IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Appellate Case No. 2021-000457

The Honorable Craig Brown, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Christopher P. Cooper……Appellant.

INITIAL BRIEF OF APPELLANT

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II. The trial court erred in not suppressing Appellant's statements when they were involuntarily given to law enforcement.

III. The trial court judge erred in allowing the complainant to testify that she recognized Appellant's voice from the bond hearing since the identification procedure was unnecessarily suggestive and conducive to irreparable misidentification.

STATEMENT OF THE CASE

Christopher P. Cooper was indicted by the Lexington County grand jury for burglary, 1st degree, 2017-GS-32-3587, kidnapping, 2017-GS-32-3589, armed robbery, 2017-GS-32-3588, possession of a firearm during a violent crime, 2017-GS-32-3591, criminal conspiracy, 2017-GS-32-3592, and criminal sexual conduct, 1st degree, 2017-GS-32-3590 during its November 2017 term. He was tried before the Honorable Craig Brown and a jury in April 2021. Appellant was represented by Theo and Anna Williams. The State was represented by Heather Weiss and Megan Raymer of the South Carolina Attorney General's Office. Appellant was convicted and sentenced to life in prison.

This appeal timely follows.

Relevant Facts

Appellant was tried along with his co-defendant and cousin, Craig Cooper for the home invasion of a suspected drug dealer and then the rape of his girlfriend. In connection with its investigation of the crime, law enforcement spoke to Craig Cooper who was identified as being present at the scene due to a CODIS hit. ROA 639. Craig Cooper told law enforcement that Appellant was with him during these crimes. ROA 146, 701. Initially, law enforcement pursued two other suspects. ROA 637-38.

Law enforcement located Appellant at his family's car dealership and he returned to the West Columbia police station with them. There, he was interrogated and ultimately offered a statement that implicated himself in the crime. Law enforcement also identified Appellant's DNA on a paper towel found in the home. ROA 1001.

At trial, Craig Cooper, who initially had agreed to cooperate with law enforcement and testify against Christopher Cooper, invoked his rights under the Fifth Amendment and refused to testify. ROA 555.

What the jury did not hear, and is discussed in greater detail below, is that after this purported home invasion, the complainant approached Appellant's brother and requested money.

Appellant did not testify at trial and the defense did not offer any witnesses.

Appellant was subsequently convicted.

ARGUMENTS

I. The trial court erred in not allowing Appellant to offer evidence that the purported victim approached Appellant's brother and requested money when that evidence was relevant and was admissible to impeach her testimony pursuant to SCRE, Rule 404(b).

Prior to the start of trial, the State motioned to suppress "any allegation of bribery." ROA, ll. 20-21[1]. The State offered the court what it believed the allegations consisted of. In short, the State informed the court that after these events allegedly occurred, Appellant's brother went to the strip club where the complainant works. According to the state, the two recognized one another immediately. ROA 110. According to the state, Appellant's brother offered her money. She became upset and called her husband. A bouncer at the strip club did not remove Appellant's brother from the business. The complainant then sent an email to the Solicitor's Office informing them of the incident. The complainant then went to Appellant's brother's business and leaves him her telephone number. They talk. According to the state, she asked the brother why he was at her place of business. ROA 110. Then, according to the state, he offered her money. She then sent an email to the solicitor's office informing them that she was no longer scared and that she was sorry she wasted the solicitor's office's time. ROA 111, ll. 9-16. According to the state, "they kept meeting." ROA 111, l. 22. At some point, Appellant's brother alleged she was attempting to

[1] The state also argued to suppress motions relating to the arrests of the complainant's husband, any mention of gonorrhea or chlamydia from the complainant's medical records, and to prevent the jury from hearing that she worked as a stripper at Platinum West. ROA 102-108.

bribe him. ROA 112. According to the state's version of events, the complainant never agreed to change her story or that she would drop the charges. ROA 112. Investigator Taylor of the Lexington County Sheriff's Office investigated the issue. ROA 112.

The state argued to suppress any mention of this entire incident because it was unrelated to the home invasion crime and therefore irrelevant. ROA 113-14.

Defense counsel argued it would be relevant for impeaching her testimony under SCRE, Rule 404. ROA 115, ll. 12-18. Defense counsel offered the court his version of these events. He explained Appellant's brother saw the complainant at the strip club. He left her a tip, but she disappeared. When he returned to his place of business at the car dealership, there was a note from the complainant with her telephone number on it. ROA 115-16. She and her sister and come to his place of employment and asked him to call her. There were multiple discussions about money. ROA 116. Appellant's brother reported this to the solicitor's office who then had Kate Usry investigate the matter. They referred the matter to the West Columbia Police Department. ROA 116. Appellant's brother tried to get direction from law enforcement as to whether he should pay her the money or not. ROA 117.

Trial counsel argued it was relevant to the complainant's character:

> Judge, its' a question of fact for the jury in regards to her character only. The big reason why this is important, Your Honor, is that, obviously, in *State v. Finley*, which is a 1989 case, an old case,[2] dealing with extortion. It was a sex case, believe it or not, like a sexual rape case. And they found that they could talk about what had occurred by this-- the guy was

[2] *State v. Finley*, 300 S.C. 196, 387 S.E.2d 88 (1989).

> going to testify that he had had sex with her or something like-- which is terrible; it was in violation of the rape shield statute.
>
> But they allowed the case to come in because it felt like it was establishing motive, bias, and prejudice on the part of the prosecuting witnesses.

ROA 117, l. 13- 118, l. 1.

Trial counsel also relied on *Vanover v. State* [3]to support the admissibility of the evidence. ROA 118. The state continued to argue this matter would "muddy the waters." ROA 122, ll. 10-13. Defense counsel informed the court that both the complainant and her sister made recordings of their conversations with the Appellant's brother. ROA 124. The state informed the court there were also recordings of what Appellant's brother told Hamp Taylor (an investigator) about what happened, and what Appellant's brother told Stan Smith of the Richland County Sheriff's Department about what happened. ROA 125. Attorney Willie Bradley is also a witness to these events. ROA 125. Trial counsel argued:

> MR. WILLIAMS: … I'm a pretty straight guy. I think there was talk of money. And I think that the impression, clear impression, from my client, was that if he-- from my client's brother, I should say, that if he paid her like $25,000 and these charges were going to go away, he was going to help in some way.
>
> The e-mail deal comes in because that was presented as evidence that she was trying to help. I don't know why the email comes in except for that reason. It's like some song and dance going on between these two parties, Your Honor. Clearly, one party didn't trust the other party; there's no question about that.

ROA 126, ll. 13-25.

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[3] *Vanover v. State*, 433 S.C. 31, 856 S.E.2d 160 (Ct. App. 2021).

The court took the issue under advisement. ROA 131-32. Later, the judge granted the State's motion to suppress any mention of the bribery scheme. ROA 254-260.

Defense counsel later proffered the testimony that he would have testified to had the information been allowed by the judge. ROA 459.

Appellant's brother testified that he met the complainant on or about July 10, 2018. ROA 460. He had been at the strip club, Platinum West, when the complainant came up to him. They realized they recognized one another. She stood up and went to the back. After ten minutes, she came back out and approached another customer. He left the club. ROA 461. The next day he attended a car auction. When he returned to his car dealership, there was a note on his desk from the complainant with her telephone number. He called the number and she said she would be back in 10 minutes. ROA 461.

Ten minutes later, the complainant and her sister showed up with a baby. The other woman asked him how would he feel if something like this happened to someone in his family. ROA 461. The complainant then jumped in and said, "listen, I need $25,000, and I'll help your brother." ROA 462, ll. 1-2. He told her he did not have $25,000 but that he could probably come up with $10,000. ROA 462. She got up and told him that when he came up with the money, he should call her. ROA 462, ll. 8-10.

The complainant called back and again and told Appellant's brother that her husband wanted to meet with him. They met over at Bojangles. ROA 462. He told

Appellant's brother that he knew everything about him, and where he lived. He told him he was "connected" and that he "could have something done to you." He then told Appellant's brother that if he gave them $10,000 and a car that they were "going to go away." ROA 463. They shook hands and afterwards Appellant's brother reached out to law enforcement. He first spoke with Stacy Turner of the West Columbia Police Department. ROA 463.

The next day, the complainant reached back out to Appellant's brother and said she had a "good faith" gesture to show him. He met with her at Bojangles and she showed him her phone. She showed him an email she sent to the victim's advocate. ROA 464-65. Appellant's brother then said he reached out to Ms. Turner again. ROA 465. Turner never returned his call. He ended up speaking to other law enforcement officers from Lexington. Appellant's brother met with them at Willie Bradley's office. ROA 466. At some point he learned they had closed the file on the issue. ROA 467.

The State did not offer any witnesses and the court did not revisit its ruling. ROA 487.

The trial court erred in not allowing Appellant to use this evidence of bribery or extortion to impeach the complainant because it was relevant and probative of the complainant's credibility. Craig Cooper initially gave law enforcement a statement indicating the two of them met up with the complainant for purposes of having a consensual sexual encounter. ROA 521, 798. Given the jury was asked to determine whether the sexual contact was consensual or not, evidence the complainant

attempted to extort money from Appellant's family was critically important in assessing her credibility.

In *State v. Finley,* the complainant there attempted to extort the appellant which was captured on a tape recording. The complainant testified that the appellant's girlfriend had called her and told her she would pay her $1000 to drop the charges. The complainant, however, called the appellant's girlfriend (which was tape recorded without the complainant's knowledge) and offered to drop the charges in exchange for $1000 (she wanted $20 that night). Appellant's counsel in *Finley* sought to introduce the tape recording to impeach the complainant's testimony. The judge ruled it was inadmissible because it was irrelevant and improper. The Court held the evidence was admissible because it was relevant on the issues of (1) whether the appellant tried to obstruct justice, or (2) whether the prosecuting witness was attempting to extort money. *Finley*, 300 S.C. at 199. "It is well settled that evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue and to bear directly or indirectly thereon. The evidence need not be sufficient in itself to establish the whole or any definite portion of a party's contention." *Id. See also Associate Management, Inc. v. E.D. Sauls Construction Company*, 279 S.C. 219, 305 S.E.2d 236 (1983); *Gause v. Livingston*, 251 S.C. 8, 159 S.E.2d 604 (1968); *Drayton v. Industrial Life & Health Ins. Co.*, 205 S.C. 98, 31 S.E.2d 148 (1944); *S.C. Department of Social Services v. Bacot*, 280 S.C. 485, 313 S.E.2d 45 (S.C. Ct. App. 1984). *See also Commonwealth v. Corcoran*, 252 Mass. 465, 148 N.E. 123 (1925) (finding a general plot or scheme to obtain money by threats to accuse

persons of a crime bears on the credibility of a witness). The trial court abused its discretion by finding this testimony was inadmissible, and Appellant asks this Court to reverse his convictions and sentence.

II. The trial court erred in not suppressing Appellant's statements when they were involuntarily given to law enforcement.

Prior to the start of trial, the parties held a *Jackson v. Denno*[4] hearing. ROA 146. Jody Lee Putney, a narcotics investigator from West Columbia Police Department testified. He was instructed to locate Appellant at Reunited Auto Sales. ROA 147. he went back to the police station with the officers. ROA 148. Putney and Investigator Morris placed him in an interview room. Putney testified they read him his Miranda rights. ROA 148. Investigator Morris was the lead investigator. ROA 149. Putney testified that Appellant did not ask for help, he was not threatened, and he did not request to use the bathroom. ROA 149-50. Putney drop to the car dealership with Investigator Todd. ROA 153. Putney was likely wearing a suit and tie when he retrieved Appellant. ROA 154. Putney did not have any independent recall of his trip to pick up Appellant. ROA 155. Putney indicated there "might" have been communication with Appellant during the ride to West Columbia. ROA 158. He could not recall if he was a witness to the interrogation. ROA 159. Investigator Todd was not in the interrogation room. ROA 159. Putney testified he was only there for the Miranda statement. ROA 160.

[4] 378 U.S. 368 (1964)

Investigator Christopher Morris also testified. ROA 162. He was the lead investigator on the case. He testified they developed Craig Cooper as a suspect based on a DNA Codis hit. ROA 163. After he interrogated Craig Cooper, he wanted to talk with Appellant. ROA 164.

Morris testified it is the policy of West Columbia Police Department not to record suspect interviews. ROA 166. If the person being interviewed cannot read or write, they will use alternative methods of video and audio recording. ROA 167.[5] Captain Bruce Wade indicated they did not record statements due to the budget. ROA 751. He testified the decision not to record has been in place since before he started working there, in 2005. ROA 763. There is a camera in the interrogation room, but apparently it is only a live feed from that room to a supervisor's office. ROA 167-68. Morris and Putney were in the room to speak with Appellant first. ROA 168. Morris was disarmed, per policy. ROA 168.

The Miranda form appeared to have been filled out at 4:54pm on August 1, 2017. ROA 171. It was close to the time that the officers would be getting off work. ROA 171. Morris testified he could not recall how long the interrogation took place but that he believed it was no longer than "a couple hours." ROA 173, l. 8. There

[5] *But see* Lexington County man sentenced to 45 years for domestic violence murder where Marion C. Wilkes confessed to murdering his wife during an interview with Captain Bruce Wade of the West Columbia Police Department and his audio recorded confession was admitted at trial. http:// https://www.abccolumbia.com/2018/03/02/lexington-county-man-sentenced-45-years-domestic-violence-murder/ (*last visited* September 7, 2021). Morris testified he had been with the Columbia Police Department for 9 years, so certainly he would have known that confessions were recorded in at least one other case. ROA 161.

were no breaks taken during the interrogation. ROA 173. At some point, Putney left the room. ROA 178. Captain Wade entered the room. ROA 179. He was not present when Morris took the statement from Appellant. ROA 188.

Investigator Morris was the only person who witnessed Appellant's statement. ROA 192. There were two witnesses on the complainant's statement. ROA 192. Morris claimed Appellant never asked to have a lawyer present. ROA 195. Even though he present for the entire interrogation, he had "no idea" whether Captain Wade came into the interrogation room, slammed a copy of Craig Cooper's statement on the desk and told him Craig Cooper would get a better deal than Appellant would. ROA 195.

Appellant testified during the *Jackson v. Denno* hearing. ROA 197. Appellant stated he told the officers who came to the car dealership that he did not have anything to say and that he wanted a lawyer. ROA 197-98. Once they got to the police department, he told Putney he needed a lawyer with him. ROA 198. Appellant testified Putney keep trying to pull him out a little bit. ROA 198, l. 9. Then, the third officer entered the interrogation room "guns blazing, yelling--." ROA 198, l. 12. One of the officers threatened Appellant-- "He was, oh, well, had it been me, you know, I'd have killed you, you know, this, that, and the third… ROA 199, ll. 5-10.

Appellant testified:

> I don't have a clue what you're talking about, sir, but I need a lawyer present. It's a totally different world for me. I was just taken from work into an interrogation room. Super nervous. He left. I was still holding to it, my word of needing a lawyer present. He went. And I guess that's his supervisor that he went and got. Supervisor came in there with a totally different tone--

ROA 199, ll. 12-20.

After meeting with Captain Wade, Appellant testified he had to be escorted to the restroom because he lost his bowels. ROA 201. Appellant reiterated that he asked for a lawyer but that the officers would not listen. ROA 200-201. He was provided his Miranda warnings after he was taken to booking, and after they obtained a buccal swab from him. ROA 201-202.

A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession. *Jackson v. Denno*, 378 U.S. 368, 377 (1964). "This principle is best justified when viewed as part and parcel of 'fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process Clause of the Fourteenth Amendment.'" *State v. Pittman*, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (quoting *Haley v. Ohio*, 332 U.S. 596, 607 (1948) (Frankfurter, J., concurring).

In determining whether a confession was given "voluntarily," this Court must consider the totality of the circumstances surrounding the defendant's giving the confession. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). As the United States Supreme Court has indicated, the totality of the circumstances includes "the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep." *Id.* (internal citations omitted). No one factor is

determinative, but each case requires careful scrutiny of all surrounding circumstances. *Id.* *See also State v. Moultrie*, 273 S.C. 60, 254 S.E.2d 294 (1979) (a waiver of *Miranda* rights is determined by the totality of the circumstances).

Once an accused requests counsel, police interrogation must cease unless the accused himself "initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 485 (1981). Interrogation is the express questioning, or its functional equivalent which includes "words or actions on the part of the police… that the police should know are reasonably likely to elicit an incriminating response." *State v. Sims*, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991) (citing *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

The trial court erred in not suppressing Appellant's statement allegedly made to the law enforcement officers in this case. Appellant repeatedly invoked his right to counsel but was ignored by law enforcement. The officers testified that it was their "policy" not to record these statements but it is clear they have done so in other cases. Additionally, the trial court never heard from the officer who accompanied Putney to retrieve Appellant from his brother's car dealership. Putney could not recall what sorts of communications were had during that trip making Appellant's claim that he invoked his right to counsel unrefuted. The State failed to show Appellant's statement was knowing and voluntary. This Court should reverse Appellant's case and remand for a new trial.

III. The trial court judge erred in allowing the complainant to testify that she recognized Appellant's voice from the bond hearing since the identification procedure was unnecessarily suggestive and conducive to irreparable misidentification.

During the complainant's testimony, the following exchange occurred:

> MR. WILLIAMS: The objection goes to the identification of my client as being in bond court and saying that her voice-- that she recognized the voice from that day, because there was no type of test, no type of procedure that was done to see whether it sounded like this person versus another person. She put his character at issue by saying he's been arrested. . . she can't today probably say that it's his voice. It may sound like his voice.

ROA 408, ll. 3-19.

Without hearing any argument from the State, the court found her identification admissible under Rule 901(b)(5). ROA 408-09. He also further stated that the identification was admissible pursuant to *State v. Plyer*[6], and that pursuant to *State v. Smith*[7], no special qualifications are required to testify regarding matching the voice of a perpetrator to a defendant. ROA 417. "The only foundation that needs to be laid is that the witness recognizes the voice of the defendant and has a basis to compare his voice with that of the perpetrator, which further goes to the Court's prior ruling." ROA 417, ll. 21-25.

The complainant then testified that the voice of the "skinnier guy" from the night of her attack was the same as Appellant, whom she heard at bond court. ROA 418-19.

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[6] 275 S.C. 291, 270 S.E.2d 126 (1980).

[7] 307 S.C. 376, 415 S.E.2d 409 (1992).

This was error and the trial court should not have allowed this identification into evidence.

SCRE, Rule 901(b)(5) states (as an example of authentication or identification conforming to the requirements of the rule): Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

The trial court judge erred first by not asking the State to respond to defense counsel's objection. Had he done so, the issue would have been more appropriately fleshed out for consideration. The trial court instead focused on the issue of authentication and he ruled on that basis, but the issue was one of reliability as trial counsel initially began to argue. The conditions under which the complainant made her identification was one that was inherently suggestive. She made her identification based on her hearing his voice during his bond hearing following the arrest of Appellant. The trial court did not consider the reliability of the identification at all which was error.

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. *Stovall v. Denno*, 388 U.S. 293 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Manson v. Brathwaite*, 432 U.S. 98 (1977) (citing *Simmons v. United States*, 390 U.S. 377 (1968)). There is

no question but that the identification procedure here was unnecessarily suggestive and conducive to irreparable misidentification-- it was Appellant's bond hearing. He was handcuffed and in police custody when she heard his voice. Just as it would be improper to allow an in-court photographic identification undertaken in these circumstances, so too it was improper to allow an audio identification into evidence without a full vetting of the reliability of the identification. The trial court erred by focusing on authenticity and not reliability, and Appellant respectfully asks this Court to reverse his convictions and remand for a new trial.

CONCLUSION

This Court should reverse Appellant's convictions and sentence and remand for a new trial.

Respectfully submitted,

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