The STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANNON LANE BONE,

APPELLANT

APPELLATE CASE NO. 2022-000873

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge err in refusing to require redaction of portions of an audio taped interview with Appellant by law enforcement that included Appellant volunteering to act as a confidential informant, asking about a reduction in the charge and an investigator questioning Appellant about an unrelated motor vehicle break-in when the probative value of those portions of the audio was substantially outweighed by the danger of unfair prejudice?

STATEMENT OF THE CASE

In May of 2018, the Georgetown County Grand Jury[1] indicted Appellant, Shannon Lane Bone, for armed robbery, indictment #2018-GS-22-00424. On June 13, 2022, the case was called to trial before the Honorable Benjamin Culbertson. Madison Harte represented Appellant. Elizabeth Smith and Alicia Richardson prosecuted the case. Appellant did not appear for trial and the judge issued a bench warrant for her arrest. (Tr. pp. 8-10). Appellant was picked up on the bench warrant following pre-trial motions but prior to the start of trial. (Tr. p. 69, lines 5-7). Counsel moved for a continuance because Appellant was ill. (Tr. p. 69, lines 7-12). The prosecutor opposed the continuance motion and told the judge that when Appellant was picked up on the bench warrant, "She did appear to be either attempting or having used some sort of substance at that point." (Tr. p. 69, lines 23-25). The judge denied the continuance motion. (Tr. p. 70, lines 5-7). When the judge asked about waiving her presence at trial, Appellant said, "Your Honor, I think my body and stuff, with my coughing and throwing up and stuff, I'm not able to withstand it." (Tr. p. 71, lines 9-11). The trial proceeded in Appellant's absence. At the jail Appellant was treated for heroin withdrawal. (Tr. p. 195, lines 1-5). At the close of the State's case Appellant waived her right to be present at trial. (Tr. p. 365, lines 5-16).

The jury found Appellant guilty. Pursuant to S.C. Code §17-25-45 and an out of state conviction for attempted armed robbery, Judge Culbertson sentenced Appellant to life in prison. A timely notice of intent to appeal was served on June 21, 2022. This appeal follows.

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[1] It is unclear who testified before the grand jury as the witness is listed as the Georgetown County Sheriff's Office. (R. p. **).

STANDARD OF REVIEW

1. **Refusal to Require Redaction of overly prejudicial portions of audio interview**

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial judge erred in refusing to require redaction of portions of an audio taped interview with Appellant by law enforcement that included Appellant volunteering to act as a confidential informant, asking about a reduction in the charge, and an investigator questioning Appellant about an unrelated motor vehicle break in when the probative value of those portions of the audio was substantially outweighed by the danger of unfair prejudice.

A jury found Appellant guilty of robbing the 521 Mini Mart on December 31, 2017. The robbery was captured on video surveillance and introduced in evidence, without objection, as State's exhibit #5. (Tr. pp. 92- 93). The clerk testified that a woman came in the store with her face covered and wearing a black hoodie. (Tr. p. 96, line 20 – p. 97, lines 1-4). The clerk testified that she "couldn't really tell who she was." (Tr. p. 97, line 1). The woman came up to the register with two candies and a soda and asked for two packs of Seneca Red cigarettes. (Tr. p. 97, lines 18-20). The clerk was able to tell that the woman was white. (Tr. p. 103, lines 10-13). The clerk testified that the woman pulled a gun out and said, "Give me all of your money." (Tr. p. 97, lines 22-23). As she was leaving with the money she told the clerk, "Sorry." (Tr. p. 98, lines 9-11). The clerk testified that she did not really recognize the voice but then claimed that she had heard the voice before at the Beverage Depot and it was the voice of Appellant. (Tr. p. 106, lines 16-25).

Another clerk chased the robber as she fled in a Chevy Trailblazer parked in the median. (Tr. p. 117, lines 7-14). That clerk was able to get the license tag number of the vehicle. (Tr. p. 117, lines 15-16). The tag was registered to Appellant's 2007 Chevy Trailblazer. (Tr. p. 174, lines 16-24). Video surveillance showed Appellant and her Trailblazer at the Mini Mart earlier that morning. (Tr. p. 120, lines 15-25).

Investigator Taylor Mintz, a former investigator with the Georgetown Sheriff's Office, testified that Appellant was arrested on January 4, 2018, in Birmingham, Alabama. (Tr. p. 181,

lines 1-7). Appellant was brought back to South Carolina. On January 19, 2018, Investigator Mintz and Investigator Lee Wilson questioned Appellant at the local jail. (Tr. pp. 47-49). The interview was audio-recorded.

Prior to trial the judge held a Jackson v. Denno hearing to determine if the statements made by Appellant during the interview were admissible as made voluntarily after *Miranda* warnings. (Tr. pp. 44-61). The interview was divided into three clips – a nine minute clip, a seven minute clip and a twenty-one minute clip. (Tr. p. 58, line 9 – p. 59, lines 1-13). Appellant moved to suppress the nine minute clip and the twenty-one minute clip. (Tr. p. 59, lines 11-13). The judge denied the motion to suppress finding that the statements in all three clips were freely and voluntarily made after Appellant was advised of her rights. (Tr. p. 59, lines 14-25). Appellant additionally objected to the nine minute clip as irrelevant. (Tr. p. 58, lines 9-23). When asked about the relevance of the nine minute clip the prosecutor indicated that they did not intend to introduce the nine minute clip unless the door was opened. (Tr. p. 60, lines 7-22; p. 61, lines 5-6).

Appellant then moved for redaction of certain portions of the twenty-one minute clip. (Tr. p. 61, line 11 – p. 62, lines 1-7). Counsel for Appellant stated, "There are certain redactions that we would request from the 21-minute video as being more prejudicial than probative under 403." (Tr. p. 61, lines 13-15). Appellant specifically requested redaction of any discussion of Appellant working as a confidential informant [CI], reference to her prior record from Louisiana, reference to Appellant breaking into a vehicle, reference to Appellant requesting a reduction in the charge and her statement that she knows people from Kingstree to the beach in reference to her working as a CI and knowing drug dealers. (Tr. p. 61, line 11 – p. 62, lines 1-7).

The State agreed that reference to her prior record should be redacted. (Tr. p. 62, lines 9-14). The State opposed the other requested redactions. (Tr. p. 62, line 15 – p. 63, lines 1-10). The

State argued that the reference to working as a CI and knowing people was an attempt to bargain and "some sort of acknowledgement of guilt." (Tr. p. 62, lines 15-21). Counsel for Appellant replied, "She's been extradited from Alabama. She's incarcerated and held without bond; that is the main purpose of her requesting to work as a CI. It is no admission of guilt and has nothing to do with the charges at hand. We believe that is more prejudicial than probative under Rule 403 and ask that it be redacted." (Tr. p. 63, lines 12-18). The State argued that the reference to her breaking into the vehicle went to her credibility about not being able to remember. (Tr. p. 62, line 22 – p. 63, lines 1-10). The State did not specifically address the reference to appellant asking for a reduction in the charge.

The judge granted the motion to redact reference to her prior record. (Tr. p. 63, lines 19-20). The judge denied the other requests for redaction. (Tr. p. 63, line 21 – p. 64, line 1). A redacted copy of the interview, without reference to the prior Louisiana conviction, was introduced in evidence, over objection, as State's exhibit #41and played for the jury. (Tr. p. 183, lines 13-21). The trial judge erred in refusing to require redaction of the other overly prejudicial portions of the interview.

At the start of the twenty-one minute clip, that comes after the seven minute clip included in State's exhibit #41, Appellant asks the investigators about being a CI. The investigators said they would talk with the Drug Enforcement Unit [DEU]. At approximately two and a half minutes into the twenty-one minute clip Investigator Wilson tells Appellant that somebody told him that Appellant called and admitted breaking into a vehicle in Williamsburg County and taking something out of it. There is a discussion about a radio missing from a vehicle belonging to a Daniel Altman. At approximately four and a half minutes into the clip Appellant talks about watching two boys set a van on fire at Daniel Altman's house. At approximately six and a half

minutes into the clip Appellant asks if there is any way she can get the charges dropped down. At approximately seven and a half minutes Appellant talks about confidential informants overdosing and being willing to help in any way to have the charges reduced. At approximately twenty-one and a half minutes and the end of the clip Appellant again offers to help the DEU stating she knows people from Kingstree to the beach.

Rule 403, SCRE provides that, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." In State v. Gray, No. 2019-001109, 2022 WL 17171094, at *5 (S.C. Ct. App. Nov. 23, 2022), the South Carolina Court of Appeals wrote:

> Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury ...." Rule 403, SCRE. " 'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). "[T]he more essential the evidence, the greater its probative value." Id. (alteration in original) (quoting United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007)). "Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." Id. "[T]he burden [is] on the opponent of the evidence to establish [its] inadmissibility." State v. King, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018).

The reference to Appellant breaking into a vehicle should have been redacted. The objection in the present case was based on Rule 403. The probative value of the reference in the interview by Investigator Wilson to Appellant breaking into a vehicle was minimal in the State's effort to discredit Appellant by showing that she remembered some events but did not remember the robbery. The interview contains lengthy discussion about events Appellants remembered and those she did not remember, without reference to the vehicle break-in. In closing the State was able to point out from the interview that Appellant remembered being at Luanne's house. (Tr. p.

386, line 13 – p. 387, lines 1-12). The reference could also be considered a prior bad act and could also have been objected to based on Rule 404(b). For purposes of the lodged 403 objection, the prior bad act enhances the prejudice.

There were four references in the clip to Appellant acting as a CI and/or having her charges reduced. These four references should have been redacted. As argued by defense counsel, requesting to work as a CI is not an admission of guilt. Asking for a reduction in charges is not an admission of guilt. The probative value of these references is minimal. The statement that she knows people from Kingstree to the beach in reference to her working as a CI and knowing drug dealers is highly prejudicial.

Any possible probative value of the reference to Appellant breaking into a vehicle and the four references to her requesting to act as a CI for a reduction in the charge is substantially outweighed by the danger of unfair prejudice. These references did not help the jury determine the identity of the robber, the fact at issue in this trial. The error in refusing to redact portions of the interview requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial.

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ATTORNEY FOR APPELLANT

This 7th day of February, 2023.