ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case No. 2012-213297

THE STATE,

Respondent,

vs.

CARL CLYDE CHAPLIN,

Appellant.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

I.

The trial judge properly admitted the statement because the statement was not offered to prove the truth of the matter asserted. Regardless, even if the trial judge erred in admitting the statement, any error was harmless.

STATEMENT OF THE CASE

In March of 2012, a Dorchester County Grand Jury indicted Appellant on one count of first-degree burglary and two counts of kidnapping. On October 8, 2012, Appellant proceeded to trial. The Honorable Kristi Lea Harrington presided over the jury trial. James Smiley and Laree Hensley represented Appellant at trial, and Assistant Solicitors Glenn Justis and Matthew Austin represented the State at trial. On October 11, 2012, the jury found Appellant guilty on all three counts. Judge Harrington sentenced Appellant to concurrent twenty year sentences for each count.

Appellant filed a timely notice of appeal. This appeal follows.

STATEMENT OF FACTS

Testimony of Amber Fish

On December 3, 2011, at approximately 9 p.m., Amber Fish heard a loud knock on her door. (R. pp. 11-12.) When Fish opened the door, she saw a black male with a gun at her doorstep. (R. p. 12; R. pp. 17-18.) According to Fish, the armed assailant, who was later identified as Dristin Johnson, was wearing a black ski mask, a hoody, and blue jeans. (R. p. 12; R. p. 17.) The armed assailant shoved the barrel of the gun in Fish's stomach. (R. pp. 12-13.) Fish pushed away the gun, grabbed the gun, and attempted to hit the assailant. (R. p. 13.)

But Christopher B., one of Appellant's co-defendants, opened the door and pushed Fish inside. Christopher B. was in a disguise that night, so Fish did not recognize him at first. (R. p. 13.) According to Fish, Christopher B. was wearing a big jacket, a black ski mask, and blue jeans. (R. p. 17.) At trial, Fish testified she recognized Christopher B.'s voice because he had a distinguishable speech impediment. (R. p. 13.) In addition, Fish recognized Christopher B. by his shoes, which were gray with red and black. (R. p. 17.) Fish knew Christopher B. from the neighborhood because he would occasionally come to her home and ask her for cigarettes. (R. p. 13; R. p. 31.)

The assailants ordered Fish to lie face down on the floor. Thereafter, the assailants grabbed Fish's ten-month-old daughter and threw her on the couch. (R. p. 14; R. p. 16.) Hoping for help, Fish screamed for her sleeping boyfriend, Shawn Rabine, who woke up and was immediately forced on the floor by the assailants. (R. p. 10; R. p. 14.) After tying up Fish and Rabine with a rope, the two assailants began rummaging through the house. (R. p. 14; R. pp. 17-18.) The assailants took the couple's Xbox-360, games, money

(approximately $400 in cash), cigarettes, lighter, cell phones, and Fish's cross pendant that was on her neck. (R. p. 18; R. pp. 20; R. p. 28.) As Christopher B. walked out the door, he said, "Merry Christmas, bitch." (R. pp. 19-20.)

Testimony of Karen Parker

At trial, Karen Parker, Fish and Rabine's neighbor at the time of the crime, testified for the State. (R. p. 34.) On the night of the crime, Appellant, Christopher B. and Dristin Johnson were at Parker's home. (R. pp. 36.) According to Parker, Appellant, Christopher B., and possibly Johnson, took her to the gas station to get cigarettes. (R. p. 36; R. p. 42.) Appellant drove. (R. p. 42.) On the way back, Appellant took an alternative route, which was longer than the regular route, to get back to Parker's home. (R. pp. 36-37; R. p. 42.) As they turned the corner to get on the dirt road where Parker and the victims' homes were located, one of the guys in the vehicle pointed to a trailer and said, "That's them." (R. p. 37.) The trailer the individual pointed at belonged to Fish and Rabine. (R. p. 37.)

Thereafter, Parker went inside her home while Appellant, Christopher B., and Johnson stayed in the yard. (R. p. 38.) Parker saw Johnson pull out a black shotgun from Appellant's truck. (R. p. 38.)

Testimony of Parker's Daughter

At trial, Parker's daughter ("Daughter") testified for the State. (R. p. 84.) According to Daughter, she saw Appellant, Christopher B., and Johnson at her home on the night of crime. (R. p. 85.) Daughter saw Appellant, Christopher B., and Johnson in the front yard by Appellant's truck. (R. p. 86.) Daughter was inside her home when she overheard their conversation. (R. p. 86.)

According to Daughter, Johnson "was talking about going to this girl that used to walk up and down the street, her name was Amber, and he could go into a house." (R. p. 87.) In response, Christopher B. stated, "well, I don't want to because when I already been through something like that before. I got talked into doing it." (R. p. 87.) Daughter testified that Appellant "was agreeing to what [Johnson] said." (R. p. 87.) Thereafter, Parker arrived home. (R. p. 88.) Daughter saw Appellant, Christopher B., and Johnson leave together in Appellant's truck. (R. pp. 88-89.) According to Daughter, they left the long way, which meant when they pulled out they went to the right to get out of the neighborhood. (R. p. 89.)

Testimony of Christopher B.

In addition, Christopher B. testified for the State. (R. p. 186.) Christopher B. and Appellant worked together at the flea market. (R. pp. 187-188.) On the day of the crime, Johnson brought a gun to the flea market. (R. pp. 188-189.) Appellant stated he needed some extra money, and brought of the idea of committing a "robbery." (R. pp. 190-191.) Appellant, Christopher B., and Johnson went to Walmart and bought bullets. (R. pp. 193-194.) Later that day, Appellant drove Christopher B. and Johnson to Parker's home. (R. pp. 195-197.) They decided to rob Fish because they knew she had money and drugs in her home. (R. p. 196.) Christopher B. put on gloves and a mask that he found in Appellant's truck. (R. p. 199.) Additionally, they grabbed a rope from Appellant's truck to use in the burglary. (R. pp. 199-200.)

According to Christopher B., Appellant dropped him and Johnson off at Fish's home in order to commit the burglary. (R. pp. 200-203.) Appellant waited in his truck while Christopher B. and Johnson forced their way into Fish's home, tied up her and her boyfriend, and stole various items from her home. (R. pp. 203-205.) After Christopher B.

and Johnson finished, Appellant drove them to Christopher B.'s house. (R. pp. 205-206.) They split the proceeds of the burglary. (R. p. 206.) Appellant took some of the weed that they stole from Fish's home, and they went their separate ways. (R. p. 207.)

ARGUMENT

I.

The trial judge properly admitted the statement because the statement was not offered to prove the truth of the matter asserted. Regardless, even if the trial judge erred in admitting the statement, any error was harmless.

Appellant argues that the trial judge erred in admitting Christopher B.'s statement that "I don't want to because when I already been through something like that before. I got talked into doing it." Appellant claims that the statement was not made in the course of and in furtherance of the conspiracy. But Appellant's argument fails for two reasons: First, the State did not offer Christopher B.'s statement to prove the truth of the matter asserted, i.e. that Christopher B. did not want to commit the burglary because he got talked into committing a burglary in the past. Second, even if the trial judge erred in admitting the statement, Appellant suffered no prejudice.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (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).

Analysis

A. The statement was not hearsay.

First, the State did not offer Christopher B.'s statement to prove the truth of the matter asserted, i.e. that Christopher B. did not want to participate in the burglary because he got talked into committing a burglary in the past. Because the State did not offer the statement for the truth of the matter asserted, the statement was not hearsay. Accordingly, the statement was admissible.

In South Carolina, hearsay is inadmissible "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. Our rules of evidence define hearsay as "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." Rule 801 (c), SCRE. However, Rule 801 (d)(2)(E), SCRE, provides that "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy" is not hearsay. See also State v. Gilchrist, 342 S.C. 369, 371, 536 S.E.2d 868, 869 (2000) (noting that Rule 801 (d)(2)(E) allows for the admission of a coconspirator's statement where there is evidence of the conspiracy independent of the statement sought to be admitted); State v. Mikell, 257 S.C. 315, 324, 185 S.E.2d 814, 817-18 (1971) (acts and statements of a co-conspirator made in furtherance and during a conspiracy are admissible to prove the existence of a conspiracy).

Here, Appellant's **only** argument on appeal is that the trial judge erred in admitting the following statement made by Christopher B.: "I don't want to because when I already been through something like that before. I got talked into doing it." On

appeal, Appellant does **not** challenge Daughter's testimony regarding Johnson "talking about going to this girl that used to walk up and down the street was talking about going to this girl that used to walk up and down the street, her name was Amber, and he could go into a house." (R. p. 87.)[1] Because Johnson made the statement during the course of and in furtherance of the conspiracy, his statement was admissible. See Rule 801 (d)(2)(E), SCRE.

Further, Christopher B.'s response, the only statement Appellant challenges on appeal, was not hearsay. The State did not offer Christopher B.'s statement to prove the truth of the matter asserted, i.e. that Christopher B. did not want to commit the burglary because he got talked into committing a burglary in the past. In fact, Christopher B. admitted his role in the burglary and kidnappings. Instead, the statement simply gave context to Johnson's statements that were made in the course of and furtherance of the conspiracy. See e.g., United States v. Valenzuela, 88 F. App'x 909, 913 (6th Cir. 2004) ("As recognized by the district judge, however, the comments made by McManigal on the various tapes were not offered to prove the truth of the matters asserted in those statements. Instead, McManigal's conversations were included in the materials submitted to the jury only to provide context for the damning admissions made by the defendant and by his co-conspirator, Rodriguez, in the recordings.").

Because the State did not offer the statement for the truth of the matter asserted, the statement was not hearsay. Accordingly, the statement was admissible.

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[1] See State v. Sullivan, 277 S.C. 35, 42, 282 S.E.2d 838, 842 (1981) (an issue raised at trial but not in the brief is deemed abandoned on appeal).

B. The statement was not prejudicial.

Second, even if the trial judge erred in admitting Christopher B.'s statement, the statement did not prejudice Appellant.

Even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "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).

In this case, even if the trial judge erred in admitting the statement, any error was harmless. Viewing the challenged statement in the proper context and in relation to the other evidence presented during trial, any error in the admission of the statement was

harmless and did not warrant a reversal of Appellant's convictions. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."). Notably, the statement itself was very vague. Appellant's own brief demonstrates the ambiguousness of Christopher B.'s statement. See (App. Br. p. 10) ("Assuming arguendo [Christopher B.] was referring to a burglary . . . ."). Further, the statement did not implicate Appellant in the crime. In fact, the statement did not mention Appellant's name whatsoever. The statement could not have possibly affected the verdict considering the statement had **nothing to do with Appellant**. In addition, during Appellant's closing argument, defense counsel pointed out to the jury that Daughter was approximately 40 feet away from the conversation she overheard and there was noise in the background. (R. p. 312.) Moreover, the statement was never repeated during trial, and the solicitor made no reference to it during his closing argument. See State v. Chisholm, 395 S.C. 259, 274, 717 S.E.2d 614, 622 (Ct. App. 2011) (considering the fleeting nature of a hearsay statement in concluding the statement was harmless).

For these reasons, the statement, which was isolated, vague, and unspecific, was not sufficiently prejudicial to warrant a reversal of Appellant's convictions.

CONCLUSION

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

Respectfully submitted,

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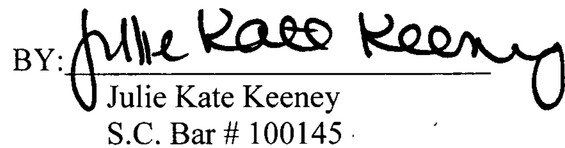
BY: 
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February 3, 2014

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THE STATE,

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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled " Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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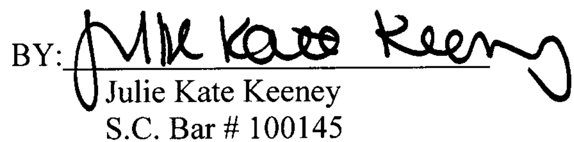
BY: 
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THE STATE,

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin John Tripp, Esquire
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I further certify that all parties required by Rule to be served have been served. This 3rd day of February, 2014.

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