STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000873

THE STATE, Respondent,

v.

SHANNON LANE BONE, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting Appellant's offers to cooperate and work as a confidential informant because the offers are evidence showing consciousness of guilt and the trial court did not err in allowing the officer's questions and Appellant's answers about a car breaking during the interview because Appellant's answers are relevant to Appellant's credibility. Further any error is harmless in light of the overwhelming evidence of Appellant's guilt.

STATEMENT OF THE CASE

In May of 2018, a Georgetown County Grand Jury indicted Shannon Bone (Appellant) for armed robbery. On June 13-15 and June 17, 2022, Appellant proceeded to trial before the Honorable Benjamin H. Culbertson. The jury found Appellant guilty as indicted. The trial court sentenced Appellant to life without parole with Appellant's prior attempted armed robbery conviction as the predicate offense. S.C. Code §17-25-45. Appellant did not appear for trial, was picked up on a bench warrant, and then needed to be treated for heroin withdrawal. She waived appearance at trial due to being sick from heroin withdrawal. (R. 195).

STATEMENT OF FACTS

A jury found Appellant guilty of robbing a 521 MiniMart on December 31, 2017. The robbery was captured on video surveillance and introduced into evidence, without objection as State's Exhibit 5. (R. 92-93). The clerk testified that a woman came into the store with her face covered and wearing a black hoodie. (R. 96-97). The clerk testified that "[she] couldn't really tell who she was." (R. 97). The woman came up to the register with two candies and a soda and asked for two packs of Seneca Red cigarettes. (R. 97). The clerk was able to tell the woman was white. (R. 103). The clerk testified that the woman pulled a gun out and said "give me all of your money." (R. 97). As she was leaving with the money she told the clerk "sorry". (R. 98). The clerk realized she had heard the voice before and knew it was Appellant's voice. (R. 106).

Thomas Crawford worked the 10 p.m. to 6 a.m. shift at the MiniMart. Crawford knows Appellant as a customer and saw her at 2:00 a.m. buying a pack of Seneca Red and a pack of Seneca Green from co-worker Nadine Reed. He was just outside the store when the robber came running out. Both Crawford and co-worker Nadine Reed chased the robber. The robber was white, with a slim figure, wearing a black hoody with a grey hoody underneath. (R. 109-115; 122; 124). In stills showing Appellant entering the store at 2:00 a.m., Appellant is wearing a grey hoody or jacket. (State's Exhibits 13, 14). The robber ran to a Chevy Trailblazer parked on the grass median on Highway 521. Crawford got the tag number from the Trailblazer. Crawford recognized the Trailblazer as the same vehicle that Appellant drove earlier in the night. (R. 117; State's Exhibit 9 (Aerial map showing MiniMart and the 521 median)).

Gerald Graham, a customer present at the robbery, did not pay much attention to the robber when she was at the register, but he did notice while waiting that the robber was a small, thin, white woman. (R. 129). The cashier told him when the female robber left that the woman in front of him in the line had robbed the cashier. He also noticed the Trailblazer parked in the

median when driving to the store because the Trailblazer's windows were down, which he thought was odd given the cold weather. (R. 128-130).

Nadine Reed was the cashier when Appellant first came in the store at 2 a.m. Reed knew Appellant. Appellant drove an SUV. Appellant was acting strange and counting out a lot of change to pay for the two packs of Seneca cigarettes. Reed testified that Appellant seemed to be scoping out the store. (R. 135-136). Later, when the robbery occurred, Reed and Thomas cased the robber and saw the SUV parked in the median. The robber ran to it and drove away. Reed described the robber they chased was a petite white woman. She was able to get the tag number. (R. 137-140).

Monica West, Appellant's sister, testified that Appellant was depressed, into drugs, and just lost. Appellant asked West to be admitted into rehab and West brought her to a rehab facility in Columbia on December 26, 2017. After just four days, Appellant called West an asked to be picked up. (R. 235-237). Appellant and West arrived back home around 10:30 p.m. on December 30, 2017. (R. 237). West learned about the robbery from a Facebook post and tried to text and call Appellant but she would not answer. (R. 240). Subsequently, West provided law enforcement Appellant's cell phone that was in the purse Appellant released to West when Appellant was admitted to the county jail. (R. 241-242).

Josiah Stafford, at the time the Corporal for the uniformed division at the Georgetown County Sheriff's Office, responded to the robbery and was provided a tag number for the robber's vehicle. The tag number was for the Trailblazer belonging to Appellant. Corporal Stafford went to Appellant's address on nearby Kent Street but she was not there. (R. 146-149).

Investigator Taylor Mintz took over the investigation. Looking at the videos, he noted that although dressed differently, Appellant and the robber wore very similar brown shoes in the

videos. Law enforcement did not find Appellant that night. Instead, she was found in Alabama on January 4, 2018, and brought back to Georgetown County. (R. 180-181).

Investigator Mintz and another deputy interviewed Appellant on January 19, 2018. (R. 213). The interview was audio-recorded. During the initial interview, Appellant denied any knowledge about the robbery, but as Investigator Mintz gathered his materials and started out the door, Appellant started the conversation back up and asked about working off the charges by working as a CI, possibly for the DEU. She changed her story from adamantly claiming she was uninvolved to not remembering what happened and claiming some pills were the likely cause of her memory issues. (R. 183-187). Investigator Mintz confirmed on redirect examination that the Trailblazer was located in Alabama. (R. 220).

In the initial interview, Appellant claimed she went to a friend, Luanne's house, then went to the store and bought two packs of cigarettes, one for her and one for Luanne. Then after bringing Luanne her cigarettes, Appellant took off for Texas. She claimed she was not the robber. She was confronted with the fact that her Trailblazer matched the tag number at the scene, and she insisted she was on the road at the time, probably somewhere on Interstate 20. Appellant claimed when arrested in Alabama, she was surprised to learn she was a suspect in the robbery. (State's Exhibit 41 (seven minute audio recording)).

The twenty-one minute audio recording follows the seven minute video. At the onset of this second recording, Appellant is offering to be a confidential informant for the DEU. (State's Exhibit 41). She claimed she did not remember things on December 31 because of pills she took. (State's Exhibit 41 1:00-2:00). She did not remember having a gun and did not think she had a gun. (State's Exhibit 41 2:30-2:40). Investigator Mintz confronted Appellant with a report that someone said Appellant told them over the phone she broke into a vehicle in Williamsburg.

Appellant told the person during the phone conversation that she took something out of Altman's car, but Appellant would not tell them what she took. Appellant's first response was that it was a lie. But then the officers confronted Appellant with her claim that she lost her memory of a whole day and did not know what happened when they were talking about the robbery, after she initially denied it. (State's Exhibit 41 3:00-4:00). Then Appellant admitted going to Daniel Altman's house, off Highway 521, and claimed while she was waiting in the yard, two boys set Altman's van on fire. (State's Exhibit 41 4:00-5:30).

Appellant then asked if there was anything she could do to have the charges reduced. She noted most of the confidential informants in the area had overdosed and offered to help out as an informant. (State's Exhibit 41 6:30-7:45). Appellant claimed she did not remember anything else, but did remember arriving back from Columbia and getting in her Trailblazer and just driving around "in circles." (State's Exhibit 41 9:30-10:15). Appellant claimed she did not remember calling West to pick her up nor West picking her up in Columbia. (State's Exhibit 41 11:00-11:30). Appellant remembered driving around and going to Luanne's house. She originally went to Luanne's to pick up a heater that belonged to her. (State's Exhibit 41 11:30-12:50).

Joanne Clarey, an employee with the Georgetown County Detention Center testified that when Appellant was booked, she released her purse to her sister Monica West. She also testified that Appellant's clothes were inventoried and included brown shoes. (R. 230-232).

Officer Alyssa Brown from the Birmingham Police Department found Appellant at an apartment after receiving a tip from Georgetown County. The Trailblazer was parked nearby – Officer Brown recorded the tag number as XA834, Appellant's tag number. (R. 244-245; 250). Appellant confirmed the Trailblazer was her vehicle. She said she was trying to score drugs,

which is why she was in that neighborhood. She also admitted to Officer Brown that she knew "you are all looking for me." (R. 251). Appellant admitted she knew about the warrants and claimed she was going to turn herself in. (R. 256).

Detective Alan Huggins from the Conway Police Department was qualified as an expert in cellular technology. (R. 305). He noted Appellant's phone was using the cell tower nearest the 521 MiniMart between 6:10 and 6:49 a.m. (R. 318-319). After that, cell tower tracking shows Appellant's phone moving up Highway 521. That night, there is a powering off event at 10:10 p.m., and no further cell phone tracking was possible from that point on December 31 until the phone was powered on again in March 2018. (R. 325-326; 334; 335).

STANDARD OF REVIEW

Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). The improper admission of evidence is reversible error only when the admission causes prejudice. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947).

ARGUMENT

The trial court did not err in admitting Appellant's offers to cooperate and work as a confidential informant because the offers are evidence showing consciousness of guilt and the trial court did not err in allowing the officer's questions and Appellant's answers about a car breaking during the interview because Appellant's answers are relevant to Appellant's credibility. Further any error is harmless in light of the overwhelming evidence of Appellant's guilt.

Appellant complains that the trial court erred in declining Appellant's request to redact from the interview Appellant's offers to cooperate or work as an informant. However, Appellant's offers to cooperate was relevant to show consciousness of guilt. Appellant also complains that law enforcement's inquiry and her discussion of a possible car breaking should also be redacted after Appellant objected and requested redaction of this portion of the interview. However, the car breaking, occurring in roughly the same time frame, was relevant to her credibility as Appellant claimed she took some pills and was unable to remember events occurring during December 30-31. Yet she managed to remember being there and seeing two boys burn the vehicle in question. Any error was harmless as her identity as the robber was supported by overwhelming evidence of guilt.

"The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus, a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610

S.E.2d 494 (2005).

"As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976).

In the instant case, Appellant contends her offer to work as a confidential informant is inadmissible under Rule 403, SCRE, because the probative value of her offer is substantially outweighed by the danger of unfair prejudice. In United States v. Levy, 578 F.2d 896 (2nd Cir. 1978), the defendant told agents he worked as an informant in the past and offered to work with the DEA in future investigations. The Second Circuit Court of Appeals observed, "We think that such an offer evidences a consciousness of guilt and is relevant to prove the charge against Levy." Id. at 900.[1] The Court further opined, "No fault can be found with allowing in evidence his volunteered desire to cooperate in the future, since it was evidence of his consciousness that he was in serious difficulty with the law and needed to do something to extricate himself." Id.

The Seventh Circuit Court of Appeals found a defendant's offer to assist law enforcement was probative evidence showing consciousness of guilt in its opinion in United States v. Cardena, 842 F.3d 959 (7th Cir. 2016). Recognizing the question presented a novel issue of law in its circuit, the Seventh Circuit announced it was joining the three sister circuits that have considered the issue and found that an offer to cooperate may show consciousness of guilt. Id. at 992 (citations omitted). The Seventh Circuit held, "We agree with our sister circuits: an offer to cooperate to get oneself out of trouble is relevant evidence tending to show consciousness of guilt." Id. Finding the evidence was relevant, the Seventh Circuit then examined whether the evidence of cooperation was admissible under Rule 403, F.R.E. The Court found, "Cardena's

[1] See People v. Hart, 828 N.E.2d 260, 272 (Ill. 2005) (quoting the above sentence from Levy in finding that the prosecutor argued a reasonable inference from Hart's offer to cooperate).

offer to cooperate is quite probative of his involvement in criminal activity because a person who is innocent of all wrongdoing would not likely make an offer to cooperate in exchange for getting himself out of trouble." Id. The Court noted Cardena failed to explain how he was prejudiced and found the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Id.

In the instant case, initially Appellant denied she was involved in the robbery. She admitted visiting the MiniMart at 2:00 a.m. to buy a pack of cigarettes for herself and a pack of cigarettes for her friend Luanne. Appellant then left Luanne's house to drive to Texas to get away from the drug culture. After hearing Appellant's explanation of her whereabouts, law enforcement confronted Appellant with evidence that her Trailblazer was identified by its tag number at the scene of the robbery. Appellant claimed that was not possible because she was already on her way out of state when the robbery occurred at 6:30 a.m. The interview seemingly ended with Appellant's strict denial. Investigator Mintz gathered his items and was on the way out when Appellant re-initiated the interview, suddenly offering to work as a confidential informant for the DEU. She then claimed she took some pills that caused her to not remember anything on December 30 or 31. Therefore, she did not know whether she committed the robbery. She then asked if the investigators could reduce her charges and was told they could not. She maintained her offer to work as an informant, explaining she knew a lot of people in the drug trade between Georgetown and Charleston. She knew they could use informants because she was aware most of them had overdosed.

In the instant case, Appellant's offer to cooperate arose after her failed attempt to clear herself of involvement in the armed robbery; she was confronted with some powerful evidence of guilt. A reasonable juror could conclude that her offer of assistance was made to extricate

herself from the serious trouble she found herself in. This was accompanied by her new claim that she did not remember what occurred during the time of the robbery. A reasonable juror could conclude Appellant's offer to cooperate is evidence of consciousness of guilt. To a certain extent, her offer to cooperate was accompanied by a suggestion of her involvement with drugs. However, Appellant already discussed being in a drug treatment facility in the days leading up to the robbery and told law enforcement she was leaving for Texas to get away from the local drug culture. Additionally, Appellant's sister testified that Appellant was depressed and on drugs when she was admitted to the rehab facility in Columbia. Therefore, Appellant's discussion of her familiarity with the drug world was cumulative to other evidence. Accordingly, the trial court did not err in admitting this evidence.

Appellant also argues that the trial court erred in not requiring the prosecution to redact evidence that Appellant told someone she broke into Daniel Altman's vehicle and took something in the same time frame after she arrived back in Georgetown from Columbia. Appellant argued to the trial court that this discussion should have been redacted under Rule 403, SCRE. [2]

Appellant at first completely denied the car breaking. However, investigators confronted Appellant with the fact that she earlier denied involvement in the robbery then admitted she could have committed the robbery because she did not remember what she did that night. Investigators suggested that perhaps she broke into Altman's vehicle and did not remember it. Appellant replied that she did remember driving at Altman's house and waiting there when she saw two boys burn Altman's van.

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[2] Appellant recognizes that the argument below was based on Rule 403, SCRE analysis and Appellant did not raise Rule 404(b), SCRE, to the trial court. State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

The prosecution argued that the discussion of a car breaking at Altman's house was relevant to her credibility. As discussed above, Appellant was claiming she had no memory of what happened, and therefore, did not remember whether she committed a robbery. The prosecutor noted that despite her new claims that she could not remember anything, Appellant was also claiming, "Oh, but hey, I remember I sat in his car. So she does remember a lot of details." (R. 62:22-63:10). It is also worth noting that Investigator Mintz brought up the car breaking after Appellant discussed how she does not have a gun and does not remember getting a gun that would be used in a robbery. Perhaps Investigator Mintz was trying to determine if Appellant took the gun used in the robbery from Altman's vehicle. Investigator Mintz mentioned the break-in and twice mentioned that Appellant told these people she took something from Altman's vehicle but would not say what. In this context, it seems Investigator Mintz was exploring the possible explanations of where Appellant acquired the gun used for the robbery. Regardless, the limited discussion about Altman's vehicle was probative because it showed an emerging pattern in which Appellant denied involvement in a crime, then modified the answer when confronted with evidence or logic. In this case, despite her inability to remember events that day, Appellant all of a sudden had a memory recall of being at Altman's and watching someone else damaging Altman's vehicle. The danger of unfair prejudice was minimal as the prosecution did not present any further evidence and Appellant denied committing the car breaking.

Further, any error was harmless beyond a reasonable doubt. Appellant's Trailblazer was at the robbery. So was her phone. The clerk Appellant robbed recognized Appellant's voice. The person the other two clerks chased from the robbery to the Trailblazer was Appellant's size and build. The robber was a white female who like Appellant, smoked Seneca Red cigarettes.

Appellant drove out of state and was aware there was a warrant for her arrest when she was arrested in Birmingham, Alabama. Appellant turned off her phone before she left the state. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). The harmless error doctrine preserves the central purpose of a criminal trial, which is to decide the factual question of a defendant's guilt or innocence. State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (citing Arizona v. Fulminante, 499 U.S. 279, 306-08 (1991)).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 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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