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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Georgetown County
The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2021-001176

THE STATE, Petitioner,

v.

RANDY COLLINS, Respondent.

BRIEF OF PETITIONER

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Did the Court of Appeals err in reversing the trial judge when there was evidence in the record to support the trial judge's ruling that Collins' confession was voluntarily given and where the trial judge did not err as a matter of law in finding the confession was voluntarily given? Did the Court of Appeals also err in denying the State's motion to supplement the record on appeal with Collins' subsequent confession of guilt at his codefendant's trial when the subsequent confession eliminated any prejudice Collins could have suffered from the admission of his prior confession?

STATEMENT OF THE CASE

In August 2014, a Georgetown County Grand Jury indicted Collins for one count of first-degree arson, one count of criminal conspiracy, and one count of murder. On November 5-9, 2018, a jury trial was held in the Georgetown County Court of General Sessions with the Honorable Larry B. Hyman, presiding. Collins was represented by Ralph Wilson, Jr., Esquire. The State was represented by Deputy Solicitor Alicia Richardson and Assistant Solicitor Randerson Stephens of the Fifteenth Circuit Solicitor's Office. The State proceeded to trial on the charges of first degree arson and criminal conspiracy, but declined to proceed with the murder charge. At the conclusion of trial, the jury convicted Collins of both counts. Following the verdict, the trial judge sentenced Collins to thirty years' imprisonment for first degree arson and five years' imprisonment for criminal conspiracy. Each sentence ran concurrently with the other resulting in an aggregate term of thirty years' imprisonment. Collins appealed.

On appeal, Collins alleged the trial judge erred by admitting his confession when it was "induced by deception regarding [its] use, promises of leniency, threats of severe punishment, and other factors" which rendered the statement involuntary. (App. 861). Collins also alleged the trial judge erred by not requiring an additional evaluation of his competency to stand trial. (App. 861). After the Final Briefs of both parties were filed with the Court of Appeals, Collins testified against his codefendant, Marissa Cohen, at her trial on January 8, 2020. (App. 971-96). On February 25, 2020, the State filed a motion to supplement the record on appeal with Collins' testimony from Cohen's trial. (App. 963-68). The Court of Appeals initially granted the State's motion on March 6, 2020. (App. 998). However, Collins filed a motion in opposition to the State's request on March 9, 2020. (App. 999-1005). The Court of Appeals rescinded its prior order on March 31, 2020. (App. 1008). The State filed a return to Collins' motion on April 8,

2020. (App. 1009-14). The Court of Appeals denied the State's motion via a written order on April 29, 2020. (App. 1016). On September 8, 2021, the Court of Appeals reversed Collins' convictions in a published opinion and found the trial judge erred in finding Collins' confession was voluntarily given. State v. Collins, 435 S.C. 31, 864 S.E.2d 914 (Ct. App. 2021) (App. 933-50). Because the issue of whether Collins' confession was involuntary was dispositive, the Court of Appeals declined to address the second issue raised on appeal. (App. 950). The State petitioned this Court for a writ of certiorari on October 18, 2021. Collins filed a return to the State's petition on December 7, 2021. This Court granted the State's petition for a writ of certiorari on December 15, 2022.

STATEMENT OF FACTS

In the early hours of March 29, 2014, a trailer located at 10 James Drive in the town of Andrews, South Carolina was set on fire. (App. 312-14). First responders were initially told the trailer was abandoned and no one lived in it. (App. 314, 318, 321). After the fire was extinguished, firefighters entered the home and found the body of a twelve year-old boy inside. (App. 321). The body was identified as David "Syience" Coombs. Coombs' cause of death was smoke inhalation. (App. 610). Coombs was Marissa Cohen's son. Cohen arrived at the scene of the fire shortly after first responders. Multiple first responders noted Cohen was acting unusually calm and seemed unaffected after learning of her child's death. (App. 326, 334-35, 341). Loretta Miller witnessed Cohen's behavior at the scene. Miller reported that when Cohen was informed that her son was killed she made a phone call to Collins. (App. 624). According to Miller, Cohen said "Randy, my baby's dead. My baby Syience dead on the floor." Miller heard Collins respond "You got to live with that." (App. 624, lines 13-14). Earlier that evening at approximately 8:30 PM, Coombs went to a birthday party at a local recreation center. Coombs and his friend, Ricky Nelson, left the party at approximately 12:30 AM. Coombs told Nelson he was going home to check on his mother, get some clothes, and then he would sleep over at Nelson's house. (App. 306). Nelson waited for Coombs to arrive at his house but eventually fell asleep.

In February 2014, Cohen applied for a $25,000 contents-only insurance policy on the trailer at 10 James Drive. (App. 353). Cohen filed a claim with the insurance company on April 7, 2014. (App. 356). The insurance company declined to pay the claim. (App. 359). Investigator Melvyn Garrett of the Georgetown County Sheriff's Office received an anonymous tip that Cohen and Collins were involved in setting the fire. (App. 139, 675-76). As a result of this tip, Garrett spoke with gas station attendant Charlene Scott. Scott reported that Cohen bought $20

worth of kerosene the night before the fire. (App. 377-78). Earlier in the week of the fire, Cohen began moving furniture and other items out of the trailer into a storage unit. (App. 314, 371-72, 382). Cohen asked Benjamin "Mano" Brown and Everett Langley to help her move. After Brown had finished moving the items out of the trailer, Cohen told Brown she was going to burn down the trailer. (App. 382).

Garrett spoke with Collins for the first time on April 9, 2014. Collins allowed Garrett to write a statement on his behalf which Collins subsequently signed. (App. 677-79, 836). Collins denied any role in setting the fire and claimed he was with his nephew, James Miller[1], from 9:00 PM to 3:00 AM at Carnell's Club. (App. 678, 836). After his initial interview with Collins, Garrett executed search warrants for the phone records of Collins and Cohen. (App. 681-82).

Law enforcement discovered that Collins and Cohen exchanged a total of six phone calls in the hours before and after the fire. (App. 539-40). Three phone calls occurred before the fire in the afternoon and evening of March 28, 2014. (App. 539). An additional three phone calls occurred between 2:30 AM and 3:30 AM on March 29, 2014. (App. 539-40).

Garrett and Agent Scott Hardee of SLED arranged for Collins to retrieve his phone from the Andrews town hall on June 4, 2014. Collins agreed to stay and talk with Hardee and Garrett about the fire. (App. 683). Collins was read his Miranda[2] rights and he signed a form indicating he understood and waived his rights. (App. 544, 837). Collins gave a statement to Hardee and Garrett acknowledging his involvement with the fire. Collins initially denied any involvement with the fire, but gradually acknowledged he was with Miller when Miller set the fire. (State's

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[1] James Miller was eventually charged as a codefendant of Marissa Cohen and Collins. Prior to Collins' trial, Miller was killed. Devon Coombs, another son of Marissa Cohen and older brother of David "Syience" Coombs, plead guilty to killing Miller prior to the start of Collins' trial. (App. 187, 621).

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

Exhibit #3, App. 839-40). Collins said Cohen approached him about burning down her trailer and offered him $5,000 for his help. Collins told Miller about the offer. Miller seemed interested in the offer because he needed some money. On the night of the fire, Collins and Miller went to the trailer together. According to Collins, Miller lit a piece of paper on fire and threw it through a window while Collins looked on. (State's Exhibit #3, App. 839-40). Collins denied lighting the match that started the fire but admitted he was at the trailer with Miller. Garrett wrote a statement on Collins' behalf which Collins reviewed and signed. (App. 839-40).

Prior to trial, a mental evaluation of Collins was ordered by the Honorable Benjamin Culbertson. Collins was evaluated at the Medical University of South Carolina by Dr. Abby Mulay and Dr. Emily Gottfried. Mulay concluded that Collins did not have a mental illness nor did he have an intellectual disability. (App. 68, 848-56). Both Mulay and Gottfried concluded Collins could assist his lawyer at trial and was competent to stand trial. (App. 68, 116, 848-56).

At trial, the State tendered Agent Brian Wright of SLED as an expert in fire origin and cause. Wright classified the fire as incendiary and determined it originated from accelerant that was poured on the floor of the trailer. (App. 497). The State also called a handwriting expert to authenticate a letter dated November 11, 2014 from Cohen to her older son Devon. Cohen made the following statements regarding Collins in the letter: "I heard Randy has a bond. I wish that I had some backup and Randy did have a bond just to deal with him" and "Do you think that I'm going to get life? I hope not. I need a gun and meet up with Randy and Mano." (App. 662, lines 2-4, lines 9-11).

The State also called Cohen's cousin, Rose Collins as a witness. Rose testified that she traveled with her husband to Andrews the day after the fire and met with Collins at his house. When she arrived at Collins' home, Collins approached her vehicle and said "We fucked –

everything's f'd up. It wasn't supposed to go down like that, nephew. We, we f'd up." (App. 416, lines 12-13). Collins declined to testify in his own defense. At the conclusion of trial, Collins was convicted of both counts.

STANDARD OF REVIEW

Historically, in South Carolina, when reviewing a trial judge's ruling concerning the voluntariness of a statement, an appellate court does "not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). Accordingly, pursuant to the historical standard in this state, "The trial judge's determination of the voluntariness [of a statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). However, this Court recently held that "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review." State v. Frasier, 437 S.C. 625, 633-634, 879 S.E.2d 762, 766 (2022). While Collins' case does not involve a review of a motion to suppress under the Fourth Amendment, this Court raised the possibility that the newly adopted Frasier standard may govern the issue of voluntariness in State v. Brewer. State v. Brewer, Op. No. 28120, --- S.C. ---, --- S.E.2d ---, 2022 WL 6881963 (S.C. Sup. Ct. filed Oct. 12, 2022) (Howard Adv. Sh. No. 37 at 21). Therefore, the State will address the trial judge's ruling concerning the voluntariness of Collins' statement under both the traditional abuse of discretion standard of review and the two-step Frasier standard of review.

ARGUMENT

The Court of Appeals erred in reversing the trial court because there was evidence in the record to support the trial judge's ruling that Collins' confession was voluntarily given and the trial judge did not err as a matter of law in finding the confession was voluntary. Additionally, the Court of Appeals erred in denying the State's motion to supplement the record on appeal with Collins' subsequent confession of guilt at his codefendant's trial because the subsequent confession eliminated any prejudice Collins could have suffered from the admission of his prior confession.

The Court of Appeals reversed Collins' convictions for first degree arson and criminal conspiracy because the Court determined the trial judge erred in finding Collins' confession was voluntarily given. The State respectfully submits the Court of Appeals' decision was wrong for two reasons[3]. First, the trial court did not abuse its discretion in determining Collins' confession was voluntary nor did it commit an error of law by admitting the confession. The trial judge reviewed the recording of Collins' interview and heard testimony from Collins, Agent Hardee, and Investigator Garrett and was able to assess the credibility of those witnesses before ruling on the admissibility of the statement. Collins deflected blame to his codefendant in his recorded confession, his written statement, and during the Jackson v. Denno[4] hearing (App. 264, 839-40, State's Exhibit #3). Furthermore, Collins admitted he was not threatened by law enforcement and the substance of his statement was true. (App. 269-70). Therefore, whether this Court reviews the trial judge's decision under a de novo or an abuse of discretion standard of review, the trial

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[3] The State questions if the issue of whether Hardee's promise of confidentiality rendered Collins' statement inadmissible was preserved for appeal, but acknowledges trial counsel made a broad objection to the admission of Collins' statement that included an argument that the admission of Collins' statement violated his due process rights under the 14th amendment to the United States Constitution. Hardee's promise of confidentiality is one many circumstances an appellate court could consider in determining whether a statement was voluntarily given under the due process clause. However, any issues regarding whether Miranda warnings were required or whether Collins made a knowing, intelligent, and voluntary waiver of his Miranda rights are not properly before this Court. Collins did not argue that his Miranda warnings were negated or that he did not properly waive his rights in his brief to the Court of Appeals. (App. 860-86). Furthermore, Collins conceded at oral argument that the question of whether Miranda warnings were required was not before the Court of Appeals. (Oral Argument at 37:00-38:35).

[4] Jackson v. Denno, 378 U.S. 368 (1964).

judge's ruling should be upheld under either standard because there was evidence to support the ruling and Collins' will could not have been overborne based on the nature of his statement and his testimony during the Denno hearing. Second, the Court of Appeals erred in denying the State's motion to supplement the record on appeal with Collins' subsequent sworn testimony at his codefendant's trial in which he acknowledged his guilt to the crimes for which he stood trial in this case, because Collins' subsequent confession eliminates any prejudice from the admission of his previous confession. Accordingly, this Court should reverse the holding of the Court of Appeals and affirm Collins' convictions and sentences.

No Abuse of Discretion or Error of Law

Whether this Court reviews the admission of Collins' confession under the traditional abuse of discretion standard of review or adopts the de novo standard described in Frasier, this Court should reach the same conclusion regardless. The trial judge did not abuse his discretion because there was ample evidence in the record to support his ruling of voluntariness. The trial judge did not commit an error of law by admitting the statement because Collins' testimony was self-serving, he denied being threatened by law enforcement, and he admitted the substance of his statement was true. This Court should reverse the holding of the Court of Appeals and affirm Collins' convictions and sentences.

In rendering its' decision reversing Collins' convictions, the Court of Appeals claimed that it reviewed the trial judge's ruling under the traditional abuse of discretion standard. However, a closer review of the Court's opinion reveals the Court reviewed the question in a de novo fashion. The Court maintained: "We are not insensitive to the deferential standard of

review we apply to the trial court's determination of the voluntariness of a statement[5]." Collins 435 S.C. at 53, 864 S.E.2d at 925. (App. 949). However, the Court of Appeals noted it was "still tasked with considering the totality of the circumstances surrounding the defendant's giving of a confession in determining whether a confession was voluntarily given." Collins 435 S.C. at 53, 864 S.E.2d at 926. (App. 949). Under the traditional standard, an appellate court must consider the totality of the circumstances surrounding a confession, but the court must not "reevaluate the facts based on its own view of the preponderance of the evidence, but simply determine[s] whether the trial court's ruling is supported by any evidence." Saltz, 346 S.C. at 136, 551 S.E.2d at 252. Here, the Court of Appeals substituted its own judgment of whether the totality of the circumstances supported a finding of voluntariness in a de novo fashion, rather than ruling on whether there was any evidence to support the trial judge's finding that Collins' confession was voluntary.

The Court of Appeals erred because there was evidence in the record to support the trial judge's ruling that Collins' confession was voluntarily given. First and foremost, Collins testified he was not threatened by either of the officers, and the officers only promised him they would speak to the solicitor on his behalf. (App. 269-70). Furthermore, Collins never mentioned Hardee's promise of confidentiality at any point in his testimony, nor did he testify that Hardee's statement had any bearing on his confession. (App. 252-70). Even if Collins' testimony at the Denno hearing wasn't sufficient to support the trial judge's ruling of voluntariness, the testimony of Hardee and Garrett amply support the trial judge's ruling as well. Garrett and Hardee each testified Collins was free to leave at any time, he was given multiple bathroom and cigarette

[5] Multiple questions were posed by the Court of Appeals at oral argument regarding what the correct standard of review was. Counsel for Collins agreed that the standard of review was an abuse of discretion and not an error of law. (Oral Argument at 5:00-7:15).

breaks, he was provided a soda, and he was allowed to leave at the end of the interview. (App. 149-52, 233, 237-39). This evidence was not contradicted by Collins. (App. 252-70).

In addition to having evidence in the record that Collins was not coerced, the trial judge was also able to evaluate Collins' demeanor and credibility after both seeing and hearing his live testimony. This firsthand experience put the trial judge in a superior position to the Court of Appeals to evaluate the voluntariness of Collins' statement. See State v. McClure, 312 S.C. 369, 371-72, 440 S.E.2d 404, 405-06 (Ct. App. 1994) ("The question of the voluntariness of McClure's confession came down to a question of credibility. The trial judge resolved the question in favor of the officers. We have no quarrel with that, finding, as we do, no abuse of discretion.") The trial judge appropriately assessed Collins' demeanor and credibility in the following exchange with trial counsel:

> The Court: I, I, I, I don't think that argument holds water, Mr. Wilson, because again today [Collins] says that's really what happened. [Collins] may view himself as having nothing to do with it by virtue of the fact that he was present aiding and abetting, but even today he says "what I said was true. James [Miller] did it. James went and threw the lighted thing in the window. James started the fire."
>
> Mr. Wilson: What he was saying actually, Judge, and again, it's because he does not have good language skills, which is why I wanted to go back and question him again.
>
> The Court: I want to question that. I watched him on three hours of tape. He seemed to have excellent language skills, pretty good manipulative skills, which are consistent with what two forensic psychologists had to say about his, his evaluation.
>
> Mr. Wilson: Judge—
>
> The Court: And he always seems to, I agree with [Deputy Solicitor] Richardson, that he, he only forgets those things that may be harmful to him. You know, he seems to have great recall, three hours of, of interrogation, and he was able to carry on conversations as clearly as you and I could.
> ....

> The Court: Will you agree that the question here is whether or not there was coercion.
>
> Mr. Wilson: It's not the only—
>
> The Court: And I asked him if there was coercion.
>
> Mr. Wilson: It's, its's not the only question, but the reason I put him up, Your Honor, was because I knew what he'd already told me about his experience there with the officer. It was important that the Court knows that obviously he felt as if he was overwhelmed with this information.
>
> The Court: I asked him if he was threatened or anything. He said no.

(App. 279, lines 9-25 – App. 280, lines 1-4, lines 11-22). The preceding exchange highlights how the trial judge was able to observe Collins' demeanor and evaluate his credibility. The trial judge appropriately focused on the self-serving nature of Collins' statement and how Collins' instinct for self-preservation never wavered during his interview. The preceding exchange also highlights the existence of evidence in the record to support the trial judge's finding of voluntariness. Therefore, the trial judge did not abuse his discretion.

If this Court choses to apply the Frasier standard of review to questions of voluntariness, the holding of the Court of Appeals should nonetheless be reversed because the trial judge did not commit an error of law in finding Collins' confession was voluntarily given. In Frasier, this Court noted that "with the dawn of the technological age, appellate courts are no longer dependent on the trial court in our review of evidence. The most obvious example is the advent of body and dashcam footage, whereby this Court reviews the same video as the trial court. Accordingly, while the need for deference remains, *particularly in determining issues of credibility*, it is no longer necessary for us to defer to the trial court's ruling in every case." Frasier, 437 S.C. at 632, 879 S.E.2d at 766 (emphasis added). Here, like in Frasier, this Court has a video of Collins' interview at its disposal to conduct its own review of the evidence. However,

pursuant to Frasier, this Court must also give deference to the trial court's factual findings, particularly in regard to issues of credibility.

Here, the trial judge made factual findings regarding Collins' intelligence, the length of his interrogation, the accommodations provided to Collins by law enforcement, whether Collins was threatened by law enforcement, and ultimately whether Collins' testimony was credible. The trial judge found that, while Collins did not go very far in school, he was gainfully employed in a variety of career fields, he could transport himself to his mental evaluation appointments, and his evaluators found no evidence of mental retardation or illness. (App. 291-92). While Collins' interview lasted three hours, the trial judge found Collins was free to leave at any time, was able to use his phone during the interview, and was given cigarette and bathroom breaks. (App. 292). After hearing the testimony of Collins, Hardee, and Garrett and reviewing the video of the interview, the trial judge determined that no threats were made to Collins. (App. 292). Finally and most importantly, the trial judge simply did not find Collins' testimony credible. (App. 279). The trial judge noted that Collins had "pretty good manipulative skills" and he only "forgets those things that may be harmful to him." (App. 279, line 21; App. 280, lines 1-2).

Pursuant to the two-step analysis articulated in Frasier, this Court, while giving deference to the factual findings of the trial court, may conduct a de novo review of the ultimate legal question facing the court. Here, the question of law facing this Court is whether Collins' will was overborne and his capacity for self-determination critically impaired? See State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession."). Based on the totality of the circumstances surrounding Collins' confession, Collins' will was not overborne nor was his capacity for self-determination critically impaired because he continually

maintained his innocence and never accepted responsibility for the crime. Far from accepting responsibility for the crime, Collins' attempted to shift blame to his codefendant, James Miller. Collins repeatedly noted that James Miller was the person who lit the piece of paper that started the fire, and not himself. (State's Exhibit #3, App. 839-40). See State v. Pendergrass, 270 S.C. 1, 8, 239 S.E.2d 750, 753 (1977) ("The voluntariness of the waiver can be discerned from the fact that the statement which followed it was self-serving and was an attempt on appellant's part to cast blame on his co-defendant."). While this distinction did not absolve Collins of his guilt for the crimes of first degree arson and conspiracy, Collins' clearly believed it did. Collins' certainly admitted his role in setting up and planning a criminal conspiracy to burn down a trailer which resulted in the death of Syience Combs. However, Collins believed he was not responsible for any crime, because he did not light the match that started the fire. In fact, the very first words of Collins' written statement are "I did not do it." (App. 839). Collins' exculpatory declaration combined with his continued emphasis on James Miller's role in the fire prove that Collins' will could not have been overborne nor his capacity for self-determination critically impaired because his instinct for self-preservation never wavered.

The trial judge correctly noted that Collins' attempts to cast blame on his co-defendant, James Miller, indicated his will was not overborne. The trial judge noted "[Collins] may view himself as having nothing to do with [the fire] by virtue of the fact that he was present aiding and abetting, but even today [Collins] says, 'What I said was true. James did it. James went and threw the lighted thing in the window. James started the fire.'"(App. 279, lines 11-15). Perhaps if law enforcement had overborne Collins' will, Collins would have acknowledged some culpability in the fire. Instead, Collins deflected blame and maintained his innocence throughout the interview.

In analyzing the question of whether Collins' will was overborne, the Court of Appeals noted that the question of a statement's voluntariness following an assurance of confidentiality by law enforcement has not been addressed in South Carolina. Collins, 435 S.C. at 46, 864 S.E.2d at 922. (App. 943). Therefore, the Court of Appeals relied on appellate decisions from other states to inform its conclusion. However, a closer review of the cases cited by the Court of Appeals reveals key differences in the arguments presented to those appellate courts and differences in the facts of those cases that differentiate them from Collins' case.

The Court of Appeals began their analysis by citing to Redmond v. People, 501 P.2d 1051 (Colo. 1972). In Redmond, The Colorado Supreme Court considered whether a defendant validly waived his Miranda rights when he was told by law enforcement that whatever he told them would only be used against his codefendant and not against him. Id. at 1052. The Court ruled that the confusing nature of the agreement between Redmond and law enforcement made it impossible to determine which parts of his confession were voluntary and which parts were inadmissible. Id. at 1053. As previously noted, the issue of whether Miranda warnings were required to be given to Collins or whether Collins made a knowing, intelligent, and voluntary waiver of his Miranda rights was not presented to the Court of Appeals. (App. 860-86, Oral Argument at 37:00-38:35). Therefore, the Redmond court did not consider the same issue presented to the Court of Appeals and now presented to this Court. This Court must decide whether a defendant's statement is admissible in light of a promise of confidentiality by law enforcement, when the question of a valid Miranda waiver is not before the Court and when the defendant admitted he was never threatened by law enforcement, and admitted his statement deflecting blame to his codefendant was true.

Next, the Court of Appeals cited to Porter v. State, 239 S.E.2d 694 (Ga. Ct. App. 1977). In Porter, the Georgia Court of Appeals considered the admissibility of a confession where the trial court failed to conduct a Jackson v. Denno hearing and where the State failed to disclose the existence of a civilian witness who conveyed a promise of confidentiality to Porter and who could provide exculpatory evidence to the defense, and where a codefendants confession was improperly admitted in violation of Bruton v. United States[6]. Thus, the Georgia Court of Appeals considered a variety of issues that are not presented to this Court in Collins' case. Here, unlike in Porter, a thorough Jackson v. Denno hearing was conducted that included all the relevant witnesses, the State did not fail to disclose evidence, exculpatory or otherwise, to the defense, and the testimony of a codefendant was not improperly admitted against Collins. Although, the promise of confidentiality conveyed by a civilian witness was a factor in the Porter court's decision to reverse Porter's conviction, it was not the only factor. Similarly, here, the promise of confidentiality made to Collins by Hardee is not the only factor this Court should consider in determining whether Collins' statement was voluntary. Rather, this Court must also consider the self-serving nature of Collins' statement, Collins' testimony that he was not threatened and his statement was true, and the trial court's factual findings regarding the circumstances of Collins' interview.

The Court of Appeals next relied on United States v. Preston, 751 F.3d 1008 (9th Cir. 2014) to support their decision reversing Collins' conviction. The Court of Appeals asserted that Preston analyzed "factors occurring during the questioning-including some with similarities to the case at hand", but neglected to acknowledge the obvious differences between the reprehensible conduct displayed by the law enforcement interrogating Preston and the conduct of

[6] Bruton v. United States, 391 U.S. 123 (1968).

the officers interviewing Collins. Collins 435 S.C. at 48, 864 S.E.2d at 923 (App. 945). First and foremost, Preston had "an IQ of sixty-five, which the Supreme Court recognized as within the range of intellectual disability." Preston 751 F.3d at 1010. By contrast, after being examined by Dr. Gottfried and Dr. Mulay, Collins was found to "not currently meet diagnostic criteria for a mental illness, neurocognitive disorder, or intellectual disability." (App. 856). In Preston, law enforcement "repeatedly presented Preston with the choice of confessing to a heinous crime or to a less heinous crime; rejected his denials of guilt; instructed him on the responses they would accept; and fed him the details of the crime to which they wanted him to confess." Id. Here, law enforcement did not reject Collins denials of guilt but rather wrote exactly what Collins asked them to write, including the words "I did not do it." And far from feeding Collins details of the crime, Collins provided details of the arson to investigators that were previously unknown before the interview. (App. 703).

While the Court of Appeals understandably sought guidance from other states in deciding an issue of first impression in South Carolina, none of the cases considered by the Court of Appeals adequately match the facts presented in Collins' case. While Redmond, Porter, and Preston all featured promises of confidentiality by law enforcement or a third party that preceded a confession, none of the cases featured a defendant who maintained his innocence and deflected blame on his codefendant throughout the interview. None of the cases relied upon by the Court of Appeals featured a defendant who testified during a Jackson v. Denno hearing that he was not threatened by law enforcement and who admitted that the substance of his statement was true. (App. 269-70). Finally, none of the cases relied upon by the Court of Appeals addressed whether a statement was voluntary when no issues regarding Miranda warnings were properly preserved for appeal. Whether this Court chooses to adopt the standard of review prescribed in Frasier, or

the traditional abuse of discretion standard, this Court should reverse the holding of the Court of Appeals. The trial judge did not commit an error of law in finding Collins' statement was voluntary when Collins did not admit his guilt, but deflected blame to his codefendant instead and where Collins acknowledged he was not threatened by law enforcement and the substance of his statement was true. Likewise, the trial court did not abuse its discretion in admitting the statement because there was evidence in the record to support the trial court's decision of voluntariness.

No Prejudice to Collins

Pursuant to Rule 212(b), SCACR, on February 25, 2020, the State moved for the leave of the Court of Appeals to supplement the record on appeal to include Collins' testimony from the trial of his codefendant, Marissa Cohen, on January 8, 2020. On April 29, 2020, the Court of Appeals denied the State's motion in a written order. (App. 1016). The Court of Appeals erred in denying the State's motion to supplement the record.

While Rule 210(c) of the South Carolina Appellate Court Rules explicitly states the Record on Appeal "shall not, however, include matter which was not presented to the lower court or tribunal", Rule 212 provides for supplementation of the record when ordered by an appellate court or when a party is given leave by the appellate court to supplement in the absence of consent from the other party. Rule 210(c) SCACR; Rule 212(a), (b) SCACR. The State submits, that while Collins' testimony in his codefendant's trial was not before the trial judge because Collins was tried before his codefendant, the Court of Appeals nonetheless erred in not supplementing the Record on Appeal, because Collins' subsequent admission of guilt under oath eliminated any possible prejudice to Collins.

Even if the trial court erred in its determination that Collins' confession was voluntary, Collins' subsequent admission precludes Collins from obtaining any meaningful relief and effectively obviates the need for his appeal. While represented by counsel, Collins admitted under oath and in open court that he engaged in a criminal conspiracy with Marissa Cohen and James Miller to burn down Cohen's trailer in exchange for $5,000 of insurance proceeds. (App. 980-83). Collins further admitted he suggested that kerosene be used to start the fire and that he traveled with Miller to the trailer on March 29, 2014 and witnessed Miller light a piece of paper on fire and throw it through a window of the trailer. (App. 980-83). In light of this admission, Collins is effectively worse off than he was prior to his trial. If the decision of the Court of Appeals stands, the State can use Collins' subsequent confession against him in a future trial. At a future trial, Collins will struggle to argue against the admission of a confession given under oath while represented by counsel. Collins will also struggle to explain his subsequent confession to a future jury if the Court of Appeal's reversal of his convictions stands. See United States v. Najjar, 300 F.3d 466, 477 (4th Cir. 2002) ("However, not all evidence conceivably derived from an illegal search need be suppressed if it is somehow attenuated enough from the violation to dissipate the taint."). Because of the aforementioned considerations, the Court of Appeals should have granted leave to supplement the record under Rule 212(b) SCACR.

In two previous decisions, this Court addressed situations where a defendant admitted their guilt in court and then sought appellate review of their convictions. In State v. Sroka, this Court held that Sroka's convictions should be upheld because he admitted prior to sentencing that he participated in the robbery for which he stood trial. See State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976). ("We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the

correctness of this conclusion is eliminated by the admission of Appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge that he had participated in the robbery with a sawed-off shotgun"). Here, in a similar fashion to Sroka, Collins admitted his guilt while under oath in a subsequent proceeding. In Whetsell v. State, this Court held that when multiple defendants admitted their guilt in a plea hearing and at a post-conviction relief hearing, any review of trial errors was unnecessary and trial counsel was not ineffective for failing to challenge the admission of evidence that would have been used against them. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("Review of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."). Similarly, Collins' subsequent admission of guilt makes any appellate review of potential errors by the trial judge unnecessary. Therefore, in light of this Court's prior decisions in Whetsell and Sroka and Collins' sworn admission of guilt, Collins did not suffer any prejudice from the trial judge's decision to admit his confession to law enforcement, nor can he achieve any meaningful relief if this Court upholds the Court of Appeals reversal of his convictions.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgement of the Court of Appeals be reversed and Collins' convictions and sentences be affirmed.

Respectfully submitted,

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