[Cite as *State v. Arrington*, 2012-Ohio-5009.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLINTON COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2012-02-002
	:	O P I N I O N
- vs -		10/29/2012
	:	
CAMERON ARRINGTON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case No. CRI2011-5188

Richard W. Moyer, Clinton County Prosecuting Attorney, Susan H. Cohen, 103 East Main Street, Wilmington, Ohio 45177, for plaintiff-appellee

Tyler P. Webb, 423 Reading Road, Mason, Ohio 45040, for defendant-appellant

YOUNG, J.

{¶ 1} Defendant-appellant, Cameron Arrington, appeals his conviction in the Clinton County Court of Common Pleas for intimidation of a victim or witness in a criminal case.

{¶ 2} In March 2011, appellant and the victim began a romantic relationship. Appellant quickly became abusive, violent, and controlling; the relationship was marked by threats and physical, verbal, and mental abuse. As a result of his abusive behavior on two separate occasions (April and May 2011), appellant was indicted in July 2011 on one count

each of robbery, theft, attempted aggravated arson, aggravated menacing, abduction, and domestic violence, and two counts of child endangering (the children were the victim's children but not appellant's). Appellant was also indicted on one count of failure to provide notice of a change of address, and one count of intimidation of a victim or witness. The intimidation charge was based on violent threats made by appellant against the victim and her loved ones during recorded telephone conversations between appellant and the victim while appellant was in jail in June and July 2011.

{¶ 3} In January 2012, appellant entered a guilty plea to failing to provide notice of a change of address. A jury trial was held on the remaining charges. At trial, during the victim's direct examination, the state played excerpts of the telephone conversations. Although the state had a total of eight or nine hours of telephone conversations, only 30 minutes of the audiotapes were played for the jury.

{¶ 4} Prior to closing arguments, the trial court granted defense counsel's Crim.R. 29 motion and dismissed the two counts of child endangering. The remaining seven charges were submitted to the jury. On January 27, 2012, the jury found appellant guilty of the seven charges. He was subsequently sentenced to a total of nine years and six months in prison.

{¶ 5} Appellant appeals, raising one assignment of error:

{¶ 6} THE TRIAL COURT ERRED BY FAILING TO ALLOW THE DEFENDANT-APPELLANT TO INTRODUCE THE FULL PORTIONS OF RECORDED AUDIOTAPES.

{¶ 7} At trial, during the victim's direct examination, the state sought to play for the jury 15-minute excerpts from ten different telephone conversations, for a total of 150 minutes. Pursuant to Evid.R. 106, defense counsel objected to the playing of only "bits and pieces" of the conversations, and instead sought to have the audiotapes played from the excerpts sought by the state to the very end of the conversations. Defense counsel explained that doing so would show that although the conversations escalated and oscillated, many of them

ended by "I love you, I love you too."

{¶ 8} After listening to the parties' positions, the trial court declined to rule on the issue. Rather, the court told the parties "to haggle over this issue" and to let the court know the next day if they were able to reach an agreement. The trial court then recessed for the day. When the court reconvened the following day, the state resumed its direct examination of the victim, and once again indicated it would play excerpts of the telephone conversations between appellant and the victim. Addressing defense counsel, the trial court stated, "My understanding is there's no issue with regard to the playing of the recording; is that correct?" Defense counsel replied, "Not at this time." Subsequently, 30 minutes of the audiotapes were played for the jury without any objections from appellant. Two of the excerpts played for the jury ended with "I love you, I love you too." On cross-examination, the victim testified that while some of the telephone conversations were pretty heated, she ended most of them with "I love you."

{¶ 9} On appeal, appellant argues that Evid.R. 106 was violated when the trial court allowed the jury to only hear bits and pieces of the telephone conversations between appellant and the victim. Appellant asserts that the jury should have been permitted to hear the entire conversations in order to determine whether appellant was truly threatening the victim and whether the victim was intimidated.

{¶ 10} Evid.R. 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction *at that time* of any other part or any other writing or recorded statement which is otherwise admissible and which ought in fairness to be considered contemporaneously with it." (Emphasis added.)

{¶ 11} Evid.R. 106 allows the adverse party to immediately put the admitted statements into context by permitting the party to simultaneously admit the remainder of the writing or recording. *State v. Mathers*, 9th Dist. No. 07CA009242, 2008-Ohio-2902, ¶ 27.

The overriding purpose of the rule is to prevent one party from taking statements out of context and distorting them. *State v. Byrd*, 9th Dist. No. 03CA008230, 2003-Ohio-7168, ¶ 26.

{¶ 12} The adverse party is, however, not automatically entitled to have the entire writing or recorded statement introduced into evidence simply by requesting it. *State v. Williams*, 115 Ohio App.3d 24, 41 (11th Dist.1996). Rather, the adverse party has the burden of showing that the additional part sought to be introduced is not only admissible, but also relevant to the portion that has already been introduced. *State v. Holmes*, 77 Ohio App.3d 582, 585 (11th Dist.1991); *State v. Scott*, 2d Dist. No. 21260, 2006-Ohio-4016, ¶ 9. Evid.R. 106 "contemplates a very high degree of discretion to be exercised by the trial judge." Weissenberger, *Weissenberger's Ohio Evidence Treatise*, Section 106.1, 49 (2011).

{¶ 13} Upon review of the record, we find no violation of Evid.R. 106. The rule allows the adverse party to *immediately* put the admitted statements into context by permitting the party to simultaneously admit the remainder of the writing or recording. *Mathers*, 2008-Ohio-2902 at ¶ 27. Evid.R. 106 is "a rule of timing which avoids the need for the adverse party to wait until later to place the writing or recording introduced into proper perspective through cross-examination or rebuttal evidence." Evid.R. 106, Staff Notes. "Thus, the rule permits, but does not require, a party to take advantage of the procedural device afforded by the rule to place the opposing party's evidence in context immediately." *State v. Oliver*, 8th Dist. No. 49613, 1985 WL 8138, *7 (Oct. 17, 1985).

{¶ 14} At the end of the first day of trial, when the state first introduced the excerpts of the telephone conversations it intended to play for the jury, appellant promptly sought to have the entire telephone conversations introduced. Yet, the next day, when the state again indicated it would play excerpts of the conversations, appellant did not seek to introduce the conversations in their entirety. Rather, appellant stated he had no objections. The record

clearly shows that the trial court did not rule on the issue when it was first brought up. The record does not indicate whether the parties reached an agreement between the first and second day of trial. Appellant cannot now reasonably contend that the trial court excluded evidence relevant to his case when it was at his election that the telephone conversations were not placed in their entirety before the jury.

{¶ 15} In addition, appellant made no attempt on the second day of the trial to show that the entire conversations were admissible and relevant to the excerpts introduced by the state. Although he was not prevented by the trial court, appellant also never used any portion of the telephone conversations during the presentation of his case. *See Holmes*, 77 Ohio App.3d at 585 (If the additional parts are not relevant to the initial part, then the additional parts can be safely introduced during the adverse party's case). Appellant did, however, elicit testimony from the victim on cross-examination that their romantic relationship continued after his arrest and that while some of the telephone conversations were heated, she ended most of them with "I love you."

{¶ 16} Appellant's assignment of error is accordingly overruled.

{¶ 17} Judgment affirmed.

RINGLAND, P.J., and PIPER, J., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.