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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRICK DOCTOR,

APPELLANT

APPELLATE CASE NO. 2022-000554

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to suppress Appellant's statement to police where Appellant was in custodial interrogation, where he recognized his Miranda warnings by shaking his head "yes" and signing the acknowledgment form, yet where he refused to sign the waiver of his rights, repeatedly shook his head "no" when asked if he would talk with police, and after interrogators read the waiver of rights a aloud Appellant said, "I don't want to"?

STATEMENT OF THE CASE

Appellant Demetrick Doctor was indicted by the Richland County Grand Jury on October 14, 2020, for two counts of murder, and one count of attempted murder. R. 661-662, 665-666, 669-670. His case proceeded to trial from April 18th through 22nd, 2022, before the Honorable Jocelyn Newman and a jury. R. 1. Appellant was represented by John Tate and Megan Eigenbrot, while the State was represented by Daniel Goldberg and Amanda Gaston. R. 1. The jury found Appellant guilty of all counts, and the trial court sentenced Appellant to concurrent sentences of life without parole for each charge.[1] R. 646, ll. 10-21; R. 395, ll. 13-17; R. 660, ll. 6-13; R. 663-664, 667-668, 671-672.

[1] On April 6, 2022, Appellant was served with the State's notice to seek life without parole based upon his prior record. R. 15, ln. 14—R. 16, ln. 1.

STANDARD OF REVIEW

In light of the South Carolina Supreme Court's recent jurisprudence, Appellant respectfully requests this Court to analyze whether the statement at issue in this case was given that the statement was made freely and voluntarily, and taken in compliance with Miranda[2] as a mixed question of fact and law.

In State v. Brewer, 438 S.C. 37 n.1, 882 S.E.2d 156, 160 n.1 (2022), after acknowledging prior precedent regarding standard of review,[3] the Supreme Court recognized other jurisdictions examining "the question of whether a statement was voluntary given as a mixed question of fact and law" employed "a standard that is nearly identical" to that adopted by our Court in State v. Frazier, 437 S.C. 625, 879 S.E.2d 762 (2022). However, the Brewer Court "left for another day" whether the Frazier standard of review governs such issues. Id.

In Frazier, the Court reformed the standard of appellate review of a motion to suppress based on violation of the Fourth Amendment to now involve a two-step analysis: the trial court's factual findings are reviewed for any evidentiary support, while the ultimate legal conclusion is a question of law subject to *de novo* review. Id. 437 S.C. at 633-34, 879 S.E.2d at 766 (2022). The rationale supporting such a change was due in part as follows:

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[2] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1964).

[3] Previously, this Court has stated that "[o]n 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); see also State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute an abuse of discretion." State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

> "[W]ith 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 overall ruling in every case."

Id. 437 S.C. at 632, 879 S.E.2d at 766.

Similarly, appellate review of a motion to suppress based on violations of Fifth Amendment Miranda and Sixth Amendment protections is no longer dependent on the trial court in reviewing evidence due to the same advantages of our technological age. Specifically, body worn camera and interrogation room camera footage allows appellate courts to review "the same video as the trial court." Id. Accordingly, Appellant respectfully requests this Court review the trial court's factual findings for any evidentiary support, and review de novo the legal conclusions reached by the trial court.

STATEMENT OF THE FACTS

Late at on the night of October 3, 2019, numerous residents and visitors were out at the end of a dirt road around 129 Ballenton Road in Richland County, South Carolina—an area called the D-R by those familiar with it. R. 138, ll. 21-22; R. 254, ll. 16-25; R. 256, ll. 1-11; R. 271, ll. 1-5; R. 287, ln. 24—R. 288, ln. 3. At the end of the D-R was an RV and several other vehicles; directly beyond that was a single-wide trailer, and a Mercedes car parked between the RV and trailer. At the left end of the trailer was light pole, and a wood line of trees; farther past the right end was a brick house; behind the trailer was a table, a large pile of empty beer cans, another shack, and a greenhouse-like structure with fabric on the side referred to as a "tent" with a rear SUV seat inside. R. 186, ln. 19—R. 187, ln. 17; R. 248, ln. 23—R. 249, ln. 23; R. 252, ll. 3-16; R. 273, ln. 1—R. 274, ln. 19. The D-R was an area known to have many people come and go to barbeque, hang out, and use drugs. R. 253, ln. 7—R. 254, ln. 13.

At the time, Nathan Telford (Telford), whose family owned the property, was out back playing cards. Unbeknownst to him, Justin "Julio" Glenn (Julio), Christine "Jules" Hayes (Jules), and another unknown male recently arrived in Julio's SUV, and parked slightly to the right front of the trailer. Stacey Melton (Melton) was also out front with another friend, Christopher "Ferb" Doctor (Ferb) waiting for Jules and Julio to arrive. When they did, Melton went to Julio's SUV to meet with Jules and buy drugs from Julio. R. 252, ll. 3-16; R. 254, ln. 16—R. 255, ln. 10; R. 286, ll. 10-25; R. 293, ln. 2—R. 299, ln. 7. Shortly after Melton left Julio's SUV and walked back over to Ferb, a white Ford Crown Victoria sped down the D-R. Ferb told Melton to take cover. R. 299, ln. 10—R. 301, ln. 23. She ran towards the back of the trailer heard a boom, followed by a car horn incessantly blowing. Melton then turned back and walked up the side of the trailer, and saw three flashes; realizing they were gunshots, she ran

behind the trailer again. The scene was chaotic with people running everywhere, including Telford's cousin, John Dickerson (Dickerson). R. 261, ll. 6-18; R. 277, ll. 1-12; R. 302, ln. 3—R. 303, ln. 18; R. 319, ll. 12-18. Melton saw Appellant running behind the trailer with two firearms: a pistol, and a sawed-off shotgun. She put her head down and did not see Appellant again that night; however, Melton heard another gunshot shortly after. R. 303, ln. 21—R. 304, ln. 24; R. 306, ll. 4-15; R. 320, ll. 10-25; R. 322, ll. 16-23.

Telford likewise heard gunshots while playing cards behind the trailer, and took cover in the tent next to the seat. R. 258, ln. 3—R. 259, ln. 13; R. 275, ln. 17—R. 276, ln. 25. Telford also saw Appellant come behind the trailer with two guns in his hands and another in his waistband, and spoke with him; Appellant purportedly said, "I'm looking for the ones who say their gonna kill me on sight, shoot me on sight," and that "they threatened me all week long." R. 259, ln. 16—R. 260, ll. 25; R. 262, ll. 9-19. Appellant left around the past of the cans toward the front of the trailer. Telford also saw Dickerson run by him toward the can pile; shortly after, he heard more gunfire. R. 262, Ln. 20—R. 264, ln. 6. Telford ran to his mother's brick house next door, and as cars left he called 911. R. 264, ll. 7-24.

When police arrived, they discovered Jules laying face down on the ground out front with wounds to her head and neck from buckshot likely fired out of 12-gauge shotgun from at least nine feet away. They also found Julio's body in the doorway of his SUV; he was shot through the left side of his head by the ear from between two to four feet away with birdshot fired from a shotgun. Finally, Dickerson was found laying in the can pile with a gunshot wound in his face; although permanently blinded, he survived the incident. R. 140, ln. 6—R. 141, ln. 6; R. 173, ln. 1—R. 174, ln. 23; R. 196, ln. 5—R. 200, ln. 4; R. 205, ll. 9-18; R. 207, ll. 1-9; R. 474, ln. 23—R. 475, ln. 14; R. 480, ln. 21—R. 481, ln. 18; R. 484, ln. 19—R. 485, ln. 25. After talking with

Melton and Telford, police developed Demetrick "Meke" Doctor (Appellant) as a person of interest. R. 266, ln. 2—R. 269, ln. 3; R. 307, ln. 13—R. 308, ln. 13; R. 358, ln. 19—R. 359, ln. 10; R. 544, ll. 16-25.

On October 5, 2019, Appellant was held in a small interrogation room at the Richland County Sheriff's Office (RCSO) Headquarters. He was interrogated by Investigator Kevin Bland (Inv. Bland) and Sergeant Dauway (Sgt. Dauway). R. 87, ln. 14—R. 88, ln. 10. Police acknowledged he was in their custody and not free to leave. R. 88, ll. 15-19. Appellant's interrogation was also video recorded. R. 91, ln. 19—R. 92, ln. 17; Ct. Ex. #3—cameras 1 and 2.

At the outset, Inv. Bland advised Appellant of his rights pursuant to Miranda. Ct. Ex. #3—cameras 1 and 2 @ 20:12:13.[4] Appellant shook his head "yes" when asked if he understood his rights, and likewise signed the Interrogation Advisement of Rights form. Ct. Ex. #3—cameras 1 and 2 @ 20:12:50—20:13:04. Inv. Bland then asked Appellant if he was willing to answer any questions they had for him that night; Appellant shook his head "no," and turned the wrist of his right hand. Inv. Bland responded by saying he had to have a verbal yes or no. Appellant then responded by saying, "nah, probably not." Ct. Ex. #3—cameras 1 and 2 @ 20:13:08—20:13:17. Sgt. Dauway asked, "probably no?" while Inv. Bland said, "you don't wanna, you don't wanna." Appellant again shook his head "no," and turned his wrist. Ct. Ex. #3—cameras 1 and 2 @ 20:13:19—20:13:21. On Camera 2, a person can be heard indicating they need to hear statements, and Appellant responded that police were looking for him. Ct. Ex. #3—cameras 1 and 2 @ 20:13:23—20:13:26. Sgt. Dauway then asked Appellant to listen to what they wanted him to sign, and then they would tell Appellant why he was there. Ct. Ex. #3—cameras 1 and 2 @ 20:13:26—20:13:32. After Inv. Bland read aloud the waiver portion of the

[4] No transcript of Appellant's interrogation was submitted to the trial court.

Interrogation Advisement of Rights form, he asked Appellant if he understood it and Sgt. Dauway asked if Appellant knew what pressure or coercion was. Appellant shook his head "yes," in acknowledgment. When Inv. Bland pushed the waiver form back toward Appellant again for him to sign, Appellant again shook his head "no" and said, "but I ain't gonna sign it though 'cause you had just now said uh Agree to answer questions, and I don't want to." While saying this, Appellant again was shaking his head "no" and turned both wrists. Ct. Ex. #3—cameras 1 and 2 @ 20:13:37—20:14:12. Sgt. Dauway continued the interrogation of Appellant, and immediately asked if Appellant wanted to know why he was there. Ct. Ex. #3—cameras 1 and 2 @ 20:14:12—20:14:13.

The interrogation continued after Appellant apparently vacillated upon further questioning. While he refused to discuss his whereabouts on October 3, 2019, he did relay to police the events of October 2, 2019, that transpired at the D-R between Appellant and Julio. Appellant went to the D-R to talk with Julio about selling drugs in front of his relative's home. Julio cursed Appellant and reached for an AR-style rifle. Appellant was able to disarm Julio, disable the weapon, and told Julio that he would leave it at the end of the D-R when he left. R. 94, ln. 15—R. 96, ln. 6; R. 555, ln. 8—R. 556, ln. 18; Ct. Ex. #3—cameras 1 and 2 @ 20:14:13—21:09:13; 21:46:04—22:12:45.

Appellant's case proceeded to trial, and at his pre-trial hearing the defense moved to suppress admission of his statement to police due to violation of Appellant's Miranda rights. R. 86, ll. 8-12. During the hearing, Inv. Bland confirmed both that Appellant was indeed in police custody, and that consistent with his training, the majority of communication is non-verbal body language. R. 88, ll. 15-19; R. 101, ll. 14-25. Counsel for Appellant (Counsel) recognized Appellant was read his Miranda warnings by law enforcement and signed the advisement of

rights form acknowledging them. R. 112, ll. 4-7. However, he argued that Appellant asserted his right to remain silent when he shook his head "no" in response to whether he wanted to talk with police, and he declined to sign the waiver. R. 112, ll. 13. As such, Counsel asserted Appellant's conduct was a clear invocation of Appellant's Fifth Amendment right to remain silent, and all questioning should have immediately stopped. Instead, law enforcement continued talking with Appellant. R. 112, ll. 20-25; R. 113, ll. 7-24; R. 114, ll. 9-11; R. 114, ll. 17-25; R. 122, ll. 14-22; R. 123, ll. 2-6.

The State agreed with Counsel that Appellant was in a custodial interrogation scenario triggering Miranda, and that the issue before the court was *inter alia*, whether Appellant invoked his right to remain silent. R. 115, ll. 3-7. However, the State argued that, under the totality of the circumstances, Appellant did not unambiguously invoke his Miranda rights based upon his twisting of his hands when refusing to sign the waiver shaking his head "no," "and then immediately after says probably not. He says, probably not." R. 120, ln. 24—R. 122, ln. 12. The State further pointed to Appellant's vacillating answers afterward with police throughout the interrogation "in light of the continuing questions that were asked of him to try to clear up this situation." R. 121, ll. 7-20.

The trial court examined the interrogation video, and determined Appellant's invocation of his right to remain silent was ambiguous because, when he refused to sign the waiver and shook his head "no," he also moved his hands by twisting his wrists. The further took into consideration Appellant's vacillating communication with police after his refusal to sign the waiver of Miranda rights form and shaking his head "no." R. 124, ln. 3—R. 125, ln. 15. As such, the trial court allowed the State to admit testimony, as well as limited portions of the video,

into evidence before the jury. R. 125, ll. 8-15; R. 547, ln. 20—R. 559, ln. 1; St. Ex. #89, Redacted Interrogation.

During trial, the information provided through Appellant's interrogation was provided not only through the testimony of Inv. Bland, but also through portions of the interrogation video. R. 547, ln. 20—R. 559, ln. 1; State's Ex. #89. Further, Melton partially corroborated Appellant's statement when she testified that on October 2, 2019, she rode to the D-R with Jules and Julio. She stayed in the SUV with Jules when Julio got out, and when Julio returned, he was upset. R. 290, ll. 21-24. Finally, the State repeatedly referred to Appellant's statement throughout its closing argument to the jury. R. 588, ll. 14-18; R. 593, ln. 15—R. 594, ln. 12; R. 597, ll. 5-10; R. 600, ll. 13-22; R. 604, ln. 1—R. 605, ln. 5; R. 611, ln. 22—R. 615, ln. 12. The jury found Appellant guilty on all three counts; he was sentenced to concurrent sentences of life without possibility of parole. R. 646, ll. 10-21; R. 395, ll. 13-17; R. 660, ll. 6-13; R. 663-664, 667-668, 671-672.

This appeal follows.

ARGUMENT

The trial court reversibly erred by failing to suppress Appellant's statement to police where Appellant was in custodial interrogation, where he recognized his Miranda warnings by shaking his head "yes" and signing the acknowledgment form, yet where he refused to sign the waiver of his rights, repeatedly shook his head "no" when asked if he would talk with police, and after interrogators read the waiver of rights a aloud Appellant said, "I don't want to."

Appellant unambiguously invoked his right to remain silent when, after being mirandized by police while in their custody, refused to sign the waiver of his rights, shook his head "no," and turned his hand up when asked by Inv. Bland if Appellant was willing to answer any questions they had for him that night. Even after police asked further questions to clarify whether Appellant would speak with them and read aloud the waiver of rights, Appellant again shook his head "no" and said, "but I ain't gonna sign it though 'cause you had just now said uh Agree to answer questions, and I don't want to." Under the totality of the circumstances, Appellant's conduct and words leading up to and including the refusal to waive his right to remain silent amount to an unambiguous assertion of his right to remain silent. Rather than scrupulously honoring Appellant's right to cut-off interrogation and immediately cease all questioning in the face of Appellant's invocation, police instead immediately asked further questions of Appellant. Accordingly, the trial court erred by refusing to suppress Appellant's statement to police.

"[T]he Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980); State v. Howard, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988). "In order to introduce into evidence a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 436, 86 S.Ct.

1602, 16 L.Ed.2d 694 (1964)." State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). "A waiver of Miranda rights is determined from the totality of the circumstances." State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998) (citing State v. Moultrie, 273 S.C. 60, 254 S.E.2d 294 (1979)). "Statements elicited during interrogation are admissible if the prosecution can establish that the suspect 'knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Id. "Any waiver, express or implied, may be contradicted by an invocation at any time. If the right to counsel or the right to remain silent is invoked at any point during questioning. Further interrogation must cease." Berghuis v. Thompkins, 560 S.C. 370, 387-88, 130 S.Ct. 2250, 2263-63, 176 L.Ed.2d 1098 (2010).

Further, questioning by police must stop immediately once a defendant asserts his rights. As the United States Supreme Court explained in Michigan v. Mosley:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates *in any manner*, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

Id. 423 U.S. 96, 100–01, 96 S.Ct. 321, 325, 46 L.Ed.2d 313 (1975) (emphasis added) (citing Miranda, 384 U.S., at 473-474, 86 S.Ct., at 1627). Accordingly, "the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his 'right to cut off questioning' was 'scrupulously honored.'" Id. 423 U.S. at 103–04, 96 S. Ct. at 326, 46 L. Ed.2d 313 (1975).

If nothing about a defendant's invocation of his Fifth Amendment rights is unambiguous, leading up to and including the invocation itself, then the interrogation must end. See Smith v.

Illinois, 469 U.S. 91, 98, 105 S.Ct. 490, 494, 83 L.Ed.2d 488 (1984) ("Where nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease."). Under such circumstances, "an accused's subsequent statements are relevant only to the question whether the accused waived the right he had invoked. Invocation and waiver are entirely distinct inquiries, and the two must not be blurred by merging them together." Id.

When determining whether a defendant's right to cut-off questioning was "scrupulously honored," courts often analyze the following five non- exclusive factors:

> (1) whether the suspect was given *Miranda* warnings at the first interrogation;
>
> (2) whether police immediately ceased the interrogation when the suspect indicated he did not want to answer questions;
>
> (3) whether police resumed questioning the suspect only after the passage of a significant period of time;
>
> (4) whether police provided a fresh set of *Miranda* warnings before the second interrogation; and
>
> (5) whether the second interrogation was restricted to a crime that had not been a subject of the earlier interrogation.

State v. Benjamin, 345 S.C. 470, 476-77, 549 S.E.2d 258, 261 (2001) (citations omitted).

In the case at bar, Appellant unambiguously refused to waive his right to remain silent and invoked his right to the same after being advised of his Miranda rights by police. First and foremost, Appellant was in police custody when held by police inside the confined interrogation room with two investigators at the RCSO Headquarters. R. 88, ll. 15-19. In preparation for questioning Appellant while in their custody, Inv. Bland read Appellant his Miranda rights, which Appellant acknowledged he understood by both signing the acknowledgment form and shaking his head "yes." Ct. Ex. #3—cameras 1 and 2 @ 20:12:50—20:13:04. However, when asked by Inv.

Bland if he would speak with them, Appellant refused to sign the waiver by shaking his head "no" and twisting his right hand upward. Ct. Ex. #3—cameras 1 and 2 @ 20:13:19—20:13:21. This alone should have been sufficient indication that Appellant wished to remain silent. See Mosley, 423 U.S. at 100–01, 96 S.Ct. at 325, 46 L.Ed.2d 313 (emphasis added) ("If the individual indicates *in any manner*, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise."). Instead, despite his training and experience in interrogation that the majority of communication is non-verbal body language, Inv. Bland nonetheless responded by saying *he had* to have a verbal yes or no. In other words, Inv. Bland rejected the manner of Appellant's invocation of his right to remain silent, and effectively insisted it be made in a manner acceptable to him.

In the face of Inv. Bland's demand, Appellant responded to the additional questioning by saying, "nah, probably not." Ct. Ex. #3—cameras 1 and 2 @ 20:13:08—20:13:17. R. 88, ll. 15-19; R. 101, ll. 14-25. Sgt. Dauway immediately seized upon Appellant's response and asked, "probably no?" while Inv. Bland said, "you don't wanna, you don't wanna." Appellant again shook his head "no," and turned his wrist. Ct. Ex. #3—cameras 1 and 2 @ 20:13:19—20:13:21. This response too should have been viewed as Appellant reverting to his manner of invoking of his right to remain silent. Again, rather than immediately ceasing the interrogation of Appellant, on Camera 2 someone can be heard indicating they need to hear statements. Appellant responded that police were looking for him. Ct. Ex. #3—cameras 1 and 2 @ 20:13:23—20:13:26. Sgt. Dauway then asked Appellant to listen to what they wanted him to sign, and then they would tell Appellant why he was there. Ct. Ex. #3—cameras 1 and 2 @ 20:13:26—

20:13:32. This likewise constituted an unlawful continuation of the interrogation and further pressured him to waive his constitutional right to remain silent.

Regardless, even after Inv. Bland read aloud the waiver portion of the Interrogation Advisement of Rights form, he asked Appellant if he understood it and Sgt. Dauway asked if Appellant knew what pressure or coercion was. Appellant shook his head "yes," in acknowledgment. Yet, when Inv. Bland pushed the waiver form back toward Appellant for him to sign, Appellant again shook his head "no" and said, "but I ain't gonna sign it though 'cause you had just now said uh Agree to answer questions, and I don't want to." While saying this, Appellant again was shaking his head "no" and turned both wrists. Ct. Ex. #3—cameras 1 and 2 @ 20:13:37—20:14:12. In other words, even after police continued to press Appellant to waive his right to remain silent, Appellant verbally and non-verbally invoked his right to remain silent. All questioning should have immediately ceased.[5] See, e.g., Thompkins, 560 S.C. at 387-88, 130 S.Ct. at 2263-63, 176 L.Ed.2d 1098.

Rather than "immediately ceas[ing] the interrogation when the suspect indicated he did not want to answer questions," Sgt. Dauway continued the interrogation of Appellant, and immediately asked if Appellant wanted to know why he was there. Ct. Ex. #3—cameras 1 and 2 @ 20:14:12—20:14:13. Police asked Appellant more questions ostensibly under the guise of clarifying whether he wanted to talk with them about the same offense for which he was brought into custody at RCSO Headquarters. No time was given in between Appellant's refusal to waive his rights or his invocation, and subsequent questioning by police. Thus, no new Miranda warnings were given. Instead, Inv. Bland and Sg. Dauway continued to question Appellant.

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[5] Appellant's wrist turning, coupled with his head shaking "no" and outright verbal refusal to answer questions, should have dispelled any potential confusion that it was anything other than an expression or gesture in support his refusal to talk.

Accordingly, police refused to "scrupulously honor" Appellant's right to cut-off questioning and immediately cease the interrogation. Benjamin, 345 S.C. at 476-77, 549 S.E.2d at 261.

When the totality of the circumstances of Appellant's conduct and words leading up to and including his refusal to waive his rights are examined, he clearly invoked his right to remain silent. Investigators knew Appellant was aware of his Miranda rights because, when informed of them, he signed the form acknowledging his rights and shook his head "yes"; by the same token, investigators knew Appellant refused to waive his rights and instead invoked his right to remain silent because, when informed of the waiver and asked if he would talk with them, Appellant refused to sign the waiver and shook his head "no" with his hand turned. Simply stated, police were unambiguously informed of Appellant's refusal to waive his rights and instead invoke his right to remain silent in the very same manner they claim Appellant was unambiguously aware of his Miranda rights.

If that was not enough, and if doing the same was likewise insufficient by again shaking his head "no" when again asked if he wanted to talk, it should have been abundantly clear to all when he told police "I don't want to." In other words, Appellant invoked his Miranda right to remain silent in the unambiguous manners of: (1) twice refusing to sign the Miranda rights waiver; (2) shaking his head "no" when asked if he would speak to police, and again when Inv. Bland asked, "do you wanna, do you wanna" regarding whether Appellant would speak with them; and (3) shaking his head "no" with both hands turned up and saying, "but I ain't gonna sign it though 'cause you had just now said uh Agree to answer questions, and I don't want to" in response to Inv. Bland reading the waiver aloud. In so doing, Appellant "ha[d] shown that he intend[ed] to exercise his Fifth Amendment privilege; any statement taken after [he] invoke[d] his privilege cannot be other than the product of compulsion, subtle or otherwise." Mosley, 423 U.S. at 100–

01, 96 S.Ct. at 325, 46 L.Ed.2d 313; see also Thompkins, 560 S.C. at 388, 130 S.Ct. at 2263-63, 176 L.Ed.2d 1098 ("If the right to counsel or the right to remain silent is invoked at any point during questioning. Further interrogation must cease.").

Further, the trial court erred in its analysis by interpreting Appellant's wrist-turning as transforming his refusal to sign and head-shake "no" into an ambiguous assertion of his right to remain silent. The court likewise erred by considering Appellant's statement "probably not," as it was a product of Inv. Bland's demand that Appellant respond in a manner acceptable to him—a verbal yes or no—rather than "any manner" given by Appellant. Mosley, 423 U.S. at 100–01, 96 S.Ct. at 325, 46 L.Ed.2d 313. Moreover, even if the trial court's assessment was accurate regarding Appellant's first invocation to his right to remain silent, it nonetheless failed to consider facts under the totality of the circumstances of Appellant's other invocations, up to and including his verbal statement, "I don't want to." Thompkins, 560 S.C. at 388, 130 S.Ct. at 2263-63, 176 L.Ed.2d 1098 ("If the right to counsel or the right to remain silent is invoked at any point during questioning. Further interrogation must cease."). Additionally, the trial court should not have considered statements made after Appellant's unambiguous invocation in response to police questioning as part of its analysis of whether he invoked his right to remain silent. See Smith, 469 U.S. at 98, 105 S.Ct. at 494, 83 L.Ed.2d 488. Thus, Appellant's Fifth Amendment right to remain silent was violated when police immediately continued the interrogation even after Appellant's unambiguous invocation. Accordingly, "any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." Mosley, 423 U.S. at 100–01, 96 S.Ct. at 325, 46 L.Ed.2d 313. As such, the trial court erred by failing to suppress Appellant's statement to police.

Appellant was also prejudiced by the trial court's erroneous admission of his statement to police. The State utilized Appellant's statement to link him to Julio and show there was bad blood between the two leading up to the night of October 3, 2019. Specifically, the statement placed Appellant at the D-R on October 2, 2019, and confronting Julio about selling drugs in front of a family member's home. Such evidence proved Appellant was familiar with the location of D-R, and knew Julio frequented the same. It also indicated that Appellant was unafraid to confront Julio, that he knew Julio carried firearms, and that Julio would resort to reaching for them when confronted. Moreover, Appellant's statement to police corroborated what he purportedly told Telford: that he was being threatened. R. 260, ln. 18—R. 261, ln 1; R. 567, ll. 21-23. It also filled the gap in Melton's testimony regarding her recollection of what occurred at D-R on October 2, 2019: she was in the back seat of Julio's vehicle with Jules and waited while Julio went outside. R. 288, ln. 18—R. 290, ln. 24. Julio later returned apparently "upset about the situation that occurred a few minutes before he got back to the car." R. 290, ll. 21-24. In a murder trial where the State had no fingerprints or DNA linking Appellant to shell casings or firearms used, or witnesses saying they saw Appellant actually shoot Julio, Jules, or Dickerson, the statements supplied circumstantial evidence of familiarity with the area and at least one of the decedents, as well as motive and intent to commit the offense. R. 604, ll. 11-16; R. 605, ln. 12—R. 606, ln. 5.

Appellant's tainted statement also gave the State evidence regarding state of mind when he indicated anger brings him clarity of mind. The State used Appellant's words repeatedly throughout its' argument to the jury and linked it to the allegations of murder and attempted murder. R. 588, ll. 14-18. Moreover, the State specifically referenced the video of Appellant speaking with police to buttress the credibility of both key State witnesses; it was used to

confirm Telford's testimony about his brief conversation with Appellant behind the trailer the night of the incident, and again to fill in the gaps of Melton's testimony regarding the day prior to the incident when Appellant initially confronted Julio. R. 593, ln. 15—R. 594, ln. 12; R. 597, ll. 5-10; R. 600, ll. 13-22. The State further linked Appellant's statement to police—that he wiped Julio's AR-15 down before getting rid of it—to the reason why police found no forensic evidence at the scene linking Appellant to the present case. R. 604, ln. 1—R. 605, ln. 5. Finally, the State presented Appellant's refusal to discuss the events of October 3, 2019 with police as incriminating, while juxtaposing it with Appellant's willingness to discuss the events of the prior day. Using Appellant's words from the interrogation, the State ultimately painted Appellant as an angry, disrespected man who sought self-justice, and encouraged the jury to watch the video again. R. 611, ln. 22— R. 615, ln. 12. In short, the State used Appellant's statement to fuel its theme and theory behind the case. Accordingly, Appellant was prejudiced by the trial court's erroneous admission of his statement to law enforcement in violation of Appellant's Fifth Amendment right to remain silent.

CONCLUSION

For the foregoing reasons, Demetrick Doctor respectfully requests reversal of his convictions and sentences, and remand for new trial

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of September, 2023.

CERTIFICATE OF COUNSEL

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

September 11, 2023

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