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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2019-000284

The State, Respondent,

vs.

Tyquin Terrell Jenkins, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in allowing the State to introduce evidence Appellant had prior convictions when Appellant opened the door to the testimony through opening statement. Further, the trial court properly limited the testimony to prevent any undue prejudice. Finally, any error in the objected-to testimony is entirely harmless in light of cumulative un-objected-to testimony.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

The victim got upset with her boyfriend and exited the apartment for a walk sometime around midnight on January 6, 2015. As she was walking, Appellant approached and asked for a lighter, asked the victim if she drank or smoked, told the victim it was his birthday, and invited her to a party. The victim declined and Appellant asked to use her phone. When she went to get her phone back, Appellant pulled out a gun, pointed it at the victim, and told her to follow him across the street behind a building. (T.94-95; R.54-55).

Once behind the building, Appellant ordered the victim to perform oral sex on him, and she complied. She performed oral sex for about a minute and Appellant told her to stop. (T.98-99; R.58-59). They moved further behind the building, and he laid his jacket on a loading platform. Appellant ordered the victim to pull down her pants and she complied. He then climbed on top of her and raped her. (T. 100-101; R.60-61).

The victim had a sexual assault kit taken at the hospital. (T.108-109; R.68-69). A suspect was not immediately identified. However, after a two year period in which the case went unsolved, DNA from the SANE kit taken from the victim identified Appellant as a suspect. (T.327; R.287). Once law enforcement had a suspect, Investigator Bravo asked the victim to identify him from a lineup. The victim, tearful during the process, identified Appellant. (T.112-114; 331; R.72-74; 291).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "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). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Pagan, 369 S.C. at 208, 631 S.E.2d at 265.

"A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

ARGUMENT

I. The trial court did not err in allowing the State to introduce evidence Appellant had prior convictions when Appellant opened the door to the testimony through opening statement. Further, the trial court properly limited the testimony to prevent any undue prejudice. Finally, any error in the objected-to testimony is entirely harmless in light of cumulative un-objected-to testimony.

Appellant contends the trial court erred in admitting testimony from law enforcement regarding Appellant's statement and prior convictions which contradicted statements he made. Appellant opened the door to the testimony through his counsel's opening statements. Further, the trial court limited any possible prejudice by restricting the State from going into the nature of the underlying crimes. Finally, the objected-to testimony was merely cumulative to prior testimony by the same witness which was admitted without any objection by Appellant.

"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). "[O]therwise 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). "A party cannot complain of prejudice from evidence to which he opened the door." State v. Culbreath, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008).

Prior to trial, the State stipulated that Appellant's prior criminal record would not come in unless admitted for impeachment under Rule 609, SCRE. However, during his opening statement, Appellant's counsel told the jury:

> One thing that I would be interested to know if they're gonna talk to you about is Mr. Jenkins' own statement. . . . He gave a statement to police and in that statement he adamantly denied ever having

> assaulted anyone . . . But what he did do repeatedly is say I don't know exactly who you're talking about but I would never do that to anyone.

(T.85; R.45). Counsel made certain to reference Appellant's statement and his repeated denials of ever assaulting anyone. This opened the door to the State putting in Appellant's statement including his prior record which demonstrated several charges for crimes against women. See State v. Dunlap, 353 S.C. 539, 541, 579 S.E.2d 318, 319 (2003) (holding a criminal defendant's opening statement, which created the impression he had no prior connection to the sale of narcotics, opened the door to the introduction of evidence rebutting the contention that the defendant was merely an addict). Appellant's counsel continued to maintain the entire statement should be excluded under Rule 403, SCRE, in addition to excluding the prior record.

The trial court, in a clear effort to limit any possible prejudice from Appellant's statement and prior record, restricted what would be allowed in regards to the statement and the prior convictions to testimony showing the prior convictions refuted Appellant's counsel's statements during opening. (T.233; R.193). He specifically prohibited the State from detailing the exact crimes because of their similarity to the current crimes with which Appellant was charged. (T. 233; R.193).[1]

During examination of Lorianne Bravo, the investigator who took Appellant's statement, the following colloquy occurred:

> Q. When you started explaining the incident to him and giving him the opportunity to try to recollect this incident, did he make any statements to you about never hurting a woman?
>
> A. Yes.
>
> Q. And after he made that statement, was that a truthful statement?

[1] It should also be noted that Appellant's statement was never admitted as an exhibit and only Appellant played a portion of the statement for the jury. (T.379; R.339).

> A. No. It was not.
>
> Q. Is that because the defendant does have some prior convictions to prove otherwise?
>
> A. Yes.

(T.339; R.299). This testimony, which was in full compliance with the trial court's ruling regarding what could be discussed as a result of Appellant opening the door, was admitted without any objection by Appellant.

During Appellant's cross-examination of Bravo, the following colloquy delved into the prior record on Appellant:

> Q. I want to be clear about something that you said earlier. I believe it has been made clear but he does not have a record for sexual assault; is that correct?
>
> A. No. He does not.
>
> Q. There's one final thing I want to ask you about these statements. He told you several times that he did not rape anybody; is that correct?
>
> A. He stated that. Yes.

(T.380-381; R.340-341).

Prior to redirect, Appellant's counsel sought clarification on what could be addressed by the State. The court explained: "She can go into what you went into on your cross examination and clarify any of those issues but nothing further." The court further explained: "She can go within the boundaries of what I ruled yesterday . . . ." (T.388; R.348). After some discussion, the State also agreed to steer clear of any discussion related to Appellant being in jail just prior to the night of the sexual assault.

On redirect, the Solicitor asked:

> Q. And you were also asked about the defendant denying that he raped anyone and, in fact, the context of that we are talking about aggressively raping someone, and he never aggressively raped and would never hurt a woman like that, correct?
>
> A. Correct.
>
> Q. And while he did admit that and saying that he never hurt women, you were able to prove that that was not a truthful statement by showing that he has prior convictions of crimes against women, correct?
>
> A. Correct.

(T.398-399; R.358-359). This statement was objected to by Appellant. The court specifically stated it was "consistent with what was allowable yesterday so I'll overrule your objection." (T.400; R.360).

The trial court did not abuse his wide discretion in allowing the testimony because Appellant's counsel opened the door during his opening statement referencing Appellant's statement and indicating Appellant denied ever "assaulting anyone" or stating that he "would never do that to anyone." Once the door was opened, the evidence was admissible even if it did not comply with Rule 609, SCRE. See Dunlap, 353 S.C. at 541-42, 579 S.E.2d at 319 ("Because we find that counsel opened the door to the admission of petitioner's prior drug record, we need not reach the issue whether these convictions were admissible to impeach petitioner's credibility under Rule 609, [SCRE]."); State v. Shands, 424 S.C. 106, 123-24, 817 S.E.2d 524, 533 (Ct. App. 2018) (holding, although the trial court erred by finding Shands's remote conviction was admissible under Rule 609(b), SCRE, the trial court did not err in admitting the prior conviction because Shands opened the door to such evidence).

The trial court limited the scope of testimony to be admitted by the State to preclude any prejudice from admitting similar prior convictions. See State v. Scriven, 339 S.C. 333, 343–44,

529 S.E.2d 71, 76–77 (Ct. App. 2000) (stating that because the prior convictions were " similar or identical to charged offenses, . . . the likelihood of a high degree of prejudice to the accused [was] inescapable"). However, because the only reference was to prior convictions and not a detail of the actual charges, Appellant did not suffer undue prejudice.

Finally, the admission of the statement on redirect is entirely harmless even if error because it was entirely cumulative to testimony which was admitted during the direct examination of Bravo and during cross-examination. See State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other unobjected to evidence is harmless).

Accordingly, the trial court did not err in admitting the testimony because Appellant's counsel opened the door in his opening statement. Further, the trial court properly eliminated any undue prejudice by restricting the State from going into the details of the prior charges and from mentioning the fact Appellant was in jail prior to the sexual assault. Finally, any error is entirely harmless in light of the fact it was entirely cumulative to similar unobjected-to testimony. Therefore, this Court should affirm Appellant's convictions and sentences.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 5, 2020

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Appeal from Orangeburg County
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Tyquin Terrell Jenkins, Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed May 5, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).
This 5th day of May, 2020.

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