STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2019-000303

THE STATE, Respondent,

v.

RIAS ODELL ISAAC, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The issue of whether the trial judge erred in allowing Sandra Hawkins to identify Appellant is not properly preserved for appeal because Appellant did not timely object to Hawkins' identification. Furthermore, Appellant waived any objection to Hawkins' identification when he elicited testimony from Hawkins' about the content of the photo in which she recognized Appellant. Further, the trial judge did not abuse his discretion in allowing Hawkins to identify Appellant when the State did not seek to prove the content of the magazine photograph, thereby making Rule 1002 SCRE inapplicable to this case. Even if this Court determines the State was seeking to prove the content of the magazine photograph, the State was not required to produce the original photograph because the photo related to a collateral issue. Finally, any error in allowing Hawkins to identify Appellant is entirely harmless in light of the overwhelming evidence of guilt.

STATEMENT OF THE CASE

In June 2015, the Berkeley County Grand Jury indicted Appellant for one count of armed robbery (2015-GS-08-0956), one count of kidnapping (2015-GS-08-0958), and one count of possession of a weapon during the commission of a violent crime (2015-GS-08-0957). On February 11-13, 2019, Appellant proceeded to a jury trial in the Berkeley County Court of General Sessions with the honorable R. Markley Dennis presiding. Appellant was represented by Grant Smaldone, Esq. The State was represented by Assistant Solicitors Bart Stegall and Wilton McNeely of the Ninth Circuit Solicitor's Office. The jury found Appellant guilty of all charges. Following the verdict, the trial judge sentenced Appellant to four years' imprisonment for possession of a weapon during the commission of a violent crime, life without parole for armed robbery and life without parole for kidnapping. Appellant filed a timely notice of appeal and an initial brief.

STATEMENT OF FACTS

On December 31, 2014, Jaclyn Graham was working at the Speedway Hess gas station in the Goose Creek area of Berkeley County. (Tr. 78, 119). At approximately 6:15 AM, a black male entered the store and asked Graham for two packs of Newport cigarettes. (Tr. 81-83). As Graham walked around the counter towards the cash register to retrieve the cigarettes, the man followed her and pointed a gun in her direction. (Tr. 82-83). The man demanded Graham empty the two cash registers and Graham complied. Graham estimated that the man took approximately $187 dollars in cash and coins and some packs of Maverick Menthol cigarettes. (Tr. 84). The man asked Graham to take quarters out of the first cash register drawer and place them in his pocket. (Tr. 82). Graham testified that while she was placing quarters in the man's pocket, she was approximately one to two feet away from him and was able to get a good look at his face. (Tr. 85). After receiving the money from Graham, the man continued to hold Graham at gunpoint and ordered her to leave the building. (Tr. 82, 85). Graham and the man walked outside of the gas station and moved to the back of the building. (Tr. 82). Once they arrived behind the building, Graham was ordered to go back inside without turning around to look at him. Graham complied with the man's demands and went back inside the gas station where she hit the panic button and called the police. (Tr. 82, 86).

A few days later, Sandra Hawkins recognized a picture of her ex-fiancé from the Speedway gas station robbery that she saw "in the press[1]." (Tr. 144, line 15). Hawkins' former fiancée is Appellant. (Tr. 141). Hawkins became romantically involved with Appellant in 2012 and broke up with him in 2013. (Tr. 141-42). After seeing Appellant's picture, Hawkins

[1] At trial, Hawkins said on direct examination that she saw Appellant in the press. When asked by Appellant on cross examination where she had seen Appellant's photo, Hawkins replied that she saw it "in the Mugshot Magazine." (Tr. 144, 149, line 25). Appellant did not object to Hawkins testimony on direct examination, but did object based on the best evidence rule on re-direct examination (Tr. 160).

contacted the Goose Creek Police Department and gave them a written statement. (Tr. 146-47). At trial, Hawkins identified Appellant from a photo taken from surveillance footage at the gas station[2]. (Tr 144, State's Exhibit #4). Investigator Sean McWilliams of the Goose Creek Police Department spoke with Hawkins and requested a photo lineup with Appellant's picture from SLED. (Tr. 166-67).

On January 6, 2015, Graham met with McWilliams to review the photo lineup. (Tr. 94, 169). Graham picked Appellant out of the lineup in a "half a second or less." (Tr. 98, line 13, State's Exhibit #1, #2). Graham was one hundred percent sure of her selection and subsequently identified Appellant at trial. (Tr. 85, 98-99). At the conclusion of trial, Appellant was convicted of all charges.

[2] State's Exhibit #4 is not the same photo that Hawkins saw in the press release. (Tr. 160). The press release photo was not entered into evidence at trial. However, Hawkins was one hundred percent certain that the person she saw in the press release was Appellant and she was able to identify Appellant at trial. (Tr. 146-48).

STANDARD OF REVIEW

"In general, rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party." State v. Halcomb, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009). "In particular, the question of whether to admit evidence under the 'best evidence rule' is also addressed to the discretion of the trial court." Id. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

The issue of whether the trial judge erred in allowing Sandra Hawkins to identify Appellant is not properly preserved for appeal because Appellant did not timely object to Hawkins' identification. Furthermore, Appellant waived any objection to Hawkins' identification when he elicited testimony from Hawkins' about the content of the photo in which she recognized Appellant. Further, the trial judge did not abuse his discretion in allowing Hawkins to identify Appellant when the State did not seek to prove the content of the magazine photograph, thereby making Rule 1002 SCRE inapplicable to this case. Even if this Court determines the State was seeking to prove the content of the magazine photograph, the State was not required to produce the original photograph because the photo related to a collateral issue. Finally, any error in allowing Hawkins to identify Appellant is entirely harmless in light of the overwhelming evidence of guilt.

Appellant contends the trial judge erred by allowing Sandra Hawkins to testify about her identification of Appellant after seeing him in a magazine. Specifically, Appellant argues the trial judge should have required the State to produce the original photograph seen by Hawkins pursuant to Rule 1002 SCRE. Appellant's argument is meritless. As an initial matter, Appellant did not properly preserve this issue for appeal, because Appellant did not object to Hawkins' identification of Appellant on direct examination. Even if Appellant had objected to Hawkins' identification, Appellant elicited testimony from Hawkins on cross examination about the magazine photo, thereby opening the door to further testimony about the content of the photo on re-direct examination. Therefore, Appellant waived any objection he may have had to Hawkins' identification when Appellant, rather than the State, elicited testimony about the magazine photo. Appellant did not object to Hawkins' identification or request the State to produce the magazine photo pursuant to Rule 1002 SCRE until Appellant had already elicited testimony about the source and the content of the photo on cross examination.

Even if Appellant properly preserved this issue for appeal, the trial judge did not err by not requiring the State to produce the magazine photo when the State did not seek to prove the content of the photo. The State did not ask Hawkins about the photo to prove that it depicted

Appellant, but rather to explain why Hawkins contacted law enforcement and why Investigator McWilliams subsequently placed Appellant's photo in a lineup for Graham to identify. Even if the State sought to prove the content of the photo, the original photo was not required because the content of the photo was a collateral matter in Appellant's case.

Error Preservation

There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity." State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (Quoting JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002)). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). "To preserve an issue for appellate review, an appellant must object at his first opportunity." State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993).

An appellant cannot complain of prejudice from evidence he has brought before the jury. State v. Brown, 344 S.C. 70, 76, 543 S.E.2d 552, 555 (2001). A party will be unsuccessful in opposing the admission of evidence if that party was the one who opened the door to the admission of that evidence. State v. Robinson, 305 S.C. 469, 475, 409 S.E.2d 404, 408 (1991). "When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012).

Here, Appellant failed to preserve any issue regarding Hawkins' identification of him because he did not offer a timely objection. Furthermore, it was Appellant who asked Hawkins about the magazine photograph on cross examination. Therefore, Appellant cannot complain about the State's failure to produce the original magazine photograph when it was Appellant who introduced this evidence to the jury. Appellant specifically complains that the trial judge erred in allowing Hawkins to identify Appellant. To determine if this error is properly preserved it is instructive to review the relevant portions of the record. The following exchange took place on the State's direct examination of Hawkins:

> Q: All right. I want to ask you about January of 2015. Did you come across any information about this defendant during that time?
>
> A: Yes.
>
> Q: How did you learn about this information?
>
> A: I seen a picture of it in the press.
>
> Q: Okay. What stood out to you in that picture?
>
> A: Just him, himself and the clothes he had.
>
> Q: Okay. I'm going to show you what's been marked as State's Exhibit 4[3]. All right. If you could direct your attention behind you, this is one of the photos taken from the surveillance video. Do you recognize that individual?
>
> A: Iris[4] – Rias.
>
> Q: Do you recognize the clothing that he's wearing?
>
> A: It looks like he has a Burberry hat on and a shirt.

(Tr. 144-45, lines 9-4). Appellant did not object to this line of questioning. Thus, Appellant did not preserve any issue regarding Hawkins' identification of him for appeal. On cross

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[3] State's Exhibit #4 is not the same photo that Hawkins saw in the press release, but rather a still image taken from surveillance camera footage. (Tr. 144, 160).
[4] Appellant also went by the nickname Iris.

examination, Appellant asked Hawkins further questions about the magazine photograph and how it compared to State's Exhibit #4. The following exchange occurred on Appellant's cross examination of Hawkins:

> Q: Okay. Now, you say that you saw the – was it the video or the image, a photograph?
>
> A: A photograph.
>
> Q: You saw the photograph on the news?
>
> A: I seen it in the Mugshot Magazine. (sic)
>
> Q: Mugshot Magazine. All right. So you saw that picture, and you said you recognized him from that picture?
>
> A: Yes.
>
> Q: All right. So you recognized him by his face in that picture?
>
> A: Yes.
>
> Q: All right. So you've seen those pictures today, right?
>
> A: Yes. This doesn't look like him in the face, no.
>
> Q: Okay. So the guy in that picture[5] doesn't look like him?
>
> A: Not—no. To me it don't, no.

(Tr. 149-50, lines 21-14). Appellant elicited testimony from Hawkins on cross examination about the magazine photo and asked her questions about the photograph's content. Therefore, Appellant opened the door to questions about the content of the photograph and cannot complain on appeal about testimony that he elicited from a witness. Appellant did not offer an objection to Hawkins' testimony until the State asked Hawkins about the magazine photo on redirect examination. On redirect, the following exchange occurred:

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[5] Appellant appears to be referring to State's Exhibit #4.

Q: Is it harder to see his appearance in this picture?

A: In this one, yes.

Q: Than the one—

A: Yes.

Q: --from the press release? And the press release, I just want to—it was a different picture and you could see his—

Appellant: Your Honor, I've got to object at this point.

The Court: What's the objection?

Appellant: Best evidence.

The Court: Well, first of all, I'm overruling best evidence. He's asking the question about what she saw. You'll have the opportunity to – recross examination. Overruled.

(Tr. 160 lines 10-25).

Here, Appellant did not preserve any issue in regards to Hawkins' identification because he did not offer a timely objection to Hawkins' testimony on direct examination. However, even if Appellant objected to Hawkins' initial identification, Appellant elicited the same testimony about Hawkins' identification and asked her specific questions about the content of the magazine photograph on cross examination. Accordingly, Appellant waived any issue as to the State's failure to produce the original magazine photograph when Appellant asked Hawkins questions about the content of the photograph on cross examination. Appellant's convictions and sentences should be affirmed.

Best Evidence Rule

Even if Appellant properly preserved this issue for appeal, the trial judge did not abuse his discretion by allowing Hawkins to identify Appellant. The State was not offering the magazine photograph to prove the content of the photograph. In fact, the State did not offer the

magazine photograph into evidence at all. The State showed Hawkins a copy of State's Exhibit #4 and asked her if she recognized who was in that picture. (Tr. 144). Hawkins identified Appellant. (Tr. 144). The State only asked Hawkins about the magazine photograph to explain why she called the Goose Creek Police Department. Even if the State had sought to introduce the magazine photograph, they would not be required to produce an original because the photograph was a collateral matter under Rule 1004 SCRE.

Rule 1002 SCRE, otherwise known as the best evidence rule, reads as follows:

> To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

Rule 1002 SCRE. Rule 1004 SCRE provides exceptions to Rule 1002 and reads as follows:

> The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if-
>
> (1) **Originals Lost or Destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
> (2) **Original Not Obtainable.** No original can be obtained by any available judicial process or procedure; or
> (3) **Original in Possession of Opponent.** At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or
> (4) **Collateral Matters.** The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1004 SCRE.

Here, the State did not attempt to introduce the magazine photograph that caused Hawkins to call the Goose Creek Police Department. The State did not even possess this photograph and only asked Hawkins about it to explain why Hawkins eventually called law enforcement. The content of the magazine photograph wasn't discussed by Hawkins until Appellant asked her about its' content on cross examination. Therefore, Rule 1002 SCRE is

inapplicable to the magazine photograph because the State did not seek to prove the content of the photograph. However, even if this Court concludes the State was attempting to prove the content of the magazine photograph, the State was not required to provide the original photo because one of the exceptions enumerated in Rule 1004 SCRE applies.

The photograph in question relates to a collateral matter. The State never sought to prove that Appellant was depicted in the magazine photograph. Rather, the State produced a different photograph from the gas station surveillance footage and asked Hawkins if she could identify Appellant from that photo. (Tr 144-45, State's Exhibit #4). The magazine photograph was only briefly mentioned by Hawkins on direct examination to establish why she called law enforcement. (Tr. 146). Furthermore, the primary evidence offered by the State to prove Appellant's guilt was the eyewitness testimony of Graham, not a magazine photo that the State never introduced into evidence. (Tr. 85, 98-99, State's Exhibit #1, #2).

Harmless Error

"Whether an error is harmless depends on the circumstances of the particular case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." Id. "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Error is harmless when it could not reasonably have affected the result of the trial." State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). "[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be

set aside because of insubstantial errors not affecting the result." State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

Even if the trial judge erred in allowing Hawkins to identify Appellant, any error was entirely harmless due to the overwhelming evidence offered against Appellant at trial. Other than Appellant, there was only one eyewitness to the armed robbery that occurred at the Speedway Hess on December 31, 2014. The State offered testimony from the lone eyewitness, Jaclyn Graham. Graham identified Appellant from a still photo from surveillance footage. (Tr. 91, State's Exhibit #3, #4). Graham identified Appellant in a photo lineup and was "100 percent" sure about her selection. (Tr. 98, line 16, State's Exhibit #2). Finally, Graham identified Appellant in court. (Tr. 85). Furthermore, Hawkins identified Appellant from the same surveillance footage that Graham identified him. (Tr. 144). The jury was likely convinced of Appellant's guilt by the multiple identifications of the lone eyewitness to the crime. Furthermore, the jury had the opportunity to observe Appellant in court and determine if he was the same individual in surveillance photographs entered into evidence by the State. (State's Exhibit #3, #4). It is unlikely that the State's failure to produce the magazine photograph that inspired Hawkins to call law enforcement had any bearing on the jury's verdict. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 20, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable R. Markley Dennis, Jr. Circuit Court Judge

Appellate Case No. 2019-000303

THE STATE, Respondent,

v.

RIAS ODELL ISAAC, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies for delivery addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This twentieth day of February, 2020.

CAROLINE COLLINS
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ALAN WILSON
ATTORNEY GENERAL

February 20, 2020

David Alexander, Esquire
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RE: State v. Rias Odell Isaac
Appellate Case No. 2019-000303

Dear Mr. Alexander:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Scott Matthews

Scott Matthews
Assistant Attorney General
Bar # 101464

JSM/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services