ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Court Judge

RECEIVED
NOV 19 2018
SC Court of Appeals

Appellate Case No. 2017-001103

THE STATE,

Respondent,

v.

BRENDA L. ROBERTS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2017-001103

THE STATE,

Respondent,

v.

BRENDA L. ROBERTS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

STANDARD OF REVIEW 12

ARGUMENT 13

The trial judge properly admitted A.J. Bowers' three written statements to law enforcement where the statements did not constitute inadmissible hearsay because they were not offered for the truth of the matter asserted. Similarly, the Confrontation Clause was not implicated in Appellant's case because Bowers' statements were not hearsay and any potential Confrontation Clause violation in Appellant's case could only be harmless where the trial judge gave a thorough limiting instruction, Bowers' statements were not probative of Appellant's guilt, and the only information in the statement that could be perceived as incriminating was cumulative to other inarguably admissible evidence.

CONCLUSION 19

TABLE OF AUTHORITIES

Cases:

Carter v. Douma, 796 F.3d 726 (7th Cir. 2015) 16

Crawford v. Washington, 541 U.S. 36 (2004) 7, 15

Delaware v. Van Arsdall, 475 U.S. 813 (2006) 16, 17

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000) 13, 17

State v. Butler, 353 S.C. 383, 577 S.E.2d 498 (Ct. App. 2003) 12

State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) 12

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) 16, 17

State v. Green, 318 S.C. 426, 458 S.E.2d 73 (Ct. App. 1995) 14

State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) 12

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) 12

State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012) 17

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 12

State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001) 12

State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009) 14

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 12

United States v. Rivera, 780 F.3d 1084 (11th Cir. 2015) 16

Statutes:

U.S. Const. amend VI 15

Rules:

Rule 801(c), SCRE 13

STATEMENT OF ISSUE ON APPEAL

The trial judge properly admitted A.J. Bowers' three written statements to law enforcement where the statements did not constitute inadmissible hearsay because they were not offered for the truth of the matter asserted. Similarly, the Confrontation Clause was not implicated in Appellant's case because Bowers' statements were not hearsay and any potential Confrontation Clause violation in Appellant's case could only be harmless where the trial judge gave a thorough limiting instruction, Bowers' statements were not probative of Appellant's guilt, and the only information in the statement that could be perceived as incriminating was cumulative to other inarguably admissible evidence.

STATEMENT OF THE CASE.

Appellant was indicted during the October 2015 term of the Grand Jury for Laurens County for accessory after the fact of a felony (2015-GS-30-1477). Appellant proceeded to a jury trial before the Honorable Frank R. Addy Jr., from April 24-27, 2017, in Laurens, South Carolina. At the conclusion of trial, the jury found Appellant guilty as indicted. She was sentenced by Judge Addy to imprisonment for a term of fourteen years. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 26, 2003, Master Patrolman Dwight Craft responded to a call reporting an injury at the VFW Hall in Laurens.[1] R. p. 64. As he entered the VFW Hall, Master Patrolman Clark observed signs of forced entry. R. p. 68. Law enforcement officers subsequently entered the bathroom where they found the body of Jim Bolt. R. p. 68. The officers did not see any signs of life, but called EMS to the scene. R. p. 68. Master Patrolman Craft testified it appeared Bolt had been beaten about the head and there was a lot of blood in the bathroom. R. p. 68.

Walter Bentley was employed by the Laurens Police Department as an investigator in September of 2003. R. pp. 90-91. Investigator Bentley received a call around 6:30 p.m. to come to a homicide investigation at the VFW Hall. R. p. 92. Investigator Bentley testified when he arrived, Bolt was lying in a pool of, "[p]robably the most blood I've seen on crime scene in my career." R. p. 95. Investigator Bentley also observed blood spatter on the walls of the restroom. R. p. 95. Investigator Bentley referred to the blood splatter as, "high impact splatter" and stated it is indicative of a person being struck very hard with a blunt force object. R. p. 95. Investigator Bentley noticed defense wounds on Bolt's hands and that, due to the positioning and pattern of the strikes, believed a claw hammer type object was used in the assault. R. p. 95-96. Investigator Bentley noted Bolt's front and rear pockets were pulled out of his pants and that there was change on the floor. R. p. 96-97. Investigator Bentley testified there were signs of a struggle in the bathroom and that it appeared someone was cleaning the bathrooms at the time of the assault. R. p. 100. The VFW's cash register had been pulled out and emptied. R. p. 103. Investigator Bentley stated that due to the facts and circumstances of the case, he believed law enforcement was dealing with an armed robbery and murder. R. p. 105.

---

[1] The Veterans of Foreign Wars Hall is on East Main Street in Laurens and provides a place for veterans to congregate. R. p. 55, 92.

The investigation eventually led law enforcement to an individual named A.J. Bowers[2], who was staying at Appellant's residence. R. p. 106. Investigators were told they should speak to Bowers because he may be a person of interest. R. p. 106. After locating Bowers at Appellant's residence, Bowers agreed to accompany officers to the Laurens Police Department to be interviewed. R. p. 107. Investigator Bentley noted Bowers was a not a suspect at the time and was, "just a person we wanted to talk to." R. p. 107. Investigator Bentley observed a fresh injury to Bowers' arm and hand. R. p. 108. Investigator Bentley thought this significant because there was a drop of blood left on a notepad at the crime scene that he believed was left by the assailant who suffered injuries during the murder. R. p. 108. Investigator Bentley noted the procedure at the VFW was that if you were not a member, you were supposed to sign in when you entered the premises. R. p. 111. Investigator Bentley testified that it appeared that a page had been torn out; however the imprint of the name "A. Bowers" was imprinted on the subsequent page. R. p. 112. Bowers voluntarily waived his rights and agreed to speak with law enforcement. R. p. 112. Bowers subsequently made a statement to Investigator Bentley on September 27, 2003. R. pp. 131-33. Law enforcement officers placed Bowers into custody because his statement included details that were not public knowledge at the time. R. p. 135. On September 29, 2003, Bowers provided Investigator Bentley with a second, lengthier statement. R. pp. 137-44. Investigator Tony Lynch subsequently re-interviewed Bowers because he was not satisfied with the second statement he made. R. p. 156. Bowers later provided Investigator Lynch with a third statement. R. pp. 160-61.

After Bowers provided law enforcement with these statements, an arrest was made, however the Solicitor at the time dismissed the case with leave to re-indict. R. p. 145. The case

2 According to the South Carolina Department of Corrections (SCDC) inmate locator, Bowers was admitted to SCDC on April 27, 2018, and is currently serving sentences for murder, armed robbery, and criminal conspiracy.

remained open and officers continued to investigate. R. p. 146. In October of 2011, law enforcement received a tip and searched a well on Appellant's address for evidence relating to the murder. R. p. 146. Despite using a diver and attempting to pump water out of the well, officers were unsuccessful in finding evidence due to the depth and character of the well. R. pp. 147-49. Curiously, Appellant drove by the residence very slowly in a minivan while the investigators were attempting to search the well.[3] Following the search of the well, law enforcement continued to investigate. R. p. 151. Investigator Bentley eventually left to work for the Eighth Circuit Solicitor's Office and he selected Jared Hunnicutt as his successor at the Laurens Police Department. R. p. 151.

At trial, Officer Hunnicutt explained he was involved in the re-investigation of the VFW murder. R. pp. 188-89. On September 10, 2012, Officer Hunnicutt responded to a call about a stolen vehicle. R. p. 189. The complainant on the call was Appellant, and the driver of the stolen car was her son, Doyle Wayne Roberts.[4] R. p. 189. Upon arriving at the scene, Officer Hunnicutt put Mr. Roberts under arrest for driving under suspension. R. p. 190. Pursuant to standard procedure, Officer Hunnicutt informed Appellant and she came to the scene. R. pp. 190-91. At the scene, Mr. Roberts shouted, "I'm telling everything," to Appellant. R. pp. 229-30. Mr. Roberts also shouted, "You're going to jail bitch." R. p. 231. Mr. Roberts further yelled, "You know you washed them clothes." R. p. 231. Mr. Roberts told the officers, "You finally got to arrest Wanda Wayne, but you're going to be arresting [Appellant] for murder." R. p. 231.[5]

[3] By 2011, Appellant had moved to Clinton and lived five or six miles away from her previous address where she resided at the time of the murder. R. p. 150.

[4] Mr. Roberts is also known by the alias, "Wanda Wayne." R. p. 190.

[5] Mr. Roberts testified he was drunk and on drugs at the time of his statement; however, he Officer Hunnicutt testified he did not appear to be intoxicated and that, had he been intoxicated, Mr. Roberts would have been charged thus. R. pp. 259-60.

Law enforcement subsequently approached Freddie Miller, Appellant's brother, in July of 2015. On the evening of September 26, 2003, Miller went to Appellant's home to smoke crack cocaine he obtained earlier in the evening. R. p. 172. As he approached Appellant's home, Mr. Roberts, A.J. Bowers, and Randy Gambrell[6] pulled up in a van. R. p. 172. When the group approached, Miller hid because he did not want to share his crack cocaine with them. R. p. 173. Miller observed Appellant approach Gambrell and tell him to take his clothes off so she could wash them. R. p. 173. Miller testified Gambrell stated, "Nanny, you should have seen him. He had blood from here down to here." R. p. 173. Appellant replied, "I know that. I'm going to wash his clothes too." R. p. 173. Gambrell then handed his clothes to Appellant and she took them into the house. R. p. 173. Miller waited fifteen to twenty minutes and entered the house. R. p. 174. When Miller arrived at the home, Bowers was coming out of the shower and Doyle Wayne asked Miller if he had any clothes Bowers could wear. R. p. 174. Miller testified that Appellant's washing machine was working on the night of the murder and that Appellant got rid of it sometime in the next couple of days.[7] R. p. 175.

Jonathan Epting, Appellant's nephew, was aware that the well at Appellant's former residence was searched by law enforcement. R. p. 183. Following this event, Epting and Appellant were both at Self Memorial Hospital in Greenwood because Epting's grandfather, Appellant's father, was having surgery. R. p. 184. Epting told Appellant something was found in her well. R. p. 184. Appellant replied that clothes were in a plastic bag and that Clorox had been poured down the well. R. p. 184-85. Appellant told Epting her husband poured Clorox down the well every year to purify the well. R. p. 186.

[6] Gambrell is Appellant's grandson. R. p. 181.

[7] After the murder, Investigator Lynch noticed a washing machine sitting on Appellant's front porch and that it looked like Appellant was getting ready to throw it away. R. p. 162.

Lieutenant Joey Pittman of the Laurens Police Department began looking at the VFW murder case in 2015 with "fresh eyes" with other detectives to see what they could come up with. R. p. 252. Lieutenant Pittman testified Doyle Wayne Roberts' arrest shined a "spotlight" on Appellant as a suspect in the case. R. p. 253. Lieutenant Pittman spoke with James Miller and Jonathan Epting about the case. R. pp. 253-54. On July 7, 2015, Appellant was picked up by law enforcement to discuss her potential involvement in the VFW murder. R. p. 254. Lieutenant Pittman stated that Appellant was upset and crying. R. p. 256. When Appellant was told law enforcement had a video of Doyle Wayne Roberts implicating her in a murder, she did not believe them. R. p. 258. Lieutenant Pittman noted, "she didn't believe that Wayne would say anything like that about her." R. p. 258. After being shown the video, Appellant cried hysterically. R. p. 258. Appellant stated, "I can't believe Wayne would say anything like that about me." R. p. 258. Appellant then stated, "Well, I guess I'll just have to take it to my grave." R. p. 258.

Statements Made by A.J. Bowers

During Investigator Bentley's testimony, when the solicitor moved to admit A.J. Bowers' first statement into evidence, Defense Counsel objected to the admission of the evidence on hearsay and Confrontation Clause grounds. R. p. 114. The trial judge initially ruled that Crawford[8] was not implicated and that Bowers' statements were not hearsay, stating, "I don't think Crawford is implicated and I don't see where it's hearsay since the State's purpose in offering this statement is not for the truth of the matter asserted in the statement, but Mr. Bowers was merely present at the scene." R. p. 114. After further argument about the statements, the trial judge stated:

[8] Crawford v. Washington, 541 U.S. 36 (2004).

> Solicitor, my concern with the second and the third statement is that the second statement references going to the Defendant's house. The third statement also references being dropped off at [Appellant's address] That is what connects the Defendant to this particular incident and has the potential, I think, to violate Bruton and Crawford.

R. pp. 120-21. The solicitor replied, "I would submit, Your Honor, that the witness has already testified that they located Bowers at the Defendant's house." R. p. 121. The trial judge replied:

> The witness can testify as to what he personally observed and that he located Mr. Bowers at [Appellant's] house. It's a different matter entirely when we have a non-testifying witness saying that, okay, Mr. Bowers told me that he went to [Appellant's] house after the fact. In our meeting in chambers I think you indicated that the State has additional witnesses that would be willing to testify or that you anticipate will testify that Mr. Bowers did, in fact, go to [Appellant's] house, that they are first-party witnesses.

R. p. 121. The solicitor replied, "Yes, sir. Right. Yes, sir." R. p. 121. The trial judge then ruled:

> Here's my ruling on these two statements then. You can admit them to demonstrate what Mr. Bowers said, but as far as any part of the statement that implicates [Appellant], clearly that's in violation, in my mind, of Bruton and Crawford, the confrontation clause. So these portions of the statement we won't be able to refer to those portions through this witness. You'll have to establish that Mr. Bowers went to [Appellant's] house through witnesses who can testify as eye witnesses, et cetera. But as far as these statements - - I understand you still object to my ruling. The statements can come in with that caveat.

R. p. 121-22. Defense Counsel then told the trial judge, "sometime I would have a limiting instruction, but I'd like to think about that." The trial judge replied:

> Certainly. I think that touches on what we were discussing yesterday, that this evidence only relates to the question of whether Mr. Bowers was involved in the homicide, armed robbery, what have you. I was thinking about that last night, but I still haven't put together or formulated something in my own mind. Perhaps we can continues to work on that.

R. p. 122. The trial judge subsequently instructed the jury:

> We're back on the record. Ladies and gentlemen, we are still proceeding with the testimony on direct of Mr. Bentley. Before we proceed further, I want to simply explain something to you just so that you are fully aware of why we are going into this testimony involving Mr. Bowers. Understand that one of the elements of the offense for which [Appellant] is charged is that Mr. Bowers did in fact commit

either a murder or an armed robbery or both. The testimony that we have been receiving relates only to Mr. Bower's conduct in the underlying homicide involved here, okay? It doesn't impugn anything. You shouldn't take this testimony as impugning anything to [Appellant] who is on trial here today. This is simply offered to demonstrate that Mr. Bowers was, in fact, responsible. Was, in fact, guilty of the murder of the decedent in this case. That's the only purpose for this testimony coming in. I see several heads nodding, so I think you understand what I am getting at. Obviously this testimony should not be received by you in any negative way as it relates to [Appellant], okay? I think I've explained the situation. Solicitor, you may continue with your examination.

R. pp. 126-27. The State subsequently presented Bowers' three statements to law enforcement.

As to Bowers' first statement, Investigator Bentley read the statement into the record, stating:

> WB, which are my initials, is writing this statement at my request. I also want W. Bentley to write this because I hurt my right hand am having trouble writing. I also wish to give the statement without a lawyer. . . . I was in a car with Wanda Wayne. . . . He is a he/she, and another guy who I don't know. They drove behind the VFW. I got out of the car and took a piss. Wanda and the guy left in the car. I buzzed the door and went inside. Ray-Ray and the old man were the only ones there. I do not - - I did not sign the sign in sheet. I talked to Ray-Ray and asked him what's up. I saw the old man walk in the bathroom and Ray-Ray followed him in. He had his hand in front of him as he walked into the bathroom. I heard a noise and I walked in the bathroom to see what it was. I saw the old man in the floor and blood everywhere. I ran out of the front door. I didn't see where Ray-Ray went. I went to Randy's house when I left. I didn't get any money and haven't talked to Ray-Ray since it happened. I can't remember what time it was, but it was starting to get dark outside. I had been taking pills all day and was messed up.

R. p. 133. Bowers' second statement was four pages long. R. p. 139. Bowers' second statement stated:

> On Sunday night I came to Laurens with the fair.[9] We went - - we came to Laurens from Lenore, North Carolina where we'd been set up working. I think that it had been around 5:01 p.m. when we pulled into the fairground gates, because the first thing I did was went to the bathroom. I rode to Laurens with Larry in an red old Pontiac car. Larry works with the fair too. A short time later I walked to the Exxon station and bought a pack of cigarettes and a Mountain Dew. I walked over to the Family Dollar and bought some things, like shampoo, towels, et cetera. I walked back to the fair and after a while, O was with Frost this time, and we walked back to the Exxon store and back to the Family Dollar and Frost bought some things. When we were done there we went back to the fair and after

[9] The Sunday that Bowers was referring to was the Sunday prior to the VFW murder. R. p. 141.

we got dressed we all went to the VFW. There was me, Frosty, Boo, Ray-Ray, Darby, Bones, and Larry. While we were there a guy came inside and bought a six-pack.

This guy may have been Buck. A guy I met later at the fair. We stayed there that Saturday night until 10:00 p.m. and we all left after we bought some Crown Royal. We left and went to Walmart and bought some drinks and Frost bought a DVD player. I bought another pack of cigs. We then went back to the fairgrounds and drink Crown Royal and played cards and listened to music and had fun playing dice. Then stayed up that night, but I got sick and went to my bunk and went to bed. I got up around 12:00 p.m. that Monday and set up the fair with everyone. I think it was around Wednesday afternoon when I met Stan who started working for Bones, and I met Buck. Later on Wednesday Buck had been working for Terry but got fired for coming to work drunk. Buck kept hanging around Wednesday night and left around 9:00 p.m. I also met Randy who was Angela's son. We closed around 10:00 p.m. Wednesday night and Bunk and Randy's grandfather came to pick up Angela - - and Angela's daughter. They were in a minivan. When they left a man named Courtney was with them and I walked - - I walked with Randy to his house. Randy and I stopped by Chelsie's house at some apartments. Chelsie came outside and we walked over to the playground at the apartments. Randy told me to walk away and when I got back they were finishing what they were doing. Randy and I started walking and when he got to the church and the gas station some Mexicans pulled up and wanted to buy marijuana. They pulled a gun on us and we both ran. We went over to Randy's house and slept there until 12:00 p.m. that Thursday. We hung out with Amanda, Courtney, Buck, Angela, and her mother and father until around 4:00 p.m. Then me, Angela, Courtney Randy - - excuse me - - then me, Amanda, Courtney, Randy, Angela, the blonde haired girl with the eight-year-old son with Angie's dad who was driving the white minivan went to the fair. This was around 5:00 p.m. I went to work around 6:00 p.m. that day after they left that Thursday night. After I got off work, Amanda, Courtney, Randy, and me went over to Randy's house with a guy named James or John who works with the fair in his brown Ford F-150 truck. I stayed with them that night, and when I got up around 11:00 p.m. Friday morning I decided I was not going to work because they didn't pay me enough. We all hung out together at the house that afternoon and I rode a dirt bike and fell off and hurt my arm. I think that was around 5:00 p.m. Friday afternoon.

When Buck and the dude in the green car left Randy's house. When we were getting in the dude's car to go to the store Buck said let's go to the VFW. When we pulled up to the VFW me and Buck got out of the car. Buck went in first and I went in behind him. When we got to the second door, the red door, it was shut and Buck buzzed the door and the old man let us inside. When we got inside Buck walked to the right and sat down near the phone. The phone is at the end of the bar. It is a regular phone that sits on the bar, but you have to put a quarter in it to use it. When I came in I walked to the right just behind the red door and asked the

old man for a six-pack of Bud Light. The old man asked for my ID. I told him I didn't have one when we first got there - - when we first got there I saw two to three more people in there. There was no one sitting at the bar but Buck. I think that there were some tables set up that were not. The old man would not sell me beer, so I walked outside and left Buck - - I walked outside and left. Buck stayed inside. Buck was still sitting near the phone when I walked out of the VFW and left in the green car with the dude. When the dude I left the VFW I think that it was around 6:00 p.m. I went to - - I went with Angie, her father, Wanda Wayne, the baby, and we went to pick up Angie's boyfriend John. It took us around one hour to go get him because it was around 8:30 or 9:00 when we got back to the house. I walked down to Wanda Wayne's house. Angie, John - - Angie, John, and there were Wanda Wayne, and started drinking. I didn't see Buck until 10:00 p.m. when he got beer, then he left when he went to the - - to the VFW that afternoon Buck was wearing blue jeans and a white shirt with some kind of design on it. When Buck came to Wanda Wayne's house he had shorts and kind of a tee shirt on. I didn't see Buck until 12:30 a.m. when he came back to Angie's house and showed me a piece of crack that he had in his mouth.

> It looked like $150 worth of crack. I asked Buck where he got that from and Buck told me that he had made some money and bought the crack. Buck told me at that time that he had whacked the old man, took his money. Buck told me that he had left the old man in a bathroom. Then Buck left with Randy and the dude driving the green car. I didn't see Buck until Saturday morning when the police were at Randy's house.

R. pp.139-44. Bowers' third statement, made to Investigator Lynch, stated:

> That Friday night we were all talking. It was around 4:00 p.m. that day - - that day or 4:30. I was talking to Little Robin[10], Wayne Eubanks, Buck Miller. Robin and Wayne was talking about making some money that night and they wanted to make some money and rob somebody. They called - - they called me over there to where they were standing near the old trailer. Robin and Wayne asked me if I wanted to make some money, and at first I said no and then they said that they would split the money with me. I asked them where we were going to make some money and Wayne said that we were going to the VFW. When we left there we were in an old brownish grey colored car, and Randy knows what car it was. We pulled up to the VFW and I went to take a leak, and I ran to go back up front and they were already inside. There was Wayne, Little Robin, and me. Me and Wayne was standing by the bar and I said what do you want me to do and they said just stand by the door. They pulled the man in the bathroom and three to four minutes later they said run, and we all ran to the car. I sat in the car. Either Wayne or Little Robin went back inside and after three or four minutes we left. He got into the car and we left.

R. pp. 160-61.

[10] "Little Robin" is Robin Epting. R. p. 161.

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); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). "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; State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). "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

The trial judge properly admitted A.J. Bowers' three written statements to law enforcement where the statements did not constitute inadmissible hearsay because they were not offered for the truth of the matter asserted. Similarly, the Confrontation Clause was not implicated in Appellant's case because Bowers' statements were not hearsay and any potential Confrontation Clause violation in Appellant's case could only be harmless where the trial judge gave a thorough limiting instruction, Bowers' statements were not probative of Appellant's guilt, and the only information in the statement that could be perceived as incriminating was cumulative to other inarguably admissible evidence.

Appellant asserts the trial judge erred in admitting the three statements made by A.J. Bowers. Specifically, Appellant contends the statements were: 1) inadmissible hearsay, and 2) violated Appellant's right to confront witnesses against her. Both of these arguments lack merit. As was properly found by the trial judge, Bowers' statements did not constitute inadmissible hearsay because they were not offered for the truth of the matter asserted. The statements similarly were not violative of the Confrontation Clause because they were not offered for the truth of the matter asserted. Also, any violation of the Confrontation Clause was harmless in Appellant's case where the trial judge gave a limiting instruction, the redacted statements were not probative of Appellant's guilt, and the evidence contained in the statements was cumulative to direct evidence presented by the State during its case-in-chief.

Hearsay

Rule 801(c), SCRE, provides, "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000). Evidence is not hearsay unless it is offered

to show the truth of the matter asserted. State v. Green, 318 S.C. 426, 429, 458 S.E.2d 73, 75 (Ct. App. 1995).

In Appellant's case, the three statements made by A.J. Bowers were not inadmissible hearsay because the statements were not offered for the truth of the matter asserted. All three of Bowers' self-serving statements made to investigators asserted that he was merely present in some capacity but did not participate in the murder or robbery. This varies significantly from the element the State was attempting to prove, that Bowers committed the murder. The information in Bowers' statements was simply introduced to discuss the evolution of the VFW investigation and the emergence of Bowers as a suspect. Bowers' statements contained various accounts of events containing non-public information, which made him a focal point of the investigation, as it signaled to law enforcement that he either was involved in the crime or had direct knowledge regarding who the perpetrators were. The State never contended at any point that Bowers was merely present at the scene and had no culpability in the murder, which was the fact propounded by the statements. The trial judge, therefore, properly found Bowers' statements were not hearsay because they were not offered for the truth of the matter asserted.

However, even if Bowers' statements were hearsay, their admission was harmless in Appellant's case. "[T]he improper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009). "[T]he admission of improper hearsay evidence is harmless where the evidence is merely cumulative to other evidence." Id. at 199-200, 682 S.E.2d at 280. Bowers' statements were self-serving, inconsistent, and did not implicate Appellant. Instead, the statements simply provided context into the investigation by law enforcement and explained the development of Bowers as a suspect. Furthermore, the only information that could be deemed

damaging in the statement, the fact that Appellant's child and grandson were involved and their home was visited by Bowers and the other various alleged perpetrators, was adduced in greater detail during the indisputably admissible testimony of Freddie Miller. The admission of any hearsay statements made by Bowers would unquestionably be cumulative to that testimony. Appellant was therefore not prejudiced in any way by the admission of Bowers' statements.

Confrontation Clause

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend VI. The United States Supreme Court has held that this provision bars "admission of testimonial statements of a witness who did not appear at trial unless he was available to testify, and the defendant had had a prior opportunity for cross-examination." Crawford v. Washington, 541 U.S. 36, 53-54 (2004). Critically, however, the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." Crawford, 541 U.S. at 59, n.9.

In Appellant's case, as discussed *supra*, Bowers' statements were not offered by the State for the truth of the matter asserted. Bowers' statements were inconsistent, self-serving, and identified various other individuals as the actual culprit while asserting he was merely present and thus bore no criminal responsibility. This was wholly inconsistent with the State's theory of the case and the element that the State sought to prove, that Bowers was one of the perpetrators of the murder and armed robbery and was thus culpable. The State needed to establish that Bowers committed the murder and armed robbery in order to prove Appellant was guilty of all elements of accessory after the fact. The State thus did not introduce Bowers' statements for the truth of the matter asserted, because the State was attempting to prove Bowers bore culpability

for the crime. Bowers' statements provided important context to show how he became a person of interest in the investigation. In his statement, Bowers inadvertently provided critical, non-public information about the crime that alerted investigators to the fact that he was either present at the scene of the crime or, at a minimum, that he was somehow connected to the individuals that committed the crime. However, the State never asserted Bowers was telling the truth in any of his statements. Instead, the statements simply established that Bowers knew critical information about the crime, which made him a primary focus in the investigation into the murder. Bowers' statements were therefore not offered for the truth of the matter asserted. See e.g. Carter v. Douma, 796 F.3d 726 (7th Cir. 2015) (Confrontation Clause not violated when a statement is offered only to show the effect it had on the police, not for the truth of its contents); United States v. Rivera, 780 F.3d 1084, 1092 (11th Cir. 2015) (Out-of-court declarations that were either: 1) non-assertive statements incapable of being true or false or 2) statements that were indisputably false, did not constitute hearsay because they were introduced only to show their effect on the listener).

"A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (citing Delaware v. Van Arsdall, 475 U.S. 813, 822 (2006)). "Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross-examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case." Id. (quoting Van Arsdall, 475 U.S. at 684 (emphasis added in Gracely)).

Even if this Court were to find Bowers' statements were offered for the truth of the matter asserted, any violation of the Confrontation Clause was harmless where the trial judge gave the jury a thorough limiting instruction, Bowers' statements were not probative of Appellant's guilt, and the only information that could be construed as incriminating towards Appellant in Bowers' statements also came in during the testimony of Freddie Miller. First, the trial judge's limiting instruction eliminated any potential prejudice towards Appellant because his statement made clear that Bowers' statement related only to his conduct and potential culpability in the murder and Bowers' statements should not be viewed as substantive evidence of Appellant's guilt.[11] Defense Counsel requested a limiting instruction, received one, and never offered any commentary expressing that the limiting instruction was flawed in any way. The trial judge specifically stated, "Obviously this testimony should not be received by you in any negative way as it relates to [Appellant]." R. p. 127. The trial judge also indicated that jurors were nodding their heads in assent as he read the limiting instruction. R. pp. 126-27.

Second, the passing mention of Appellant's home, her son, and her grandson in Bowers' statements was not probative of Appellant's guilt and did not directly implicate her. As noted *supra*, Bowers' statements merely provided context into the investigation by law enforcement and explained the development of Bowers as a suspect. The statements were not a substantial piece of evidence against Appellant. Third, and similarly, the only information that could be construed as "against" Appellant in the statements was admitted in greater detail during the

[11] The State would note that Appellant specifically requested that a limiting instruction be given and, after the limiting instruction was given to the jury, Appellant never offered any objection to the instruction or alleged that the remedy was insufficient to cure any potential prejudice to Appellant. Thus, Appellant's argument is arguably not preserved for appellate review because Appellant requested a limiting instruction, got what she asked for, then failed to allege that the limiting instruction was insufficient in any way. See State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 615 (Ct. App. 2012) (noting the law assumes a curative instruction will remedy an error; therefore, failure to object to the sufficiency of that charge renders the issue waived and unpreserved for appellate review).

testimony of Freddie Miller. In her brief, Appellant contends the statements were harmful because: 1) In Bowers' first statement, he told police he went to Randy's house after leaving the VFW, and 2) in Bowers' third statement, Bowers placed Randy at the VFW at the time of the murder. Br. of App. p. 19.[12] In Freddie Miller's testimony, he put Bowers, Randy Gambrell, and Doyle Wayne Roberts together immediately after the murder. Miller also testified Appellant approached Gambrell and told him to take his clothes off so she could wash them. Appellant also indicated she was going to wash Bowers' clothes. Miller's statements thus establish the same thing that was inconsistently stated in Bowers' statements, that Bowers, Gambrell, and Doyle Wayne Roberts were together immediately after the murder. Miller's testimony, however, goes far beyond Bowers' statements, as he actually established Appellant's culpability in concealing evidence from the murder. Bowers' statements are thus cumulative to the much more significant testimony provided by Miller. Any possible Confrontation Clause violation was therefore harmless. Appellant's conviction and sentence should be affirmed.

[12] Appellant acknowledges that references to Randy's house in Bowers' second statement and the reference to Appellant's street address in Bowers' third statement were redacted, thus limiting any potential for prejudice from those excerpts. Br. of App. p. 16.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY:

V. Henry Gunter, Jr.
Bar # 102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 19, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Court Judge

RECEIVED
NOV 19 2018
SC Court of Appeals

Appellate Case No. 2017-001103

THE STATE,

Respondent,

v.

BRENDA L. ROBERTS,

Appellant.

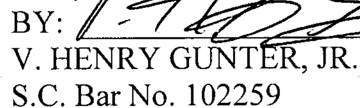
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 
V. HENRY GUNTER, JR.
S.C. Bar No. 102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 19, 2018