STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Walton J, McLeod, IV, Circuit Court Judge

Appellate Case No. 2024-001170

THE STATE,

Respondent,

v.

MICHAEL SCOTT VALDARIO,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

In September of 2021, a Lexington County Grand Jury indicted Appellant for two counts of sexual exploitation of a minor first-degree and two counts of sexual exploitation of a minor second-degree. On July 8, 2024, Appellant proceeded to trial before the Honorable Walton J. McLeod, IV. The jury found Appellant guilty as indicted. The trial court sentenced Appellant to four years' incarceration on each first-degree charge sentences to be served consecutively, and two years of incarceration on each second-degree charge to be served concurrently. This appeal follows.

STANDARD OF REVIEW

"The decision to grant or deny a motion for a mistrial is a matter within a trial court's discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). Whether a mistrial is necessary is decided on a case by case basis. "It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." State v. Rowlands, 343 S.C. 454, 457-458, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 445, 460 (Ct. App. 2005). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

ARGUMENT

I.
The trial court properly denied Appellant's motion for a mistrial.

Michael Valdario (Appellant) was charged and tried for two counts sexual exploitation with a minor first-degree and two counts sexual exploitation of a minor second-degree for manipulating his niece, Victim. into creating sexually explicit images and videos of herself that she would share with Appellant at his request. The State relied on testimony and screenshots taken by Victim that showed improper conversations between herself and Appellant. (R. 16-39).

After the parties rested and had given closing arguments, the trial court proceeded to charge the jury on the applicable law. At the start of the jury charge section dealing with the presumption of innocence, the trial court charged the jury:

> THE COURT: Now the defendant has pled guilty to these indictments and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove his or her innocence. I charge you that it is an important rule of the law that the defendant in a criminal trial no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment has issue unless guilt has been proven by evidence satisfying you of that guilty beyond a reasonable doubt.
> Did I say guilty?
> MS. YONGE: Yes, your honor.
> THE COURT: All right, folks. I made a mistake. I misspoke. Let me be very clear, the defendant has pled not guilty to these indictments. I apologize for that. I – I guess the word blurred on me. My apologies to everyone.
> To be very clear, the defendant has pled not guilty to these indictments and that plea puts the burden on the state to prove the defendant guilty…

(R. 105-107). After the jury retired to the jury room, counsel for Appellant moved for a mistrial on the basis that the Court erroneously stated the defendant had pled guilty. (R. 114). The trial judge noted that it was "a good motion to make", but that he tried to correct it as soon as possible and would call the jury back in and again let them know it was an unintentional mistake. (R. 114-115). He denied the motion for a mistrial and brought the jury back in and stated the following:

> All right. Ladies and gentlemen, just I need to speak with you one more time for myself. I made an error in reading the charge on the law, the presumption of innocence. You may have noticed it, but I inadvertently said that the defendant had [pled] guilty to the indictments. That is absolutely not true. He pled not guilty. The charge on the law says he pled not guilty. For whatever reason I missed a word, so my apologies. I want to be very clear. I have no –I have zero opinion on the facts of this case, but I want you to understand that the written law is right here, it's correct, and I just misspoke when I was reading it. So please disregard any confusion that may have caused from you when I was charging you on the law of the case, okay?

(R. 115-116).

Appellant argues the trial court erred in denying Appellant's motion for a mistrial because during the portion of the jury charge on the presumption of innocence the trial judge erroneously charged the jury that Appellant had pled guilty to the indictments. Appellant's argument lacks merit because the error was very briefly mentioned, immediately corrected, and then further reinforced that the judge simply misspoke and therefore wasn't prejudicial to Appellant.

"The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010). "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447-448, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." State v. Harris, 382 S.C. 107, 117, 674

S.E.2d 532, 537 (Ct. App. 2009). "Generally, a curative instruction is deemed to have cured any alleged error." State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005).

In State v. Brisbon, our Supreme Court considered whether a trial court's misstatement in the jury charge warranted the granting of a mistrial. Brisbon, 323 S.C. 324, 474 S.E.2d 433, 437 (1996). In the jury charge regarding witness credibility, the trial judge substituted the word "defendant" for "witness" in its instruction for credibility. Id. at 331, 474 S.E.2d at 437. Brisbon argued the reference to "defendant" focused attention on him and his credibility as a witness to the exclusion of the other witnesses. Id. The court immediately offered curative instruction. Id. Our Supreme Court held that the statement was a slip of the tongue and not an affirmative comment upon the evidence. Id. Appellant attempts to distinguish the current case from Brisbon by arguing that while both comments were unintentional, the comment in the present case was extremely prejudicial.

Here, the slip of the judge was not at all prejudicial because it was briefly mentioned and thoroughly corrected. At the beginning of the trial in the pre-trial jury charge, the trial judge read the same phrasing and stated that "the defendant has pled **not guilty** to the charges and is presumed innocent unless and until proven guilty." (R. 4) (emphasis added). In the jury charge, where he did make the slip up, he immediately corrected himself by saying he made a mistake and the defendant has pled not guilty and stated that he misspoke and the word "blurred" on him while reading. (R. 106). He then backtracked the jury charge by rereading the same portion and again stating the defendant pled not guilty as he continued on with the remainder of the jury charge. (R. 106). After Counsel for Appellant made the motion for mistrial, the trial judge stated "that was obviously unintentional. It doesn't say that in the jury charge and they'll have a copy of it. In an abundance of caution, I'm going to bring them back in here and I'm going to tell them

again that that was an unintentional mistake." (R. 114-115). He then brought the jury back in, and told them again, and made the following comments:

> All right. Ladies and gentlemen, just I need to speak with you one more time for myself. I made an error in reading the charge on the law, the presumption of innocence. You may have noticed it, but I inadvertently said that the defendant had [pled] guilty to the indictments. That is absolutely not true. He pled not guilty. The charge on the law says he pled not guilty. For whatever reason I missed a word, so my apologies. I want to be very clear. I have no—I have zero opinion on the facts in this case, but I want you to understand that the written law is right here, it's correct, and I just misspoke when I was reading it. So please disregard any confusion that may have caused from you when I was charging you on the law of the case, okay?

(R. 115-116).

The trial judge made it very clear that it was a mistake and multiple times and the jury had the copy of the jury charge that he read. Even if the multiple curative instructions did not cure the error the error was harmless because of the overwhelming guilt. The jury heard testimony from the victim that it was Appellant who was sending her inappropriate messages in order to convince her to send sexually explicit pictures and videos, and the jury was able to see screenshots of these conversations. Further, Counsel for Appellant's entire closing argument revolved around how much reasonable doubt there was in the case but then attempts to argue that the trial judge's slip up was so prejudicial to Appellant. Both situations can't possibly be true. Therefore, even if the trial judge's mistake during the jury charge was error, it was not prejudicial.

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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