Inv. Graybeal testified consistent with his pre-trial testimony regarding Appellant's interview and statement. The State redacted the audio references to Appellant's probation as agreed pre-trial, and Inv. Graybeal did not make any statements regarding the fact Appellant was on probation at the time of the burglaries during his testimony. (TT, pp. 293-317, State's Exhibit 80 [CD Audio]; R., pp. 293-317).

After the circuit court denied his motion for a directed verdict, Appellant testified on his own behalf. He stated he was manipulated into driving the vehicle used in the burglaries, and he only fled from the police because he was scared when a co-defendant held a gun to his head. (TT, pp. 325-348; R., pp. 325-348). While testifying about events leading up to the burglaries, Appellant stated: "I had advised [his co-defendants], when they started talking about kicking - - kicking doors in, advised them that I was still - I - I told them that I couldn't do it because I was still on probation."<sup>4</sup> (TT, p. 338; R., pp. 338). He subsequently stated: "I would have no prior record. This is my first time being in trouble." (TT, p. 345; R., p. 345).

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<sup>3</sup>The State did not make any reference to Appellant's probationary status in its opening statement. (TT, pp. 123-134; R., pp. 123-134).

<sup>4</sup>None of counsel's questions during Appellant's direct examination solicited these responses, which were gratuitous, self-serving statements by Appellant.

During cross-examination, the solicitor asked Appellant what he had been on probation for, and Appellant objected. Outside the presence of the jury, Appellant stated he was on probation for unlawful carrying of a weapon. Appellant then argued the reason for his probation was improper character evidence under Rule 404(b), SCRE, and the State argued Appellant opened the door during his direct testimony. The court noted Appellant brought the subject of his probation up during direct examination, then testified he had no prior record and this was his first time being in any trouble. Appellant himself conceded he “may have opened the door,” but his earlier conviction was a juvenile offense and he had no adult charges since then. (TT, pp. 356-358; R., pp. 356-358).

In ruling on the objection, the court addressed Rule 609, SCRE, stating the sentence for unlawful carrying of a weapon was not at least a year incarceration, so the evidence would not be admissible under Rule 609. The court then stated the “central issue” was Appellant’s statements during direct examination that he had no prior criminal record and had never been in trouble with the law, which the court determined “goes more in line with a general ability to attack his credibility for saying something that was arguably untrue.” (TT, pp. 359-360; R., pp. 359-360).

The court expressly recognized the evidence, even if relevant, could be excluded under Rule 403, SCRE, if the probative value was substantially outweighed by the danger of unfair prejudice. In response, the State reminded the court the State agreed pre-trial not to bring up Appellant’s prior conviction, and redacted the portion of Appellant’s taped interview that mentioned his probation. The State argued prohibiting questions regarding Appellant’s probation would essentially allow Appellant “to get away with a lie in front of this Court.” (TT, pp. 360-361; R., pp. 360-361).

The court acknowledged the State's pre-trial agreement not to bring up Appellant's prior conviction and probation, noting if that had been an issue, the court would have warned Appellant about opening the door, but there was no way to know if such a warning would have stopped Appellant from making statements that could open the door. After considering the applicable evidentiary rules, including Rules 403, 404(b), and 609, the court overruled Appellant's objection, but agreed to Appellant's request for a limiting instruction. (TT, 361-362; R., pp.361-362).

When the jury returned, the State again asked Appellant what he had been on probation for, and Appellant stated "unlawful carrying of a weapon."<sup>5</sup> The court immediately instructed the jury the evidence regarding Appellant's prior conviction was admitted solely for the purpose of assessing Appellant's credibility. The State then asked Appellant if his prior testimony that he had no prior record was not true, and Appellant agreed he had testified he had no prior record. (TT, pp. 362-363; R., pp. 362-363).

During its closing argument, the State argued it had to rely on the credibility of the law enforcement officers and victims, and nothing in the record indicated the State's witnesses were not credible. The State reminded the jury Appellant testified he had no prior record and had never been in trouble with the law, which was "a lie," so there was no reason to believe Appellant's claims regarding his involvement in the burglaries. The State never mentioned the substance of Appellant's prior conviction. (TT, pp. 382-384, 393; R., pp. 382-384, 393).

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<sup>5</sup>Significantly, the jury only heard that the prior conviction was for unlawfully carrying "a weapon," there was no evidence regarding what type of "weapon" was involved, so it could have been any number of potential weapons other than a firearm. Appellant's current charges were for unlawful possession of a firearm during a crime of violence.

The jury convicted Appellant on all charges, and the court sentenced him to twenty-one years incarceration on each burglary conviction, and five years on each other conviction, to be served concurrently. (TT, pp. 430-449; R., pp. 430-449). This appeal followed.

## STANDARD OF REVIEW

“The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling [on such] will be disturbed only upon a showing of an abuse of discretion.” State v. Washington, 424 S.C. 374, 818 S.E.2d 459, 475 (Ct. App. 2018). (*quoting* State v. Shuler, 353 S.C. 176, 577 S.E.2d 438, 442 [2003]); *see also* State v. Winkler, 388 S.C. 574, 698 S.E.2d 596, 601 (2010) (same). Likewise, the scope of cross-examination is largely within the trial court's discretion, and the appellate court “will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion.” In re Matter of Campbell, 427 S.C. 183, 830 S.E.2d 14, 18 (2019) (*quoting* Yoho v. Thompson, 345 S.C. 361, 548 S.E.2d 584, 585 [2001]); Bunch v. Charleston & W.C. Ry. Co., 91 S.C. 139, 74 S.E. 363, (1912). An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or they are controlled by an error of law. Washington, 818 S.E.2d at 469.

## ARGUMENT

**The circuit court properly determined Appellant opened the door to questions on cross-examination regarding his prior criminal conviction, which went directly to Appellant's credibility, and the probative value of the testimony outweighed its prejudicial effect; however, any error in allowing the testimony was harmless beyond a reasonable doubt.**

Appellant contends the circuit court erred in allowing the State to cross-examine Appellant about his prior conviction because the court failed to warn him about the possibility of opening the door to questions about his conviction during his testimony. Appellant testified on direct testimony he had no prior record and had never been in trouble with the law, well knowing his testimony was false, and the State was entitled to cross-examine him about the substance of his false testimony. If the circuit court erred in allowing the cross-examination at issue, however, the error was harmless beyond a reasonable doubt given the overwhelming evidence of Appellant's guilt, including Appellant's own testimony admitting he was involved in the burglaries and fired a gun at one location, and the limited references to his prior conviction could not reasonably have impacted the verdict.

### **A. Open the Door**

Otherwise inadmissible evidence may be properly admitted when the defendant opens the door to that evidence. State v. Page, 378 S.C. 476, 663 S.E.2d 357, 360 (Ct. App. 2008); *see also* State v. Stroman, 281 S.C. 508, 316 S.E.2d 395, 399 (1984) (when one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce otherwise incompetent or irrelevant evidence in explanation or rebuttal thereof). The question of whether a party 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, 663 S.E.2d at 360.

When a defendant offers evidence of his good character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to particular bad acts or conduct. State v. Young, 378 S.C. 101, 661 S.E.2d 387, 389 (2008) (citing State v. Major, 301 S.C. 181, 391 S.E.2d 235 [1990]). The State may show bad character only for the traits initially focused on by the accused, and impeachment may be done by introducing prior convictions with extrinsic evidence. *Id.*

Appellant disingenuously focuses his contention of error on his testimony he was on probation at the time of the offenses, which was not the testimony the State sought to rebut during cross-examination. Rather, Appellant went **much** further by testifying on direct examination that he had **no** prior record and had **never** been in trouble, which was demonstrably false. That false testimony dramatically increased the relevance of evidence regarding Appellant's credibility because it implied Appellant was totally unfamiliar with the criminal justice system, which was intended to give credence to his claim he acted under duress. Contrary to Appellant's argument, as required by Rule 403, SCRE, the circuit court clearly, and expressly, considered the probative value of the State's cross-examination regarding Appellant's prior conviction versus the prejudice to Appellant, and found the prejudice did not substantially outweigh the evidence's probative value.

Further, in his recorded statement to Inv. Graybeal, Appellant admitted he proposed the "mission" of breaking into houses. (State's Exhibit 80 [CD Audio], State's Exhibit 81 [Interview Transcript], pp. 7-10; R., pp. 501-504). Contrary to his recorded statement, Appellant testified at trial that his reference to a "mission" during discussions with the co-defendants was only about a video game, and he participated in the burglaries only under duress. As discussed above, Appellant's false testimony about never being in trouble was intended to support his claim of being a coerced participant in the burglaries. Therefore, the State was entitled to explore the substance

of Appellant's prior trouble with the law to rebut his claim of innocence, not merely the fact that he had been on probation. Significantly, the limiting instruction informed the jury the evidence regarding Appellant's prior record could only be considered on the issue of Appellant's credibility, and the State only used it for that limited purpose during closing argument.

Appellant sought to use Rules 403, 404(b) and 609 as a shield at trial, but seeks to use them as a sword on appeal. By giving blatantly false testimony regarding his prior record, Appellant attempted to capitalize on the State's pre-trial agreement to redact the references to his probation in the recorded statement, and not to present any evidence regarding his prior conviction. Having opened the door to the State's rebuttal of his false direct testimony, Appellant should not be allowed to claim protection from that rebuttal.<sup>6</sup> The circuit court properly allowed the cross-examination regarding Appellant's prior conviction, and its ruling should be affirmed.

#### **Harmless Error**

Assuming the circuit court erred in allowing the State to cross-examine Appellant regarding his prior conviction after Appellant blatantly lied during his direct testimony, any error was harmless beyond a reasonable doubt. Appellate courts will not set aside a conviction due to insubstantial errors not affecting the result. State v. Brown, 424 S.C. 479, 818 S.E.2d 735, 743 (2018).

Where overwhelming competent evidence in the record conclusively proves guilt such that no other rational conclusion can be reached, an insubstantial error not affecting the result of the trial is considered harmless. *Id.* The harmless error analysis is contextual and specific to the

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<sup>6</sup>By way of footnote, Appellant raises the specter of post-conviction relief based on his attorney's failure to "clarify" that his "only criminal record consisted of juvenile adjudications." (Brief of Appellant, p. 6, n. 1). While Appellant can certainly file an appropriate petition for post-conviction relief at the appropriate time, the possibility of post-conviction relief on any issue is irrelevant on direct appeal.

circumstances of the case, and when a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed. *Id.* (internal citations omitted).

Appellant admitted in both his recorded statement to Inv. Graybeal and his direct testimony that he knew what he and his co-defendants were going to do, he drove the car involved in the burglaries, he fired a gun at one of the burglary locations, and he was driving the car during the police chase. (TT, pp. 336-348, State's Exhibit 81 [Interview Transcript], pp. 8-29, State's Exhibit 80 [CD Audio]; R, pp 336-348, 502-516). His own testimony at trial contradicted his claim of duress because he had ample opportunities to refuse to be involved, and then to withdraw from the illegal activity.<sup>7</sup> (TT, pp. 336-348, 351-356, 364-371; R., pp. 336-348, 351-356, 364-371).

Based on the entire record in this case, there is absolutely **no** evidence supporting a rational conclusion other than Appellant's guilt. Accordingly, even if allowing the limited cross-examination regarding Appellant's prior conviction was error, which the State disputes, the error was harmless beyond a reasonable doubt and Appellant's convictions should be affirmed.

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<sup>7</sup>Appellant repeatedly contended he was not saying he was innocent, but he was merely an "accessory" to the burglaries, and did not directly participate in the burglaries because he merely drove the car. When asked why he did not just drive away while the co-defendants were breaking into the houses, Appellant simply claimed he could not. Read in its entirety, Appellant's testimony defied belief, but the fact he expressly gave false testimony further strained his credibility. (TT pp 329-371; R. pp.329-371)

**CONCLUSION**

Based on the foregoing reasons, the State respectfully submits the circuit court's ruling and Appellant's convictions should be affirmed.

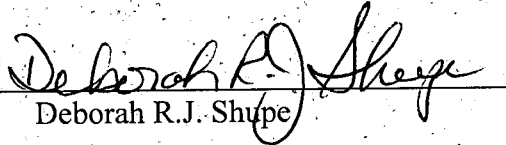
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CERTIFICATE OF COUNSEL

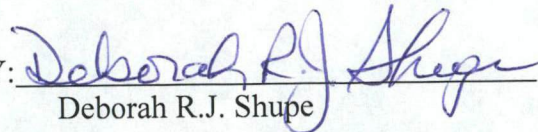
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 14, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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