IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| JULIE L. BAILEY, | ) | |
| | ) | No. 7, 2006 |
| Defendant Below, | ) | |
| Appellant, | ) | Court Below: Superior Court |
| | ) | of the State of Delaware in |
| v. | ) | and for Sussex County |
| | ) | |
| STATE OF DELAWARE, | ) | Cr. ID # 0409005305 |
| | ) | |
| Plaintiff Below, | ) | |
| Appellee. | ) | |

Submitted: February 28, 2007
Decided: April 9, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

***O R D E R***

This 9th day of April, 2007, it appears to the Court that:

(1) Appellant-defendant Julie L. Bailey appeals from her first degree murder by abuse or neglect conviction in Superior Court. Bailey contends that there was insufficient evidence to establish beyond a reasonable doubt that she was guilty because the State did not prove the *corpus delecti* of the homicide independently of Bailey's incriminating statements. Bailey also contends that the trial judge abused his discretion by instructing the jury regarding the Safe Arms for

Babies Law and by permitting a police officer to read the statute to the jury during trial.[1]

After consideration of the record, we conclude that the trial judge abused his discretion when he allowed a police officer to read the Safe Arms for Babies Law into evidence on the theory that it was relevant to Bailey's *mens rea* in the absence of any evidence suggesting she knew of the statute. The trial judge's abuse of discretion, however, was harmless error because it did not prejudicially effect the outcome of the case given ample evidence that Bailey acted recklessly. There was otherwise sufficient evidence in the record from which the jury could conclude that Bailey recklessly killed her newborn baby, justifying admitting her incriminating statements. Accordingly, we affirm.

(2) In 2002, Bailey, Joy Dawn Clark, Bailey's friend, and David Wingate, a cook, all worked at the J.W. Pickles restaurant in Georgetown. Bailey was married to James Bailey, and the couple had two daughters. James Bailey had a vasectomy in 1998 after his second daughter's birth. In the spring of 2002, however, Bailey became pregnant as a result of an extramarital affair with Wingate.

(3) Bailey did not tell her husband that she was pregnant and concealed her pregnancy by wearing baggy clothing. Bailey was worried about her

[1] 16 *Del. C.* 907 (A) (July, 9, 2001).

pregnancy, and told Clark that she could not afford an abortion. At approximately 3 a.m. on January 28, 2003, Bailey telephoned Clark and told Clark that she was about to deliver. Bailey picked Clark up in her car, and they drove to the vacant residence of Bailey's neighbor Eric Grant. The home was temporarily unoccupied because the well water pump had failed, and there was no running water. The temperature in Sussex County on that date ranged from a low of 6 degrees Fahrenheit to a high of 33 degrees. Grant's house was a mile and a half away from Nanticoke Hospital, a fact well known to Bailey because she had worked there until December 2001 in the medical surgery unit.

(4) Bailey and Clark entered the house through an unlocked door, and Bailey went into the bathroom while Clark waited in the living room. Clark heard a lot of groaning and crying in the bathroom, and then heard Bailey announce, "it's a boy." Clark testified to hearing and seeing the baby crying while the newborn was lying on a green bathroom floor mat. Bailey attempted to clean the bathroom and left with the baby wrapped in the bathmat approximately 15-20 minutes later.

(5) Bailey drove Clark home around 5 a.m., and then drove from Bridgeville to 7 Waples Drive in Georgetown where Bailey believed Wingate was renting a room from James Lee Clay. Unknown to Bailey, however, Wingate had moved out and another gentleman, Phillip Porter, had moved in. Bailey later told Clark that she had left her baby on the front doorstep of the Clay home. James

Bailey had no idea that his wife had delivered a baby until she confessed to him about her affair with Wingate and stated that she had left the baby on what she believed to be Wingate's doorstep.

(6) Word nevertheless spread about Bailey's baby, and eventually someone contacted the State Police. On May 14, 2003, Bailey told Delaware State Police Officer Ramona Doyle that she had delivered a baby on her own and that she left the infant on Wingate's doorstep. The next day, Bailey gave a similar account to another State investigator, Beverly Heath Ellis. Bailey told Ellis that she had knocked on a bedroom window at Clay's house, and after she saw curtains fluttering and the television set playing, she left the newborn outside. Bailey also told Ellis that after she left the house, she knew nothing more about her baby's whereabouts.

(7) Clay never found a baby on the doorstep of his home. A State Police door-to-door canvass of Clay's neighborhood in the spring of 2003 did not locate any unknown infants. To this date, the baby has never been located. Police recovered a blood sample from a vinyl floor tile in Eric Grant's bathroom that contained DNA consistent with offspring of Bailey and Wingate. Dr. David Paul, a board certified neonatologist, testified that newborns are very vulnerable to cold stress, and that an infant exposed to 8-10 degree Fahrenheit temperatures would survive only a matter of minutes. A Superior Court jury convicted Bailey of first

degree murder by abuse or neglect, and a Superior Court Judge sentenced her to 40 years imprisonment at Level V suspended after serving 20 years for decreasing levels of supervision.

(8) Bailey now claims the record contains insufficient evidence of the *corpus delicti* of the crime alleged. We review the record to determine whether the trial judge properly applied Delaware law to the facts of the case.[2] Before reaching the merits of this claim, however, we must first determine whether Bailey properly preserved the issue for appeal.[3]

(9) On October 10, 2005, Bailey filed a pretrial motion to dismiss the indictment for Murder on the basis that the state could not establish the *corpus delicti* of the alleged criminal offense. Bailey argued that the State could not prove that her son, admittedly born on January 28, 2003, was dead or that his death occurred by criminal means. The trial judge deferred ruling on the motion until he had an opportunity to hear the State's evidence at trial. On the third day of trial, October 13, 2003, Bailey renewed her motions arguing that the State was required to prove the *corpus delicti* of the offense alleged before presenting any of her taped statements to the police to the jury. The trial judge asked the State to proffer its

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2 *DeJesus v. State*, 655 A.2d 1180, 1200 (Del. 1995).

3 *Id.* at 1198.

intended evidence because the State had only presented a limited portion of its evidence at that stage of the trial. Bailey did not object.

(10) After hearing argument from counsel, the trial judge denied Bailey's motion to dismiss, finding that there was sufficient evidence to establish the *corpus delicti* independent of Bailey's statements. The jury then heard Bailey's incriminating statements. Because the sufficiency of the evidence establishing the *corpus delicti* issue was properly before the trial court, it is subject to consideration on appeal.[4]

(11) Delaware law requires that in order to sustain a conviction based on an accused's confession, the confession must be corroborated by other independent evidence, otherwise known as the *corpus delicti* rule.[5] "Generally, *corpus delicti* refers to 'the commission of a crime by somebody."[6] In Delaware, the purpose of the *corpus delicti* rule is to protect "those defendants who may be pressured to confess to crimes that they either did not commit or crimes that did not occur."[7]

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4 *See DeJesus*, 655 A.2d at 1199.

5 *Id.*

6 *Jenkins v. State*, 401 A.2d 83, 86 (Del. 1979), *quoting State v. Galvano, Del.O. & T.*, 154 A. 461 (1930).

7 *DeJesus*, 655 A.2d at 1202.

(12) The *corpus delicti* rule does not require the state to prove independent evidence of every element of the crime charged.[8] Rather, the "rule only requires the State to present independent evidence which shows both (a) proof of injury, death or loss, according to the nature of the crime; and, (b) proof of criminal means or agency as the cause of the injury, death or loss."[9] "Because the State need not provide independent evidence of each element of the offense with which the defendant is charged, the *mens rea* of the killer may be proven by the confession alone."[10]

(13) This Court has never precisely defined the specific quantum of independent evidence required by the State to establish the *corpus delicti.*[11] In *Nelson*, this Court held:

> We see no reason to import into the administration of the criminal law a special measure of proof for the corroborating evidence required. Hair-splitting distinctions and confusion in the minds of jurors are apt to be the result. The defendant is sufficiently protected by requiring proof of the corpus delicti beyond a reasonable doubt upon all the evidence taken together, provided that some evidence apart from the confession is adduced. The danger of an occasional false or untrustworthy confession may exist, and it is for this reason that some independent proof of the corpus delicti is required. But that there is

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8 *Id.* at 1199.

9 *Id.* at 1200.

10 *Id.*

11 *Nelson v. State*, 123 A.2d 859, 862 (Del. 1956).

> any real necessity to prescribe a special measure of such proof we cannot believe.[12]

(14) Bailey argues that the trial judge erred because the circumstances of the infant's death "were established only through the circumstances provided only by what the Defendant said in her statements." Without these statements, Bailey argues, there is no evidence to show how the infant died or if he died at all.

(15) Of course, it can be asserted that for the *corpus delicti* rule to have any application, Bailey must have *actually confessed*.[13] Bailey never actually told the State Police or anyone else that she killed her newborn child. The trial judge, however, by denying Bailey's motion for a judgment of acquittal at the conclusion of the State's evidence, assumed that Bailey's incriminating out of court statements fell within the *corpus delicti* rule:

> Here, there was no confession. Rather there were a number of statements designed to be exculpatory but which, by virtue of inconsistencies, proved incriminating. It is questionable whether these statements fall within the reach of the rule, but this Court, for the purpose of this opinion, will assume that the statements are equivalent to a confession. . . .

(16) If we assume that Bailey's out of court statements are the "functional equivalent of a confession," as the trial judge did, there is still no basis to set aside Bailey's conviction. First, in the nearly three years between the child's birth

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12 *Id.*

13 *Rogers v. State*, 2004 WL 2830898, order at ¶ 6 (Del. 2004).

(January 23, 2003) and Bailey's trial (October 2005), the child has never been located. Second, although Bailey claimed to have left the baby on the front doorstep where she believed Wingate lived, two occupants of the house (Clay and Porter) never found a baby on the doorstep. Finally, Bailey was the last person seen in possession of the child. Expert testimony established the likelihood of death given the circumstances described in all the evidence up to the last moment any one had seen the child. Therefore, there was sufficient evidence for a rational trier of fact to conclude that the child died and that his mother's reckless conduct caused his death.[14]

(17) Bailey argues that the introduction of the Safe Arms for Babies Law into evidence was "irrelevant and highly prejudicial" because: (a) attempting to leave the infant at the father's house is not unlawful per se, and Bailey was not charged with abandoning a child; (b) Bailey was charged with recklessly killing the child, and the only relevant facts were what she did that night, not what she did *not* do; (c) there was no evidence in the record that Bailey knew the law and chose to disregard it; (d) whether the legislature provided a legally less risky option to her had nothing to do with her state of mind when she left the infant at what she

[14] *See Also, Commonwealth v. Lettrich*, 31 A.2d 155, 156-58 (Pa. 1943) (finding sufficient corpus delicti when the defendant was the last to see her baby alive after taking it home from the hospital, although she testified that she gave the baby to its father); *Commonwealth v. Rivera*, 828 A.2d 1094, 1098-1105 (Pa. Super. 2003) (defendant kidnapped his daughter who was never seen again and he made inconsistent statements regarding her whereabouts).

believed to be Wingate's house;[15] and, (e) the setting in which the statute was read was highly and unfairly prejudicial.[16]

(18) We review the trial judge's decision to admit the police officer's reading of the provisions of the Safe Arms for Babies Law into evidence for an abuse of discretion.[17] Evidence is relevant under D.R.E. 401 when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[18] Unless excluded by rule or statute, all relevant evidence is admissible at trial.[19] In order for evidence to be considered relevant, "the purpose for which the evidence is offered must be material and probative."[20]

(19) The State charged Bailey with first degree murder by abuse or neglect and had to prove that Bailey recklessly caused the death of her newborn son when

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15 In the opening brief, Bailey's counsel likened this to a "Defendant's jury being charged that rather than robbing the store, he could have worked for a living." Just as it "would be irrelevant and unfair for a prosecutor to argue that the defendant should have worked for a living rather than commit the robbery he is charged with, is it less unfair for a judge to instruct the jury that another unlawful way to make a living was available to the defendant?"

16 Bailey argues that a police officer reading the statute aloud to the jury is more prejudicial than if she had been questioned about her knowledge of it in cross-examination.

17 *Wien v. State*, 882 A.2d 193, 189 (Del. 2005).

18 *Kiser v. State*, 769 A.2d 736, 739 (Del. 2001).

19 D.R.E. 402.

20 *Kiser*, 769 A.2d at 740.

she was "aware of and consciously disregard[ed] a substantial and unjustifiable risk" of his death.

(20) Before the State rested its case in chief, the State requested a jury instruction on the "Safe Arms for Babies" law.[21] As evidence of Bailey's reckless *mens rea*, the State wanted to show that there were other "legally sanctioned alternatives available to a mother of an unwanted baby." Bailey was a nursing student at Nanticoke Hospital before becoming pregnant with the baby; therefore, the State wanted the jury to infer that she knew or should have known that she had the alternatives available under the statute.

(21) Bailey's counsel objected to the jury instruction as "irrelevant." The State contended that the statute was relevant because when Detective Fraley interviewed Bailey she stated, "I'm a nurse and I know it looks really bad that I did

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[21] The relevant subsections of the "Safe Arms for Babies" law, 16 *Del. C.* § 907A, are:

> (b) A person may voluntarily surrender a baby directly to an employee or volunteer of the emergency department of a Delaware hospital inside of the emergency department, provided that said baby is surrendered alive, unharmed and in a safe place therein.
> (c) A Delaware hospital shall be authorized to take temporary emergency protective custody of the baby who is surrendered pursuant to this section. The person who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the hospital inquire as to same. If the identity of the person is known to the hospital, the hospital shall keep the identity confidential. However, the hospital shall either make reasonable efforts to directly obtain pertinent medical history information pertaining to the baby and the baby's family or attempt to provide the person with a postage paid medical history information questionnaire.

this." Fraley further reported, "She's not saying that I know there was a law that says I could have dropped it off at the hospital. She is asked why she didn't, and she said it's because she worked there and they would have known her."

(22) The State asked the judge to read subsection (b) and (c) of the "Safe Arms for Babies" law as part of the jury charge, or, in the alternative, that the State would present it in their case in chief. The trial judge told the State that if they thought it was relevant, it had to be admitted during the State's case in chief. After Bailey's counsel objected, the trial judge ruled the statute relevant under Delaware Rule of Evidence 401, and stated, "It is relevant evidence as to the state of mind of the defendant that there were options. [Bailey's] thing was [Bailey] didn't have to go to Nanticoke [Hospital], but she could have gone to Nanticoke [Hospital]. So I think it is relevant."

(23) The trial judge permitted Detective Fraley to read sections (b) and (c) of the Safe Arms for Babies Law in the presence of the jury. The trial judge also took judicial notice of the statute under Delaware Rule of Evidence 202 (a).

(24) After consideration of the record, we hold that the trial judge abused his discretion by permitting the State to introduce the "Safe Arms for Babies" law into evidence. The Safe Arms for Babies Law was irrelevant to any of the elements of the crime or to Bailey's *mens rea*. The State never established that Bailey knew of the statute during Bailey's cross examination. Bailey's testimony

on direct examination touched on the subject matter; therefore, the prosecutor could have followed up with the issue on cross examination.[22] During Bailey's cross examination the prosecutor asked Bailey about her history of working in the medical profession and working at Nanticoke hospital.[23] He also asked her whether she thought David Wingate's home was the safest place to bring the baby.[24] The prosecutor had several opportunities on cross examination where he

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[22] During Bailey's direct examination, the following exchange took place:

> Defense counsel: What prompted you to make the decision to go to Dave's?
> Bailey: I couldn't take him home with me. I didn't think I could take him to Nanticoke, and we can't pick our parents, but Dave is his father. And it seemed like the safest place for me to take him.

[23] During Bailey's cross examination, the following exchanges took place:

> Prosecutor: Working where?
> Bailey: At the hospital
> Prosecutor: Nanticoke where you had gone back for a short period of time?
> Bailey: Yes
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> * * *
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> Prosecutor: Who had the history of working in the medical profession, you or Joy?
> Bailey: I did

[24] The following exchange took place on cross examination:

> Prosecutor: Your testimony today is that you took that baby to Seven Waples Drive to where you thought David Wingate was living because you thought that was the safest place you could take the baby?
> Bailey: Yes, that's what I said
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> * * *
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> Prosecutor: So maybe he [Wingate] was not the safest choice, right?
> Bailey: I could have made a lot of different choices, yes, and in hindsight, it makes a lot of sense to make other choices. I am not admitting what I did was wrong.
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> * * *

could have inquired if Bailey learned of the statute during her employment at Nanticoke Hospital. Then, during closing argument, the prosecutor could have made an argument to the jury that Bailey's knowledge of the statute and her conscious disregard of it was relevant to her reckless *mens rea*. The jury could then resolve the issue of whether Bailey knew or should have known about other alternatives and whether she consciously disregarded them when she elected to leave the baby on a doorstep in subfreezing weather rather than take the baby to safety at Nanticoke Hospital.

(25) We find the failure to establish that Bailey knew of the statute or had reason to know of the statute before introducing it by way of a police officer's testimony constitutes error as a matter of law.

(26) Although the trial judge abused his discretion, we hold nonetheless that the trial judge's error was harmless beyond a reasonable doubt.[25] Even though the jury heard about the Safe Arms for Babies Law without any indication Bailey

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> Prosecutor: But that [leaving the baby on the doorstep when it was less than 10 degrees outside] wouldn't have hurt him [the baby] right?
> Bailey: If somebody would have come to the door like I thought, then I wasn't going to intentionally hurt him by setting him on the step. I took him to his father's because that, at that time, was the only thing I knew what to do.

[25] *Charbonneau*, 904 A.2d at 304 (citing *Strauss v. Biggs*, 525 A.2d 992, 997 (Del. 1987)); *John Smith v. State*, 647 A.2d 1083, 1090-91 (Del. 1994) (citing *Van Arsdall v. State*, 524 A.2d 3, 11 (Del. 1987)); *Smith*, 647 A.2d at 1090-9.

herself knew of it, there was still sufficient evidence establishing Bailey's reckless *mens rea*. Accordingly, we affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice