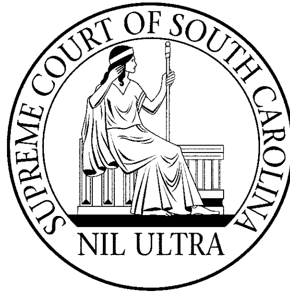

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 7
February 14, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include York County. Effective February 27, 2018, all filings in all common pleas cases commenced or pending in York County must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Aiken	Allendale	Anderson	Bamberg
Barnwell	Beaufort	Cherokee	Clarendon
Colleton	Edgefield	Georgetown	Greenville
Greenwood	Hampton	Horry	Jasper
Kershaw	Laurens	Lee	Lexington
McCormick	Newberry	Oconee	Pickens
Saluda	Spartanburg	Sumter	Williamsburg

York—Effective February 27, 2018

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available on the E-Filing Portal page at http://www.sccourts.org/efiling/ to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal page.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
February 8, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Equivest Financial, LLC, Respondent,

v.

Mary B. Ravenel and AAA Plumbing, Inc., Defendants,

Of Whom Mary B. Ravenel is the Appellant.

Appellate Case No. 2015-002257

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. Op. 5536
Heard October 10, 2017 – Filed February 14, 2018

AFFIRMED AS MODIFIED

Bruce Alan Berlinsky, of Charleston, for Appellant.

Steven R. Anderson, of Law Office of Steven R. Anderson, and James B. Richardson, Jr., both of Columbia, for Respondent.

KONDUROS, J.: In this action to quiet title to a property sold at a tax sale, Mary Ravenel appeals the trial court's finding the tax sale of her property valid. Ravenel contends (1) the trial court erred in failing to take testimony; (2) the tax sale was void because the property was not levied, advertised, and sold in the name of the true owner; (3) judicial estoppel does not apply because Ravenel was not a party to

the previous action; and (4) the delinquent tax collector did not comply with statutory requirements in sending notice to Ravenel. We affirm as modified.

FACTS/PROCEDURAL HISTORY

The subject real property is a home and land originally purchased by Ravenel on October 22, 2001. While Ravenel purchased five lots in total, only the lot on which she built her home was sold at the tax sale and is the subject of this appeal. Ravenel conveyed all five lots to her daughter and son, Lashanda Ravenel and Henry Lee Ravenel II, (collectively, Children) via a deed dated November 6, 2007, for the stated consideration of "$5, love and affection." On November 7, 2007, Ravenel filed for bankruptcy and did not indicate the recent conveyance on her sworn schedules.

Ravenel recorded the deed but never delivered the deed to Children, nor told them about the conveyance. Subsequently, the property taxes on the home became delinquent for the year 2007. The Charleston County Delinquent Tax Collector (DTC) first sent an execution notice to Children by regular mail, dated April 7, 2008, at the address given on the deed conveying the property to Children. This notice informed Children if the amount due was not paid, an official notice of levy would be mailed to them, the property would be advertised in the Charleston Post & Courier, a sign would be placed on the property announcing it would be sold due to nonpayment of taxes, and finally, the property would be sold.

When the 2007 taxes remained unpaid, the DTC levied upon the property by way of a levy notice sent by certified mail to Children's address dated May 22, 2008. This notice was returned unclaimed to the DTC on May 24, marked "Return to Sender, Unable to Forward." A sign was placed on the property on August 1, 2008, announcing the property was to be sold due to the nonpayment of taxes. The property was advertised in the local newspaper on August 15, 22, and 29, 2008. The DTC then sent the Final Notice of Property Redemption, also by certified mail, one to each of Children and one to them jointly, all of which were returned marked "Return to Sender/Unable to Forward" on October 26, 2009. The DTC then sent a courtesy copy of this notice by regular mail. After receiving the courtesy redemption letter, which was addressed to Children, Ravenel called the DTC to try and redeem the property. DTC informed Ravenel that in order to save the property, she would have to pay the redemption amount of $27,849.06, which she did not pay.

When the taxes remained unpaid, the property was sold at the tax sale on November 3, 2008, to Equifunding. Notices of redemption were sent to Children but were returned to the DTC unclaimed. These notices were addressed to Children at the address given in the deed conveying the property to them. This address was the same post office box shown as the address on the deed conveying the property to Ravenel. This post office box belonged to Ravenel's mother, who would collect the mail and bring it to her daughter. Because the property was not redeemed, a tax deed was delivered to Equifunding. Equifunding thereby conveyed the subject real property to Equivest Financial, LLC in a deed recorded on October 4, 2010.

In 2010, Children brought an action to quiet title to set aside the tax deed. In her testimony, Ravenel provided the reason for the transfer of the property to Children was to protect the assets from her creditors. The Master-in-Equity found the tax sale was valid and Ravenel had not delivered the deed to Children. The master found Ravenel's conveyance to Children was in violation of the Statute of Elizabeth, as she intended to defraud her creditors, and thus found the deed to the children was void and of no effect. Children appealed to this court, which affirmed the decision of the master on the grounds that Ravenel had not delivered the deed to Children. *Equivest Fin., LLC v. Scarborough*, Op. No. 2013-UP-495 (S.C. Ct. App. filed Dec. 23, 2013).

Thereafter, Equivest commenced the present action to quiet title as to Ravenel because she was not a party to the first action. The trial court held Ravenel was judicially estopped from claiming she did not receive notice of the tax sale, as she was the one who attempted to fraudulently convey the property. The court further held the two-year statute of limitations applied, making the tax sale incontestable. This appeal followed.

STANDARD OF REVIEW

"An action to remove a cloud on and quiet title to land is one in equity." *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (quoting *Bryan v. Freeman*, 253 S.C. 50, 52, 168 S.E.2d 793 (1969)). "In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." *Inlet Harbour v. S.C. Dep't of Parks, Rec. & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008).

LAW/ANALYSIS

I. Testimony

Ravenel maintains the trial court erred by failing to take testimony. She contends genuine issues of material fact needed to be addressed. Specifically, Ravenel contends the issue of fact regarding whether the DTC sent her the required notices under section 12-51-40 of the South Carolina Code (2014) should have been addressed and because it was not, her argument on the issue was never fully heard. Furthermore, Ravenel argues the trial court erred in finding she intended to defraud her creditors without testimony to support its finding. We find this issue unpreserved for our review.

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007); *Linda Mc Co. v. Shore*, 375 S.C. 432, 438, 653 S.E.2d 279, 282 (Ct. App. 2007). A party cannot complain of error his own conduct has induced. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 870 (2006). When an appellant expressly waives an argument at trial, it cannot be raised on appeal. *Richland Cty. v. Carolina Chloride, Inc.*, 382 S.C. 634, 656, 677 S.E.2d 892, 903 (Ct. App. 2009). Additionally, "[a]n issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011).

At trial, the following exchange took place:

> **The Court:** [Ravenel's Attorney], if there's anything that you need to add to protect your record, you let me know and I will be glad to do that. Because I really think the record in this case -- I don't think we need to have testimony and put you all through that.
>
> **[Ravenel's Attorney]:** Right, because we've agreed on the joint exhibits, so the exhibits are the exhibits. They say what they say.
>
> **The Court:** All the exhibits are admitted and are now part of the record fully, as is your memorandum.

The trial court gave Ravenel's attorney the opportunity to augment the record and counsel chose not to do so. Therefore, this issue is not preserved for appellate review. Furthermore, because Ravenel raised the argument in her brief without providing any supporting authority, we also deem the argument abandoned.

II. Judicial Estoppel/Res Judicata

Ravenel contends she was not a party to the previous action and therefore, she cannot be bound by the action. She further argues if the court finds she was a party to the previous action, judicial estoppel still does not apply as the issue of true ownership of the property was not actually litigated in the previous case. We agree in part and disagree in part.

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013) (quoting *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004)).

> For the doctrine of judicial estoppel to apply, the following elements must be satisfied: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the

> same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. at 598, 748 S.E.2d at 788.

On the other hand, "[r]es judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action." *Duckett v. Goforth*, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007). "Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies." *Id*., 649 S.E.2d at 81-82 (quoting *Nelson v. QHG of S.C. Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003)). In order for res judicata to apply, the parties—or their privies—and subject matter must be identical, and the prior suit adjudicated the issue. 7 S.C. Jur. *Estoppel and Waiver* § 27 (1991). "For purpose of res judicata, however, the concept of privity rests not on the relationship between the parties asserting it, but rather on each party's relationship to the subject matter of the litigation." *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012). "The term 'privy,' when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right." *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 496, 450 S.E.2d 616, 619 (Ct. App. 1994). "One in privity is one whose legal interests were litigated in the former proceeding." *Id*. "Privies are those who are so connected with the parties in estate, or in blood, or in law, as to be identified with them in interest . . . ." *Bailey v. U.S. Fid. & Guar. Co.*, 185 S.C. 169, 193 S.E. 638, 641 (1937)).

"Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The basis for [a] respondent's additional sustaining ground[] must appear in the record on appeal . . . ." *Id*. at 420, 526 S.E.2d at 723.

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR.

We find the trial court erred in ruling Ravenel was judicially estopped from claiming a position inconsistent with the one she took in the previous action. The third element for judicial estoppel requires a party to have been successful in arguing an issue in the previous action in order to preclude him or her from asserting the opposite in the present action. In this case, the issue in question—whether Ravenel was the true owner of the property—was ruled on by the trial court in favor of Equifax, not Ravenel. Therefore, judicial estoppel does not apply.

Although not raised at trial, we affirm on the theory of res judicata, which was raised by Equifax as an additional sustaining ground in its appellate brief. For res judicata to apply, a three-part test must be met. The first element requires the same identity of the parties or their privies. In this case, Ravenel's absence as a named party from the previous tax sale lawsuit should not insulate her due to her interests and Children's interests in the previous action being identical. Ravenel is in privity with Children due to their intertwining interests in the property, and the master ruled in the previous action that "[Ravenel] is the real individual in interest with regard to the subject real property." The master also found in that case "[i]t is [Ravenel] who will benefit if the tax deed is set aside, not [Children], who are simply straw owners." Thus, the first element is met. The second element requires the subject matter be identical. In the previous case, the master conclusively decided the issue of whether the tax sale was valid. In the present action, Ravenel again questions the validity of the tax sale. Therefore, the second element is met as the subject matter in the present case is identical to that in the first. The third element, which requires a final, valid judgment on the merits, is also satisfied. The master heard the first case in full, ruled, and this court affirmed on appeal. Because all three elements are met, we find res judicata applies to Ravenel's arguments regarding the validity of the tax sale.

Ravenel raises three other arguments, contending (1) the trial court erred in failing to find the tax sale was void for failure of the DTC to levy, advertise, and sell the property in her name as the true owner of the property; (2) the trial court erred when it failed to find the DTC did not comply with statutory notice requirements when Ravenel, as the defaulting taxpayer, was not provided with notices of the delinquent taxes or notice of the tax sale; and (3) the trial court erred in applying the two-year statute of limitations because she was not given notice as to the sale

and this lack of notice makes the tax deed void on its face so as to make the statute of limitations not apply. Because these all could have been raised in the prior action, res judicata bars these claims. Accordingly, we affirm the trial court's decision as modified.

CONCLUSION

Based on the foregoing, the trial court is

AFFIRMED AS MODIFIED.

SHORT and GEATHERS, 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

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

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

AFFIRMED

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.

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 Jujuain 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[1] testified for the State. According to Rivers, on the night of May 16, 2012, she drove Heyward and Dashaun Simmons[2] 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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[1] Rivers is the mother of Heyward's daughter.

[2] 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.[3] 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.

[3] 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.