STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,……RESPONDENT

v.

CORREY TREMAYNE BROWN,……APPELLANT

FINAL BRIEF OF RESPONDENT
Appellate Case No. 2021-001231

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ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT ON APPEAL

Did the trial court err in admitting Appellant's interrogation with the police because the police denied Appellant his right to the assistance of an attorney when they told him that he could not give his evidence to a lawyer because only they possessed the ability to drop Appellant's charges?

RESPONDENT'S COUNTER ARGUMENT ON APPEAL

Did the trial court err in allowing into evidence the interrogation of the Appellant, after he was read his *Miranda* rights, acknowledged that he fully understood, and decided to waive the right to counsel and answer questions from law enforcement?

STATEMENT OF THE CASE

On December 29, 2018, Anteyan Davis (Davis) was at a club called Tony's in Richland County South Carolina. (R. p. 519 l. 5-13). While there he saw the Appellant Correy Tremayne Brown (Appellant). (R. p. 519 l. 19-20). They both left Tony's along with Donald Young (victim) and went to Davis's house. (R. p. 520 l. 9-16). While there, they called Benjamin Parker (Parker) to join them after he got off work. (R. p. 290 l. 8). Parker first went home then to Davis's house. At Davis's house was the Appellant, the victim, and Davis, each drinking alcohol and smoking marijuana. (R. p. 291 l. 4-5; p. 291 l. 11-17). During trial Davis testified that while they were at his house he did witness the Appellant with a gun, however, he never saw a gun on the victim. (R. p. 521 l. 18-19; p. 522 l. 7-8).

The victim, Appellant and Parker later left Davis's house. Appellant was riding with Parker; the victim was in his car following. Parker dropped off the Appellant at his girlfriend Akela's house. (R. p. 292 l. 8-12). Parker then went home, ate a bowl of cereal, and went to bed. (R. p. 295 l. 13-15). Later that night Parker heard a car horn blowing and as he looked out the window and saw the Appellant walking towards his porch. (R. p. 295 l. 25 – p. 296 l. 1; p. 296 l. 3-5). Parker walked to his porch and greeted the Appellant who told him, "let's go for a ride." (R. p. 296 l. 12-15). Parker saw that the victim was driving, and at first said no, however, the Appellant and the victim were persistent, so he decided to accept their offer. (R. p. 296 l. 17-22). Parker approached the car and started to get into the back seat, however, Appellant told him to get in the front. (R. p. 296 l. 25 – p. 297 l. 1).

Once they got into the car the victim started driving. (R. p. 297 l. 2-4). As the victim was driving he and Parker got into a conversation. As they were talking and laughing the Appellant stated, "y'all doing all the talking why I'm here for?" Then the Appellant said, "As a matter of

fact, shut the fuck up." He then shot the victim in the back of the neck. (R. p. 297 l. 7-12). Due to being shot, the victim lost control of the car and his foot pushed the pedal down to the floor. Parker grabbed the steering wheel in an attempt to put it back on the road, however, the car ran into a tree. (R. p. 297 l. 15-21). Parker and the Appellant exited the car, leaving the victim sitting behind the steering wheel. Since the incident occurred right down the road from his house, Parker ran home. When he got home he knew that the Appellant was following him, so he woke up his wife Jessica Guyton (Guyton) and told her what happened. When Guyton heard what happened., she screamed, and Parker covered her mouth because he knew the Appellant had followed him. (R. p. 298 l. 14-19). Parker then started looking for his keys to get his gun out of his car. That is when there was a knock on the door. Parker opened the door to find the Appellant standing there with the gun. (R. p. 299 l. 7-16). The Appellant then told him "If you snake me I'll kill you too." Appellant then told Parker to give him a ride back to his girlfriend's house. (R. p. 299 l. 19-21). The next day Parker and Guyton packed up some of their belongings and went to Guyton's grandmother's house. That entire day the Appellant was calling Parker. Parker initially did not answer, however, when he decided to answer Appellant told him, "pull up on me, I need to holler at you for a second." (R. p. 303 l. 14-17).

The scene of the accident was witnessed by a passerby and that person called 911. The South Carolina Highway Patrol, the Columbia Fire Department, and Emergency Medical Services were initially called to respond. (R. p. 113 l. 19-22; R. p. 115 l. 2-5). These first responders arrived at the scene because it was thought to be a traffic accident with a fatality. (R. p. 162 l. 9-11). It was later discovered during autopsy that the victim had a bullet hole in the back of his neck. At that time, it was determined to be a homicide, so the Richland County Sheriff's Department was contacted to conduct the murder investigation. (R. p. 195 l. 1-6).

The case was initially assigned to Sergeant Michael Laurita of the Richland County Sheriff's Department. Sergeant Laurita spoke with the victim's family members and learned that the victim was with Davis the night before, therefore, law enforcement went to his home to question him. (R. p. 702 l. 14-18; p. 702 l. 24 – p. 703 l. 4). While there they received a call that Larry Wilson was attempting to contact law enforcement because Parker wished to speak with them. (R. p. 706 l. 7-14). After being given this information, Sergeant's Laurita, and Caldwell both went to the residence of Guyton's grandmother to speak with Guyton and Parker about this incident. (R. p. 706 l. 21-25). After speaking with them for a while they both agreed to give a statement at police headquarters.

After these statements law enforcement believed they had sufficient evidence to charge the Appellant with murder. The Appellant was later arrested and brought into police headquarters for questioning. (R. p. 710 l. 19-25; p. 712 l. 13-15; p. 713 l. 4-5).

Once at police headquarters the Appellant was questioned by Sergeant's Laurita and Caldwell. Before they began their questioning they read the Appellant his *Miranda* rights and gave him an advice of rights form to read and sign. (R. p. 713 l. 24; p. 714 l. 5). The Appellant signed the bottom of the form without hesitation indicating that he was willing to speak. (R. p. 18 l. 5-7). During questioning the Appellant informed them that he went to Tony's with the victim and some other people. He told them that he then went to Davis's house. Then he went with the victim to another house and to the gas station. He stated that the victim took him back to the house and left, and that was the last time he saw the victim. (R. p. 20 l. 10-18). During questioning the officers noticed that the Appellant had a busted lip. They asked him about it, and he told them that when he got to the house he slipped and hit his lip on the vehicle door. (R. p. 20 l. 22-25).

After the Appellant gave his statement Sergeant Laurita informed him that his story was not matching up with the witnesses nor the physical evidence. (R. p. 21 l. 15-17). Appellant then told him that he had some evidence that would "shoot that out of the water." (R. p. 21 l. 22-23). Once the Appellant made this statement Sergeant Laurita asked Appellant to provide him with this evidence. The Appellant then asked him "can I get it to a lawyer?" (R. p. 22 l. 9). They told him no, because they would follow up on this information and if it cleared his name they would love to see it. (R. p. 22 l. 16-17; p. 24 l. 15-21).

They then asked the Appellant to consent to a buccal swab for a DNA sample. At first it looked like the Appellant was going to consent. However, he asked Investigator Laurita "should I need a lawyer for this?" Appellant then refused to give the sample. (R. p. 25 l. 24 – p. 26 l. 6). At that time Appellant was arrested and charged with the offense of murder.

On September 10, 2019, the Richland County Grand Jury indicted the Appellant for murder. On June 7, 2021, the Appellant was brought before the Honorable DeAndrea G. Benjamin, Circuit Court Judge, for a trial before a jury of his peers. Present was the Appellant along with his attorneys Jennifer S. Davis, Laura W. Young, and Haley A. Hubbard. The State was represented by Assistant Solicitor's Kathryn Cavanaugh and Samuel C. McGlothin of the Fifth Circuit Solicitor's office.

During the trial Mr. John Barron from the South Carolina Law Enforcement Division (SLED) was introduced as an expert in the field of DNA analysis and serology. (R. p. 575 l. 13-15). Mr. Barron testified that swabs taken from rear passenger interior door, rear passenger door frame, and exterior door handle each matched the Appellant. (R. p. 580 l. 18-19; p. 581 l. 1-4; p. 584 l. 23-25).

Dr. Amy Durso who was submitted as an expert in the field of forensic pathology, (R. p. 676 l. 20-23) also testified. Dr. Durso performed the autopsy on the victim in December of 2018. She testified that the victim was shot on the right side of back of the neck. The bullet then exited on the left front of the neck. (R. p. 678 l. 2-5). Dr. Durso determined the cause of death was the gunshot wound to the neck. (R. p. 680 l. 1-4).

After five days of testimony a jury of his peers found the Appellant guilty of murder. (R. p. 859 l. 10-21). After the verdict Appellant appeared before the trial judge where he was sentenced to a forty-two year period of incarceration. (R. p. 872 l. 15-17).

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The trial court has considerable discretion on the admissibility of evidence. *State v. Sheldon,* 344 S.C. 340, 342, 543 S.E.2d 585 (2001). On appeal the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kornahrens,* 290 S.C. 281, 350 S.E.2d 180 (1996). Waiver of *Miranda* rights is determined from the totality of the circumstances. *State v. Moultrie,* 273 S.C. 60, 254 S.E.2d 294 (1979). On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. *State v. Rochester,* 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant,* 372 S.C. 305, 642 S.E.2d 582, 586 (2007).

ARGUMENT

The trial court did not err in admitting Appellant's interrogation into evidence since the Appellant was read his *Miranda* rights, fully understood them, and never requested counsel be present during questioning.

The State introduced the video of the statement of the Appellant. During this statement Appellant never confessed, he stated he was not present when the victim was killed, (R. p. 20 l. 16-18), and made a reference that any evidence revealing that he was present, he would, "shoot it out of the water," (R. p. 21 l. 22-23), because of what he had on his phone. (R. p. 23 l. 3-7). Appellant then inquired if he could give this evidence to a lawyer. (R. p. 22 l. 9). That request was refused by law enforcement due to the fact they felt that they would be in a better position to assist the Appellant if he was actually innocent of this crime. (R. p. 22 l. 16-17; R. p. 24 l. 15-21).

The Appellant now claims that he was denied the right to counsel due to the fact he asked that this "evidence" be given to an attorney. The Respondent will argue that the Appellant was informed of his *Miranda* rights prior to questioning verbally and in written form. (R. p. 16 l. 11-13; R. p. 16 l. 14-22). The Appellant signed this form acknowledging that he understood his *Miranda* rights and still wished to be questioned. (R. p. 18 l. 5-7). The Appellant never requested counsel to be present, which is why *Miranda* exists. The statement given to law enforcement was after Appellant waived his *Miranda* rights, so it was properly introduced as evidence.

In the United States Supreme Court decision of *Miranda v. Arizona,* the Supreme Court decided:

> When an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right

> to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda v. Arizona, 384 U.S. 436, 478-479 (1966).

It is clear by the testimony and the evidence presented that the Appellant was read his *Miranda* rights as soon as he entered the room. Those rights read to him were identical to the rights stated in the *Miranda* decision. Once these rights were given he totally understood them, and he began to talk freely to law enforcement.

The Appellant now argues that he was denied the right to counsel in violation of *Miranda.* He argues that due to this violation his statement was wrongfully admitted into evidence. During his statement the Appellant informed law enforcement that he possessed information that could reveal that he was not present during the murder. He requested to give this information to a lawyer. He never once requested the presence of a lawyer during his questioning. *Miranda* refers to the right of a lawyer being "present" during questioning and not just available to give evidence. Prior to any questioning the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and he has the right to the **presence of an attorney** either retained or appointed. *Miranda,* 384 U.S. at 444 (emphasis added).

During his interrogation, the Appellant never clearly stated that he wanted a lawyer present. He made statements regarding giving a lawyer evidence. Before law enforcement is required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation. *State v. Aleksey*, 343 S.C. 20, 31, 538 S.E.2d 248, 253 (2000). There was never an unequivocal acknowledgement that the Appellant wished for an attorney to be present during questioning. This is what is allowed under *Miranda.* If the desire for counsel is presented "sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney," no ambiguity or equivocation exists, and all questioning must cease until the person

can consult counsel or the accused voluntarily reinitiates conversation. *State v. Kennedy,* 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998). The officers present never concluded that the Appellant wished for a lawyer to be present during questioning. Their interpretation of the Appellant's statement was that he had evidence that would exonerate him, and he wished to give it to a lawyer for safe keeping. That is why the officers wanted to see it, because as they stated, if it proved he was not present they would further investigate to see if he could have actually committed this crime. A defense attorney is not equipped to do that, but law enforcement is, and that is what the officers told him once he wanted to give this information to an attorney. It was never a request for counsel, and it is reasonable for any law enforcement officer not to see this as such. Therefore, it was not in violation of *Miranda* that the questioning continued. An invocation of the *Miranda* rights to counsel "requires at a minimum some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis v. U.S.,* 512 U.S. 452, 459 (1994), *quoting, McNeil v. Wisconsin,* 501 U.S. 171, 178 (1991). But if a suspect makes a reference to an attorney that is ambiguous or equivocal, in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning. *Davis,* 512 U.S. at 459. It is clear the Appellant never invoked his right to counsel. and didn't request for an attorney to be present during questioning, therefore this statement was allowed into evidence properly.

It is clear that the Appellant understood his *Miranda* rights because during the request for a buccal swab, he asked if he should have a lawyer present. And once he refused, the attempts to obtain DNA ceased. That proves that if he had asked for counsel to be present officers would have honored that request and stopped the interrogation. However, he never asked for counsel to be present during questioning. Asking for a lawyer to hold information is not identical to requesting

counsel to be present while you are being interrogated. *Miranda* exists for the sole purpose of informing the defendant that he has the right to remain silent, that anything he says would be used against him and he has the right to an attorney to be present during questioning. The *Miranda* decision says nothing about an attorney holding evidence.

The *Miranda* decision was for a person in custody being questioned to make sure he knows his rights before relinquishing the Fifth Amendment right not to self-incriminate. The need for counsel to protect the Fifth Amendment privilege protects not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires. *Miranda,* 384 U.S. at 470. Appellant never made a request for counsel to be present during his interrogation, so he never waived *Miranda.* Law enforcement continuing to question him was not unlawful.

The Appellant also alleges that law enforcement made a promise to him during questioning. There were no promises made regarding his charges or sentencing during this interrogation. The Appellant stated that he had evidence that should exonerate him, all law enforcement told him was that if he would give them this information, they could further investigate. There was no promise of dropping charges or that he would receive a lighter sentence.

In *State v. Collins* the officer informed the defendant, "no matter what he told him he was going home," and "whatever you tell me it ain't gonna leave this room. This, um tape is going into my file." The South Carolina Supreme Court determined that, if the defendant receives *Miranda* rights and it is conveyed to him during the interview, that his statement would not be used against him and is being obtained for some other purpose renders the statement inadmissible. *State v. Collins,* 435 S.C. 31, 51, 864 S.E.2d 914, 924 (2021). In *State v. Peake,* the officer informed the defendant that if he gave a statement he would guarantee the state would not seek the death penalty.

The Supreme Court ruled that if a statement induced by a promise of leniency is involuntary only if connected with the inducement as to be a consequence of the promise. *State v. Peake,* 291 S.C. 138, 139 (1987).

The present case is more like *State v. Rochester,* where the polygraph examiner told the defendant "it would be in his best interest to tell the truth." In *Rochester,* the South Carolina Supreme Court determined that this was not on its face an inducement or hope of lighter punishment, and standing alone, did not constitute the kind of hope of reward or benefit prohibited in extracting confession. *Rochester,* 301 S.C. at 201, 391 S.E.2d at 247. There was never any promise of any reduced sentence or any dropping of charges if a statement was given. This discussion of evidence between law enforcement and the Appellant was brought on by the Appellant himself. He informed law enforcement that he had information that would shoot the evidence that they had out of the water. Of course, law enforcement, in the middle of an investigation, wanted to know what that evidence was just in case they had arrested the wrong person. That was conveyed by Sergeant Laurita on cross-examination. He testified that he wanted to see this information so they could follow up on it and possibly clear his name. (R. p. 739 lines 13-16). There was never any promise given to the Appellant, so no coercion existed.

According to the United States Supreme Court case of *Jackson v. Denno,* the process for determining whether a statement is voluntary and thus admissible is bifurcated; it involves determinations by both the judge and jury. First, the trial judge must conduct an evidentiary hearing outside the presence of the jury, where the state must show the statement was voluntarily made by a preponderance of the evidence. *Jackson v. Denno,* 378 U.S. 368, 376 (1964). This was done on behalf of the Appellant. There was a hearing before the trial judge where it was explained that he was given his *Miranda* rights, not denied any comforts, and only interrogated for forty-five

minutes so he was not held for an excessive amount of time. This interrogation cannot be considered excessive or coercive to force a confession. When making a determination of whether a statement is lawful the trial court must look at the totality of the circumstances. In *Schneckloth v. Bustamonte,* 412 U.S. 218 (1973) the United States Supreme Court determined what those circumstances that should be considered include:

> "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 deprivation of food or sleep."

Schneckloth, 412 U.S. at 226.

In *State v. Miller,* 375 S.C. 370, 652 S.E.2d 444 (CR. App. 2007) this court recognized even further circumstances that the trial court should consider when making the determination as to the voluntariness of a statement. In *Miller* this court concluded,

> "appropriate factors to consider in the totality-of-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentation; isolation of a minor from his or her parent; threats of violence; and promises of leniency."

Miller, 375 S.C. at 386, 652 S.E.2d at 452.

In consideration of each of these factors the trial court was correct in allowing this statement to go forward to the jury.[1] The Appellant was not a minor[2]; he was not deprived any of the comforts that the human body needs to sustain itself, like food, water, and the ability to use the bathroom if requested; he was only held for forty-five minutes so he was not confined for an

[1] If the statement is found to have been given voluntarily it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. *State v. Washington,* 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

[2] The Appellant was born in 1975 so at the time of the interview he was 40 years old. (R. p. 18 lines 18-20).

abundant amount of time; he was not physically nor mentally abused; and was not promised any leniency if he was to give a statement.

Within the Appellant's brief he alleges that he gave statements after the law enforcement informed him that if he gave them his information they could possibly continue the investigation and possibly exonerate him. The Appellant drew attention to his statement regarding how his lip became busted, and the fact the Assistant Solicitor used his statement against him in closing arguments. However, within Sergeant Laurita's testimony, this information was revealed before the discussion regarding the evidence that he had that could prove his innocence. Since he had already been read his *Miranda* rights and had given this statement, this statement was admissible, regardless of what was later said. Once a voluntary waiver of *Miranda* rights is made, that waiver continues until the individual being questioned indicates that he wants to revoke the waiver and remain silent, or circumstances exist which establish that his "will has been overborne and his capacity for self-determination critically impaired." *Rochester,* 301 S.C. at 200, 391 S.E.2d at 246, *quoting, Moultrie,* 273 S.C. at 62, 254 S.E.2d at 295. The Appellant never verbally withdrew his waiver of *Miranda* rights; therefore, everything he said was able to be used against him, and he was aware of this after he was read his *Miranda* rights.

The Appellant was read his *Miranda* rights which he clearly understood and decided to freely waive. He was never denied anything; was not physically nor mentally abused; he was not a minor; was only detained for forty-five minutes; and he was never promised leniency if a statement was provided. He was allowed a hearing before the trial court outside the presence of the jury where the State was obligated to prove by a preponderance of the evidence that his statement was freely and voluntarily given. There exists no error in law by the trial court allowing

the Appellant's statement to be forwarded to the jury; therefore, the decision of the trial court should be affirmed.

CONCLUSION

For the reasons stated above the Respondent would respectfully request that this court affirm the decision of the trial court and deny the Appellant's request for a remand and a new trial.

Respectfully submitted,

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November 17, 2022

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The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2021-000619

THE STATE, ...RESPONDENT,

v.

CORREY TREMAYNE BROWN, ...APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This17th day of November 2022.

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