[Cite as *State v. Higgs*, 2019-Ohio-4426.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	Case No. 18CA130
	:	
AMANDA LYNN HIGGS	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 2018CR211
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	October 23, 2019

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
GARY BISHOP RICHLAND CO. PROSECUTOR JOSEPH C. SNYDER 38 South Park Street Mansfield, OH 44902	R. JOSHUA BROWN 32 Lutz Avenue Lexington, OH 44904

Delaney, J.

{¶1} Appellant Amanda Lynn Higgs appeals from the November 19, 2018 Sentencing Entry of the Richland County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose on March 15, 2018, when Robert Wheeler attempted to check into a motel in Bellville, Ohio, near Interstate 71. An astute manager at the motel noticed Wheeler appeared unsure of himself when he asked whether he could smoke in the room. A clerk told him that the motel was non-smoking but he could try a different motel across the street; Wheeler responded that he "had to check" with someone outside. Wheeler left and returned, said "she needs to stay here," and paid cash. Spotting a number of red flags, the manager surveilled Wheeler and his companion--appellant. The manager eventually called Bellville police to be available when she asked appellant and Wheeler to leave the motel. The responding officer later traffic-stopped the pair and discovered they were in possession of significant quantities of drugs, cash, and a firearm.

Robert Wheeler attempts to "take the blame"

{¶3} Robert Wheeler is 48 years old and describes himself as a "slow learner," acknowledging he has an intellectual disability. Wheeler worked at Menard's and lived with his mother. In May 2017, Wheeler met appellant through her parents. Appellant is less than half Wheeler's age, but Wheeler "liked her right away" and hoped appellant would eventually marry him. Wheeler provided appellant with money, food, cigarettes, rides, and sometimes vehicles. Wheeler has given appellant several vehicles which she quickly lost to impoundment. Wheeler had been warned by friends and family, including

appellant's parents, that appellant is using him. Nevertheless, Wheeler testified appellant "said she would love him if he took the blame" for the crimes he became involved in. Wheeler acknowledges appellant is a drug addict but does not use drugs himself.

{¶4} Shawn Garrad is appellant's long-term boyfriend who admits he got her hooked on heroin. Garrad testified he and appellant have used drugs together throughout their 11-year relationship.

{¶5} On March 15, 2018, around 5:00 a.m., Wheeler got off work at Menard's and came home to his mother's house in Mount Vernon. He had just arrived home when he heard a knock at the door; it was appellant and Garrad. Wheeler was surprised to see the pair because it was early in the morning and to his knowledge, they had been living in Columbus at a car dealership where they both worked. Wheeler wondered how the pair got from Columbus to Mount Vernon, but assumed they "borrowed a car" from the dealership.

{¶6} Wheeler testified that appellant and Garrad seemed nervous or excited, and "in a hurry." They asked him whether he knew how to open a safe, and he said no. Appellant called someone on Wheeler's mother's land line, and Wheeler overheard the call. The person she called was "E," known to Wheeler as appellant's drug dealer in Mount Vernon. Appellant and Garrad left Wheeler's residence, stating they would return shortly. "E" called back on Wheeler's land line, looking for them. Wheeler told "E" appellant and Garrad were coming to his place.

{¶7} Appellant and Garrad returned a short time later, excitedly telling Wheeler they "made out," but not as well as they should have because they had to give some of the safe's contents to the person who opened it. Appellant had a brown Kroger bag with

her that she seemed protective of. Appellant and Garrad were nervous and suggested that the trio go to a motel. They got in Wheeler's vehicle and he drove them to a motel in Mount Vernon, the closest motel to his mother's residence. Garrad gave Wheeler cash to pay for a room, which Wheeler noted was unusual because "they never paid for anything." Wheeler got a room at the motel.

{¶8} Once inside the room, appellant gave Wheeler more cash and instructed him to go to Wal-Mart and buy burner phones, phone cards, Mountain Dew, and a box of syringes. Wheeler accomplished the errand, and also stopped at Kroger on the way back to buy appellant a half-dozen roses because she seemed upset and he wanted to prove how much he cared for her.

{¶9} Appellant and Garrad gave Wheeler more cash to buy them breakfast from McDonald's and told him to come back in an hour. Upon his return to the motel, he found appellant very upset. Appellant was angry that Garrad was making calls and had revealed their location. Appellant and Garrad said they needed to leave Mount Vernon right away, so the trio got into Wheeler's vehicle again and drove off.

{¶10} Inside Wheeler's vehicle, along with the Kroger bag and the recent Wal-Mart purchases, was a large cardboard box appellant had given him to hold for her some time before. As far as Wheeler knew, the box contained appellant's clothing and personal items. The box was in the back of his truck and appellant sometimes asked Wheeler to put clothes in it or take clothes out of it when he did her laundry for her.

{¶11} Wheeler drove toward Mansfield. He stopped at a Comfort Inn off State Route 97 in Bellville. Appellant and Garrad gave Wheeler cash and told him to get a smoking room. He went inside and learned that the motel was non-smoking, but they

could smoke at a different motel across the street. Garrad, however, wanted to stay at the Comfort Inn because it had a pool. Wheeler went back inside, reserved a room, and paid cash. He was given two keys, which he turned over to appellant and Garrad. He told the pair the room was non-smoking.

{¶12} Wheeler helped appellant and Garrad bring their items into the hotel room, including the large cardboard box. Wheeler then left in his truck, intending to return home to Mount Vernon and go to bed because he was scheduled to work that evening. Upon his arrival at home, however, his mother told him appellant had called twice and he needed to call her back right away. Wheeler called appellant and she told him he needed to return to pick them up because they had been kicked out of the Comfort Inn for smoking.

{¶13} Wheeler drove back to the Comfort Inn and walked around the building, unable to get in because he didn't have a key. He observed Garrad walking across the street and assumed he and appellant must be fighting. Wheeler walked to the back of the Comfort Inn and saw appellant dragging the cardboard box out the back door. Wheeler helped appellant put the box in his truck, and he and appellant drove away from the motel.

{¶14} Wheeler testified he didn't know his operator's license was suspended. He drove with appellant to a nearby gas station but was pulled over by a Bellville police officer. The officer explained he pulled them over because Wheeler's license was suspended. The officer asked if there were any drugs or weapons in the vehicle and Wheeler said no. The officer walked back to his cruiser, briefly leaving Wheeler and appellant alone. Appellant revealed to Wheeler that there was a gun in the truck, and

drugs, and asked "will you take the charge?" Wheeler understood this to mean that he should tell police everything was his. He said yes, he would "take the charge." Wheeler testified he did not have specific knowledge of what type of drugs were in the truck, or how much, and had not actually seen the gun.

{¶15} When the officer returned, Wheeler told him there was a gun in the car, and drugs. When asked where, he said in the large cardboard box. When asked what type of drugs, Wheeler guessed heroin and meth because he knew appellant used both. At trial, appellee showed Wheeler State's Exhibit 12-B, a pink firearm, and asked if he had ever seen it before. Wheeler said he never saw the gun before and has never owned or handled one. He testified he has a felony theft conviction and cannot be in possession of a firearm.

{¶16} In response to questions from the officer, Wheeler said the drugs and gun were his. He said he bought the gun for $50 in Mount Vernon.

{¶17} As Wheeler was arrested, the officer allowed appellant to hug him. Appellant told him she would "try to get him out of this." Wheeler testified he "didn't realize he did the wrong thing" until later because he had no idea how much trouble he was in.

Ptl. Queen investigates a motel manager's suspicions

{¶18} Ptl. Tom Queen was the Bellville police officer who encountered Wheeler and appellant after being alerted to suspicious behavior by the Comfort Inn motel manager.

{¶19} The manager is a former corrections officer who does not hesitate to call police if she observes questionable activity at the motel. She described the Comfort Inn as a family-oriented facility and it is her top priority to keep it that way. In this case, the

manager saw several red flags. Wheeler seemed unsure of himself, intended to pay in cash, and was "local." He put appellant's name on the cash deposit receipt. The manager recognized appellant's name. She sent a motel clerk down the hallway outside the room to check for anything suspicious, and the clerk smelled cigarette smoke.

{¶20} The manager called police for backup and Queen arrived. The manager knocked on the door of the room three times and eventually appellant answered. She appeared to be alone in the room and there was no sign of Wheeler. The manager observed track marks on appellant's legs and "picking" marks on her face, recognizing these as signs of illegal drug abuse. The manager asked if she was smoking and appellant admitted she briefly lit a cigarette then put it out. The manager asked appellant to vacate the motel, and allowed appellant to call Wheeler to pick her up.

{¶21} In the meantime, Queen discovered Wheeler's operator's license was suspended. He traffic-stopped and arrested Wheeler after they left the Comfort Inn. Wheeler's responses to Queen's questions were not convincing. Wheeler told Queen there were drugs and a gun in the truck, and that those items were his. Queen found this unlikely because Wheeler did not strike him as a drug user, but appellant did. Appellant bore unmistakable physical signs of drug abuse, and she did most of the talking during the traffic stop.

{¶22} Subsequent investigation yielded a significant amount of evidence. Queen testified about the traffic stop and illustrated his testimony with the aid of his cruiser video. Queen told Wheeler that he smelled the odor of marijuana. Wheeler said nothing and sat quietly, but appellant became agitated and "did all of the talking" throughout the stop. Queen took the large cardboard box out of Wheeler's truck to search, and appellant said

there was cash in the box which her mother gave her for a funeral. Wheeler was unfazed about the impending search of his vehicle, but appellant was obviously disturbed, indicating to Queen that Wheeler was ignorant of contraband in the vehicle.

{¶23} Inside the large cardboard box, police found the brown Kroger bag. It contained $11,898 in cash. Also inside the box were substantial quantities of heroin, fentanyl, methamphetamine, and suboxone.[1] Assorted paraphernalia was in the box, including syringes and burnt spoons. Police found a "Dealz on Wheelz" notebook in the truck, labeled with appellant's name, containing an apparent ledger of drug sales. While seated in the police cruiser, appellant called her mother, telling her police would find "big amounts" of drugs in the box, and that because of those big amounts, people were looking for appellant to kill her.

{¶24} Shawn Garrad testified as a court's witness and claimed the drugs and gun were his, and that appellant didn't know anything about either. He was confronted with his own earlier recorded statement, however, in which the backstory of the entire case unfolded. Appellant and Garrad were living and working at a car dealership in Columbus, "Dealz on Wheelz." The dealership was an apparent front for drug sales, in which both appellant and Garrad were involved. The notebook belonging to appellant was admitted into evidence, as was a similar ledger-type notebook labeled "Shawn's book." An experienced METRICH investigator described the notebooks as ledgers of drug sales.

[1] The drugs were sent to the Mansfield Police Department Forensic Science Lab for analysis. Seven individual packages of narcotics were tested and yielded the following: 1) 27.83 grams of a mixture of heroin and fentanyl; 2) 25.61 grams of methamphetamine; 3) 27.25 grams of methamphetamine; 4) 27.05 grams of methamphetamine; 5.1) 13.01 grams of heroin; 5.2) yellow and red balloons of suboxone sublingual film in an amount totaling 7.87 grams; 6) 125.9 of black tar heroin; and 7) 26.01 grams of a mixture of heroin and fentanyl.

On or around March 15, 2018, appellant and Garrad were "kicked out" of the car dealership, and Garrad's sister died of a drug overdose. These events led Garrad to the admittedly "impulsive" decision to steal a safe from a Columbus drug dealer. Garrad told appellant the contents of the safe would "change their lives."

{¶25} Thus appellant and Garrad arrived on Wheeler's doorstep in the early morning hours of March 15, looking for assistance in opening the safe. The total quantities of drugs and cash contained in the safe remain unknown because they had to forfeit some to the person who helped them open it. They were left, however, with over $11,000 in cash and what the METRICH investigator estimated to be over $27,000 worth of heroin, fentanyl, crystal meth, and suboxone.

{¶26} Appellant's mother and stepfather testified on her behalf at trial, admitting that she is a habitual drug user but claiming she was about to go to rehab and turn her life around. Her mother testified she gave her $2200 for a funeral, deposit, and rent on a place to live. Her mother acknowledged that she visited Wheeler in jail and transmitted messages from appellant, instructing him not to talk to anyone. Appellant's stepfather acknowledged appellant "used" Robert Wheeler and he warned Wheeler that appellant was a drug addict. He further testified that he has never known Wheeler to use drugs and that Wheeler has an intellectual disability.

Indictment, trial, convictions, and sentence

{¶27} Appellant was charged by an 11-count indictment with trafficking and aggravated trafficking of heroin, methamphetamine, fentanyl, and suboxone; possession and aggravated possession of those substances; improperly handling firearms in a motor vehicle; receiving stolen property; and carrying a concealed weapon. The indictment

included forfeiture specifications pertaining to a firearm and $11,898 in cash, and firearm specifications. Appellant entered pleas of not guilty.

{¶28} Relevant to the instant appeal, on June 7, 2018, appellant filed a motion for appointment of a handwriting expert at the state's expense, arguing that appellee intended to use certain written material against her, alleging that she wrote the material. Appellant disputed this allegation. The trial court granted appellant's motion on June 14, 2018.[2]

{¶29} The matter proceeded to trial by jury. Appellant was found not guilty of carrying a concealed weapon but otherwise guilty as charged. The trial court sentenced appellant to a prison term of twenty-two and one-half years.

{¶30} Appellant now appeals from the judgment entries of her conviction and sentence.

{¶31} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶32} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ALLOWING INTO EVIDENCE LETTERS ALLEGEDLY WRITTEN BY APPELLANT WHILE INCARCERATED AT THE RICHLAND COUNTY JAIL."

ANALYSIS

{¶33} In her sole assignment of error, appellant argues her conviction should be reversed because the trial court admitted letters she wrote from jail without proper authentication. We disagree.

[2] The outcome of the handwriting analysis, if any occurred, is not in the record.

{¶34} Appellee's evidence included State's Exhibits 13, 14, 15, and 16, purporting to be letters appellant wrote from the Richland County Jail. Each handwritten letter includes the envelope in which it was sent; all of the envelopes have appellant's name and inmate number in the upper-left corner with the return address of the Richland County Jail. Exhibit 13 is addressed to "Aunt Dee and Uncle Bobby;" appellant states she is scared, knows she "messed up big time," and "ruined [her] life completely." She further states she knew what she was doing was wrong. Exhibits 14 through 16 are similar to each other and can best be described as solicitations for inmate pen-pals. Exhibit 14 is addressed to inmate Charles Becker, introduces the writer as "Mandi," includes her physical description and single status, states she is "looking for friends," "grew up in the game, live[s] by the code," and "[l]oves the fast life." Exhibit 15 is addressed to inmate Jawuan Williams and states she is impatiently waiting to hear back from him. Exhibit 16 is addressed to inmate Andrew Card, contains the same physical description and sentiments of Exhibit 14, in addition to appellant's hope to find someone to "chop it up with."

{¶35} Appellee introduced the letters during the testimony of Captain Blunk, the administrator of the Richland County Jail. Blunk described the mail system and testified that inmates are required to put their name and inmate number on the outer envelopes, along with the return address of the jail. Mail is generally picked up from each inmate individually, but he acknowledged it is possible a corrections officer picked up a batch of mail without identifying which inmate sent which letter.

{¶36} Appellant argues, therefore, that the letters were improperly authenticated and therefore inadmissible. "A trial court is vested with broad discretion in determining

the admissibility of evidence in any particular case, so long as such discretion is exercised in line with the rules of procedure and evidence." *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271, 569 N.E.2d 1056 (1991). An abuse of discretion is more than a mere error in judgment; it is a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993). When applying an abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.* Absent an abuse of discretion resulting in material prejudice to the defendant, a reviewing court should be reluctant to interfere with a trial court's decision in this regard. *State v. Hymore*, 9 Ohio St.2d 122, 128, 224 N.E.2d 126 (1967).

{¶37} We note the letters contained physical descriptions of appellant (Exhibits 14 through 16) and described her family relationships (Exhibit 13). There is no suggestion that anyone other than appellant wrote the letters, and our review of the record did not yield any finding by the handwriting expert appointed by the court at appellant's request. Appellant argues, though, that there is no evidence appellant wrote the letters and therefore, the exhibits were not properly authenticated. Generally, "[a] condition precedent to the admissibility of documents is that documents must be authenticated or identified." (Citations omitted.) *State v. Wynn*, 2nd Dist. Montgomery No. 25097, 2014-Ohio-420, ¶ 74, citing *In Re Adoption of H.M.F.,* 2d Dist. Montgomery No. 22805, 2009–Ohio–1947, ¶ 26. Authentication or identification "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A). The purpose behind authentication is to connect the particular piece of evidence sought to be introduced to the facts in the case by giving some indication the evidence is relevant

and reliable. *State v. Brown*, 151 Ohio App.3d 36, 2002-Ohio-5207, 783 N.E.2d 539, ¶ 35 (7th Dist.). The ultimate decision on the weight to be given to that piece of evidence is left to the trier of fact. *Id.* "'[A] letter may be authenticated by evidence of its distinctive contents such as facts contained in the missive that only the writer may know.'" *Id.,* 2002–Ohio–5207 at ¶ 39, citing *State v. Chamberlain,* 8th Dist. Cuyahoga No. 58949, 1991 WL 144181, *4 (July 25, 1991).

{¶38} In the instant case, the letters contain general information and are of limited evidentiary value to any disputed issue in the case. At best, Exhibit 13, the apology to appellant's aunt and uncle, could be read as an acknowledgment of wrongdoing but it does not contain any specifically inculpatory statements. Nevertheless, appellant argues she was prejudiced by admission of the letters. We addressed a similar argument in the context of letters sent by a jail inmate in *State v. Keeton*, 5th Dist. Richland No. 03 CA 43, 2004-Ohio-3676 and reviewed Evid.R. 901's requirement of authentication or identification. This rule provides:

> **(A) General provision**
>
> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> **(B) Illustrations**
>
> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

> *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.* * *.

{¶39} In this case, Blunk testified the exhibits are what they appear to be: letters sent by appellant from the Richland County Jail. As in *Keeton*, we find the letters were properly authenticated under Evid.R. 901(B)(1). 2004-Ohio-3676 at ¶ 36. Outgoing mail is refused if inmates do not include their own names and inmate numbers on the envelopes. Corrections officers are supposed to verify that mail is sent by the inmate it purports to be sent by. Additionally, evidence established appellant was known by the nickname "Mandi;" she references the pending charges and her court dates in each of the letters. We find the trial court did not err in admitting the letters.

{¶40} We again note that in reaching this decision, we find the letters to be of little evidentiary value. Having reviewed their contents in the context of the voluminous evidence against appellant at trial, the letters are unavailing in establishing appellant's guilt of the offenses with which she was charged. Appellant's argument that the letters were an improper, prejudicial attack on her character is not supported by the letters themselves. At most, the letter to her aunt and uncle could be construed as evidence of consciousness of guilt, but in light of the overwhelming evidence against appellant, the effect of these letters is negligible.

{¶41} Appellant's sole assignment of error is overruled.

CONCLUSION

{¶42} The sole assignment of error is overruled and the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, John, P.J. and

Wise, Earle, J., concur.