STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable R. Knox McMahon., Circuit Court Judge

Appellate Case No. 2016-000528

THE STATE,

Respondent,

v.

COURTNEY LEOLA PRICE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

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II.

Whether the trial judge abused his discretion by refusing to remove a juror from Appellant's case where the juror failed to disclose that her daughter was friends with an assistant solicitor who was not involved with Appellant's case and where the juror's nondisclosure was not intentional?

STATEMENT OF THE CASE

In February 2015, the Orangeburg County Grand Jury indicted Appellant for murder. On February 22-26, 2016, a jury trial was held in the Orangeburg County Court of General Sessions with the Honorable R. Knox McMahon, presiding. Appellant was represented by Carl B. Grant, Esq. Respondent (the State) was represented by Assistant Solicitor Ashley Cornwell of the First Circuit Solicitor's Office. Prior to the selection of a jury, an evidentiary hearing took place to determine if Appellant was entitled to immunity from prosecution under the Protections of Persons and Property Act. At the conclusion of the hearing, the trial judge determined that Appellant was not entitled to immunity under the Act. Thereafter a jury was selected and the trial began. At the conclusion of trial, the jury acquitted Appellant of murder, but convicted Appellant of the lesser included offense of voluntary manslaughter. Following the verdict, the trial judge sentenced Appellant to a term of fifteen years' imprisonment. On June 27, 2017 this Court remanded the case to the trial judge for consideration of two of Appellant's sentencing motions. On May 7, 2018 the trial judge granted Appellant's sentencing motions. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Appellant and Samuel Simmons (Victim) began dating in 2008 and eventually had a child (Child) together in 2013. (R. 912, 935). Appellant alleged that Victim began abusing her in 2009 and the abuse continued up until the date of Victim's death on September 27, 2014. (R. 914-43). As of September 2014, Appellant lived alone with Child. (R. 943). Appellant alleged that Victim abused her several times during their relationship but said that she only called law enforcement on two occasions. (R. 978-87). On the first occasion, Appellant called law enforcement but declined to press charges against Victim. (R. 831-32, 982-83). On the second occasion, Appellant's mother, Beverly Price, told law enforcement that Appellant hit Victim in the face and therefore an arrest warrant was not issued for Victim because Appellant was determined to be the primary aggressor. (R. 985-97). In the weeks leading up to Victim's death, tension developed between Victim and Appellant regarding daycare expenses for Child. (R. 941-42). Specifically, Appellant alleged Victim was not paying his fair share of Child's daycare expenses. (R. 941). Accordingly, Appellant demanded that Victim return his copy of the key to her apartment. (R. 942).

On the evening of September 26, 2014, Appellant went to bed at approximately 10:30 PM. (R. 944). Appellant was awakened by a phone call from Victim at approximately 3:30 AM on September 27. (R. 944). Approximately thirty minutes later, Victim arrived at Appellant's home with a case of beer, a bottle of liquor, and a package of diapers for Child. (R. 945). Appellant confronted Victim about not paying for Child's daycare. Appellant claimed that Victim responded to her complaint by choking her. (R. 948-49). After allegedly being choked by Victim, Appellant asked Victim to leave but he refused. Instead, Victim and Appellant consumed alcohol and watched TV. (R. 950). After Appellant went upstairs to use the bathroom, Victim

followed her and they had sex in Appellant's bedroom. After having sex, Appellant confronted Victim again about paying for Child's daycare. Appellant alleged that Victim responded by choking her again. (R. 952). After allegedly being choked a second time, Appellant went downstairs to prepare a bottle for Child. While preparing Child's bottle, Appellant looked through Victim's phone and discovered that he had a child by another woman. (R. 953-54). At this point, Appellant grabbed a knife and headed upstairs to confront Victim about her discovery. (R. 956). Appellant carried the knife down by her side so that Victim would not see the knife. (R. 957, 1002). Appellant claimed she grabbed the knife for self-defense purposes and if Victim had agreed to talk with her about his other child, Appellant would have gone back downstairs and returned the knife to the kitchen. (R. 1002-03). Appellant alleged that Victim responded negatively to her questions and attempted to choke her a third time. (R. 959). As Victim began to choke her a third time, Appellant claimed she stabbed Victim in self-defense. (R. 959).

After stabbing Victim, Appellant called 911 and waited downstairs for law enforcement to arrive. Officer Tanesha Bellinger of the Orangeburg Department of Public Safety was the first officer to arrive at the scene and witnessed Appellant standing outside of her residence holding Child. Appellant and Child were covered in blood. (R. 447). Bellinger spoke with Appellant and asked her what happened. After explaining to Bellinger how she looked through Victim's phone, Bellinger testified that Appellant made the following statement: "[Appellant] quoted to me, '[Victim] called me at 3 a.m., I wish I didn't answer the phone. I'm tired of his shit. I saw the phone while he was asleep; saw that he was messing with a bitch; and had another child; and I cut him.'" (R. 451, lines 5-8). Bellinger also stated that Appellant didn't appear to have any injuries that would indicate there had been a physical altercation nor did she see any furniture

moved or displaced inside Appellant's residence that would indicate a struggle had taken place. (R. 451-52).

Appellant was taken to the Orangeburg Department of Public Safety to make a statement regarding what happened. Appellant was properly Mirandized and voluntarily chose to make a statement to Investigator Latisha Walker. (R. 602). Appellant made her first statement at approximately 8:55 AM on September 27. (State's Exhibit #73). In her first statement to Walker, Appellant explained that she went downstairs to prepare a bottle for Child and saw text messages on Victim's phone regarding him having a child with another woman. After confronting Victim, Appellant stated:

> Appellant: we got into an argument and [Victim] had his hands around my neck for about a couple of seconds, but it just teed me off and I went downstairs, and I guess he figured it wasn't nothing, so I went downstairs and I got the knife...and I went back upstairs...and we argued and I hit him, I stabbed him.

(State's Exhibit #73). During her first interview, Appellant alleged that Victim had his hands around her neck once, but did not allege that Victim choked her three separate times.

Appellant was subsequently interviewed a second time by Walker at approximately 1:12 PM on September 27. (State's Exhibit #73). In Appellant's second interview, she again told Walker that she went downstairs to prepare a bottle for Child and saw text messages from another woman. After seeing the text messages from another woman, Appellant retrieved a knife and returned to the bedroom to confront Victim about her discovery. Appellant stated she climbed on top of Victim to confront him about his other child. Appellant said: "[Victim] like kinda pushed me off of him and that's when I just got back on top of him and put it in him." (State's Exhibit #73). Appellant clarified that Victim was lying on the bed when he was stabbed. (State's Exhibit #73). During her second interview, Appellant did not claim that Victim choked her or placed his hands around her neck at any point of the night. It was not until the immunity

hearing that Appellant first claimed Victim had choked her on three different occasions that night. (R. 61, 64, 69). Appellant subsequently testified to the same facts at trial. (R. 948-49, 952, 959). At trial, Appellant also claimed that Victim was standing when she stabbed him rather than lying down on the bed as she stated in her second interview with Walker. (R. 1008-09). At the conclusion of trial, Appellant was convicted of voluntary manslaughter.

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). Trial courts have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial court'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). "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).

"'In criminal cases, the appellate court sits to review errors of law only' and is 'bound by the trial court's factual findings unless they are clearly erroneous.'" State v. Coaxum, 410 S.C. 320, 326, 764 S.E.2d 242, 245 (2014) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). "In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998).

ARGUMENT

I.

The trial judge did not abuse his broad discretion in admitting the statement of Appellant's mother when her statement, while hearsay, was admissible under the excited utterance exception to the hearsay rule, the evidence was relevant, and any possible error was harmless because Appellant was not prejudiced by the statement and it was cumulative to evidence already presented to the jury.

Appellant contends the trial court erred in admitting the statement made by Appellant's mother, Beverly Price (Mother), when she arrived at Appellant's home after Appellant stabbed Victim. Upon arriving at Appellant's residence, Walker testified that Mother said "I know [Appellant] did not kill that boy after all he does for that baby." (R. 599, lines 19-20). Appellant contends that Mother's statement was hearsay, not relevant, and ultimately more prejudicial to Appellant than probative to any fact in dispute. Appellant's argument is without merit. Mother's statement was hearsay, but it was admissible under the excited utterance exception to the hearsay rule. 803(2) SCRE. Furthermore, Mother's statement was relevant to contradict Appellant's claim that Victim never provided for Child. Even if Mother's statement was improperly admitted as hearsay, any error was harmless and the statement was cumulative to other evidence that Appellant did not object to.

Hearsay is defined 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. "The improper admission of hearsay constitutes reversible error only when the admission causes prejudice." State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280. "The admission of improper hearsay evidence is harmless where the evidence is merely cumulative to other evidence." Vick 384 S.C. at 199-200, 682 S.E.2d at 280. In order to be admitted as an excited utterance "(1) the statement must relate to a startling event or condition; (2) the statement must

have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008).

Excited Utterance

As an initial matter, the State concedes Mother's statement was hearsay. The statement was not offered to prove that Appellant murdered Victim, but rather it was offered to rebut Appellant's claim that Victim never provided for Child. However, Mother's statement was properly admitted into evidence because it was an excited utterance under rule 803(2) SCRE. Mother's statement was made to Walker as soon as she arrived at Appellant's residence and upon learning that Victim had been killed. (R. 575). While Mother did not witness Appellant stabbing Victim, her statement related to the startling event of Mother learning that her daughter had stabbed Child's father to death. Mother's statement was made as soon as she arrived at Appellant's residence; therefore, the statement was made while Mother was still under the stress of a startling event. Surely, the stress that Mother was under when she made the statement was caused by her learning that her daughter had stabbed someone to death. Because Mother's statement meet each criteria for an excited utterance, the trial judge properly admitted Mother's statement into evidence as an exception to the hearsay rule.

Relevance

Appellant argues that Mother's statement should have been excluded because it was irrelevant to any issue in dispute. Appellant correctly claims that Mother's statement is irrelevant to determine whether Appellant murdered Victim. However, the statement was not offered to prove that Appellant murdered Victim. Mother's statement was offered by the State to rebut Appellant's claims about Victim. From Appellant's opening statement through her closing

argument, Appellant sought to portray Victim as an abusive deadbeat dad who would get angry every time the subject of child support was brought up. (R. 425-27, 1173-74, 1178-80). Indeed, Appellant testified extensively about how Victim abused her over the years and that he did not pay his fair share of childcare expenses. (R. 914-43, 948-49). Furthermore, Appellant stated that merely bringing up childcare expenses was a sort of triggering mechanism that would cause Victim to become abusive and choke her. (R. 948-49). Appellant even called the manager of Child's daycare, Latoya Felder, to testify that she only received daycare payments from Appellant and never from Victim. (R. 820). In response to Appellant's claims that Victim never provided for Child, the State called Victim's sister, Shavita Garvin, to rebut Appellant's claims. (R. 432-40). The issue of whether Victim was a good father may not have been a relevant issue when the trial began, but Appellant certainly made it a relevant issue through her testimony and the witnesses she presented in her defense.

Harmless Error/ Cumulative Evidence

Appellant claims that Mother's statement was more prejudicial to Appellant than probative of any fact in dispute. However, even if Mother's statement was admitted in error, any error was harmless as Appellant suffered no unfair prejudice from the statement and the statement was cumulative to other evidence already presented to the jury.

"Whether an error is harmless depends on the circumstances of the particular case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). 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." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record

establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." Thompson, 352 S.C. at 562, 575 S.E.2d at 83. "Error is harmless when it could not reasonably have affected the result of the trial." Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)). "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008).

The primary issue for the jury's consideration in this case was whether Appellant killed Victim with malice aforethought or whether she acted in self-defense. There was never any question as to whether Appellant stabbed Victim. Appellant openly admitted during her testimony that she did kill Victim. (R. 959). Therefore, it is difficult to see how Mother's statement prejudiced Appellant. Mother never claimed to have seen Appellant stab Victim, nor did she offer her opinion as to whether Appellant acted in self-defense. In fact, Mother's statement expressed disbelief in the possibility that Appellant could have killed Victim. Mother's statement was offered for the limited purpose of rebutting Appellant's attack on Victim's character and his relationship with Child. Therefore, if Mother's statement prejudiced Appellant in any way it was minimal. Mother's statement certainly did not rise to the level of "the danger of unfair prejudice" that is prohibited by rule 403 SCRE.

In addition to Mother's statement not unfairly prejudicing Appellant, it was cumulative to evidence that was already presented to the jury. By the time Walker testified about Mother's statement, the State had already elicited testimony from Victim's sister to prove that he did provide financial assistance to Appellant to help raise Child. (R. 433-34). This testimony was not objected to by Appellant. Therefore, Mother's statement about Victim providing for Child was cumulative to the testimony of Victim's sister. After the State rested its case, Appellant testified

that she did, in fact, stab Victim. (R. 959). Therefore, even if the jury interpreted Mother's statement to be an assertion that Appellant stabbed Victim, Appellant confirmed that she did stab and kill Victim during her testimony on direct examination. (R. 959). The evidence utilized in Mother's statement was cumulative to other evidence that was either introduced by Appellant or not objected to by Appellant. Appellant's conviction and sentence should be affirmed.

II.

The trial judge did not abuse his broad discretion in refusing to remove a juror who failed to disclose that her daughter was friends with an assistant solicitor who was not involved with Appellant's case when the juror's failure to disclose this fact was not intentional.

Appellant contends the trial court erred in not removing a juror who did not disclose during *voir dire* that her daughter was friends with a member of the solicitor's office. Specifically, Appellant alleges that Juror 36 intentionally concealed her daughter's relationship with a member of the solicitor's office and therefore the trial judge was required to replace the juror with an alternate or grant Appellant a new trial. Appellant's argument is without merit. The juror's failure to disclose her daughter's relationship with an assistant solicitor was unintentional. Therefore, the trial judge acted within his discretion in refusing to replace the juror with an alternate and by not declaring a mistrial.

"When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). The first question an appellate court must address in a juror disqualification analysis is whether the juror intentionally concealed information during *voir dire*. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106-107 (1998). An "intentional

concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." Woods 345 S.C. at 588, 550 S.E.2d at 284. An unintentional concealment "occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." Id. "If a juror's nondisclosure is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternate, or declare a mistrial." State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 246 (2014).

Here, the trial judge posed the following relevant question during *voir dire*: "Is any member of the jury panel related by blood or marriage, or close personal friends, have any social, personal, business, or professional relationship with any of the attorneys in this matter, Assistant Solicitor Cornwell or Mr. Grant? If so, please stand." (R. 291-92, lines 23-2). Juror 36 did not stand in response to this question. On the third day of the trial, Juror 36 asked to speak with the trial judge. The following exchange occurred:

> The Court: And I had asked a number of questions of about whether you and the other members of the jury panel knew certain individuals and such like that. Do you know Sara Ford?
>
> Juror 36: She's a friend of my daughters
>
> The Court: So you know her as a friend of your daughter?
>
> Juror 36: Right.
>
> The Court: Do you know her – do you personally know her?
>
> Juror 36: Not really.
>
> The Court: Okay. And do you know her occupation?

Juror 36: I know she's an attorney.

The Court: Okay. Do you know where she works?

Juror 36: No, sir.

The Court: No. you don't know where she works. Okay. She's employed with the solicitor's office.

Juror 36: Okay.

The Court: Not involved with this case, but she is employed with the solicitor's office. Given the fact that she's a friend of your daughters and now you know, I've told you she's employed with the solicitor's office, would that affect your ability to be fair and impartial in –

Juror 36: Well—

The Court: --the trial of this case for both [Appellant] and the State?

Juror 36: No, sir.

The Court: Any doubt in your mind?

Juror 36: No, sir.

The Court: and you have no personal relationship with Ms. Ford?

Juror 36: No, sir.

The Court: So if I had called the name Sara Ford, which I think I did, you wouldn't even know that was the Sara Ford that was a friend of your daughter.

Juror 36: I recognized her.

The Court: oh, you recognized her. But you don't have any relationship with her whatsoever?

Juror 36: No, sir.

(R. 505-07, lines 12-1).

The proceeding colloquy demonstrates that Juror 36's failure to disclose the friendship between her daughter and an assistant solicitor was unintentional. Initially, the question

presented during *voir dire* is somewhat ambiguous. The trial judge asked the panel if they had any close relationship with any "of the attorneys ***in this matter***"? (R. 292, line 1) (emphasis added). The question posed does not indicate if a juror should come forward if they know someone in either attorney's office. Juror 36 did not know Sara Ford worked in the solicitor's office, but only knew she was an attorney. (R. 505-06). Even if Juror 36 had known that Ford worked in the solicitor's office, the question posed to the panel by the trial judge was sufficiently ambiguous to not be comprehensible to the average juror.

Even if the question was unambiguous, Juror 36 did not intentionally withhold her relationship with Ford from the court because she did not have a relationship with Ford nor did she even know Ford worked at the solicitor's office. The trial judge directly asked Juror 36 if she had a personal relationship with Ford and Juror 36 said no. (R. 506). Furthermore, Juror 36 said her daughter's relationship with Ford would not affect her impartiality in the case. Additionally, Juror 36 did not know Ford worked in the solicitor's office until the trial judge told her. (R. 505-06). Indeed, Juror 36 did not witness Ford participating in the trial in any way, because Ford had never been in the courtroom prior to the trial judge questioning Juror 36. (R. 508, 510). In fact, at Appellant's request, the trial judge ordered Ford not to enter the courtroom for the remainder of the trial. (R. 510). The trial judge acted within his discretion in refusing to discharge Juror 36 or to declare a mistrial. Appellant's conviction and sentence should be affirmed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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