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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT

APPELLATE CASE NO. 2022-000921

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 second statement to law enforcement as involuntarily coerced where Appellant invoked his right to have an attorney present when initially brought to the police station, but where Appellant later agreed to speak and provided a confession because he believed police threatened to arrest the mother of his children for accessory after the fact to murder if he did not cooperate?

STATEMENT OF THE CASE

Appellant Zachir Devaugnte McCall was indicted by the Marion County Grand Jury on April 8, 2021, for murder, armed robbery, and possession of a weapon during the commission of a violent offense. R 480-485. The case proceeded to a jury trial before the Honorable G.D. Morgan, Jr., and Michael G. Nettles from July 19th through 22nd, 2021. R. 1. The State was represented by Ryan White and Todd Tucker, while Appellant represented himself *pro se*.[1] R. 1. The jury found Appellant guilty on all counts, and the trial court imposed concurrent sentences as follows: thirty-five (35) years for murder; ten (10) years for armed robbery; and five (5) years for possession of a weapon during the commission of a violent offense. R. 472, ll. 11-25; R. 478, ll. 1-23.

[1] The trial court also granted Appellant's request to allow Franklin Chandler to sit as standby counsel. R. ll. 9-16.

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 made freely and voluntarily, and taken in compliance with due process pursuant to Jackson v. Denno, 378 U.S. 368, 378, 84 S.Ct. 1774, 1781 (1964) 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,[2] the Supreme Court recognized other jurisdictions examining "the question of whether a statement was voluntarily 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). Id. 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:

> [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,

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[2] 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).

> 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 a defendant's statement based on violations of fundamental due process and Fourteenth 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

On the night of April 5, 2020, O'Neal Gerald, Jr. (Gerald) secretly arranged to meet with Appellant Zachir Devaugnte McCall (Appellant). R. 164, ln. 3—R. 168, ln. 25; R. 353, ll. 4—R. 354, ln. 8. Gerald took his shotgun and left his wife at home for what he believed was an encounter for sex as he drove his blue Chevrolet Trailblazer (SUV) to the Scotchman gas station in Mullins, South Carolina. R. 76, ln. 13—R. 77, ln. 8; R. 362, ll. 14-23. Although Appellant knew Gerald and had communicated with him for some time beforehand, he was admittedly leading-on Gerald for money to help pay his bills. R. 353, ln. 10—R. 354, ln. 25; R. 357, ln. 16—R. 358, ln. 3. The two met sometime between 9:45 pm and 10:00 pm, and then Gerald's SUV was seen leaving the area. R. 170, ll. 2-17; R. 257, ln. 15—R. 261, ln. 20; R. 358, ln. 5—R. 360, ln. 25; R. 378, ll. 1-15.

Sometime between 10:30 pm and 11:00 pm, two gunshots were heard in a rural area near property owned by Gerald where he kept his hunting dogs; however, no dogs were heard barking that night before or after the shots rang out. R. 146, ln. 2—R. 148, ln. 25. Gerald's SUV was later seen driving back to Mullins. Shortly after the vehicle was purportedly parked off-camera behind Reed's Garage, a person believed to be Appellant was seen walking away in the area. R. 262, ll. 5-18; R. 264, ln. 2—R. 271, ln. 11.

A search party was formed the next day to look for Gerald, and his remains were found not far from the dog kennels in the area shots were heard the night before. R. 78, ln. 5—R. 79, ln. 22; R. 86, ln. 6—R. 89, ln. 2. Cause of death was two gunshot wounds to the head. R. 154, ll. 12-15; R. 159, ll. 16-17. Police questioned Appellant as a "person of interest" on April 21, 2020, whereupon he acknowledged a relationship with Gerald, and that he planned to meet Gerald

around 10:00 pm on April 5th by the local gas station, but did not confess to the incident itself. R. 164, ln. 14—R. 165, ln. 16; R. 167, ln. 22—R. 168, ln. 25.

On the morning of May 8, 2020, Appellant was arrested at his sister's house for the current charges. He was taken to the Marion County Sheriff's Office at approximately 8:30 am, and asked by Detective Greg Pike (Det. Pike) if he would speak with them. Appellant refused to speak to law enforcement without an attorney and was taken to the booking area by Det. Pike. R. 173, ll. 3-18; R. 198, ll. 3-21; R. 205, ll. 7-18; R. 214, ll. 11-14. However, several hours later, Appellant sent a note to Det. Pike indicating his willingness to speak without an attorney. After approximately two and a half hours of interrogation, Appellant provided a confession to police. R. 173, ln. 25—R. 175, ln. 13; R. 206, ll. 14-22; R. 404, ll. 2-17; State's Ex. #30.

Appellant's case proceeded to jury trial beginning July 19, 2021, whereupon a hearing was held regarding the voluntariness of his statements, including the inculpatory May 8, 2020 statement to police. R. 1; R. 18, ll. 2-25. According to Det. Pike, Appellant was in custody and brought to the sheriff's office that morning. R. 30, ll. 20-21. After Appellant indicated he did not want to speak with the investigators he was taken to booking; notably, Det. Pike did not recall the content of conversation with Appellant as he was walked to the booking area.[3] R. 31, ll. 2-16. Det. Pike acknowledged that Appellant was brought back to interrogation after submitting a note indicating his willingness to talk without an attorney; he was mirandized at 1:49 pm, questioned for approximately two and a half hours, and ultimately provided a confession. Det. Pike further denied any pressure being placed upon Appellant during the interview. R. 31, ln. 19—R. 34, ln. 5.

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[3] No body camera audio or video footage covering the time Det. Pike walked Appellant to the booking area or while in the booking lobby was produced to the trial court by either party.

Appellant also testified at his pretrial hearing regarding the voluntariness of his May 8, 2020 statement. Specifically, Appellant largely agreed with the events of that morning: he was arrested, and brought to the sheriff's office where he was asked by investigators if he wanted to talk with them. Appellant refused to talk without his lawyer present, and he was escorted back to the booking area by Det. Pike. R. 38, ln. 24—R. 39, ln. 5. However, Appellant's recollection of the conversation between he and Det. Pike was more detailed than Det. Pike's testimony. Specifically, Appellant indicated Det. Pike asked him where the mother of his children, Jasmine Blackwell (Blackwell) was located, and that they would be getting an arrest warrant on her for accessory after the fact to murder. Appellant needed to care for Blackwell not only because she was the mother of Appellant's infant daughter, but also because she was four (4) months pregnant with his son. R. 39, ll. 5-16. Appellant further indicated he had until 5:00 pm to talk with police. R. 39, ln. 22–R. 40, ln. 3. Appellant stated he believed the only reason police would tell him that they would arrest Blackwell was because they wanted to talk with him—otherwise they would not have told him in advance. R. 50, ll. 6-10.

After weighing his situation, Appellant testified that he felt "trapped between a rock and a hard place" of putting his own life at risk, or that of his child. R. 49, ll. 15-20. He ultimately filled out a form to speak with Det. Pike and was taken back to an interrogation room with Det. Pike, Captain Parker, and Sheriff Brian Wallace (Sheriff Wallace). R. 28, ll. 8-15; R. 42, ln. 6-12. After being interrogated approximately two and a half hours, Appellant provided an incriminating statement to police. According to Appellant's testimony, he did so because he had "to make sure [Blackwell] was not arrested, and my son was not going to be put in a box at birth. My kids mean everything to me, and if that meant putting my life at risk for them, so be it." R. 42, ll. 20-23; State's Ex. #30.

The trial court held that, although Appellant was in custody, he was provided his Miranda warnings. Further, the court held that no threats were made regarding the arrest of Blackwell, and even if such threats were made that Appellant's will was not overborn by them as a result. R. 60, ln. 2—R. 61, ln. 15. As such, the court ruled Appellant's statement was admissible: "Again, the standard of review for me at this point is a preponderance of the evidence. And based on my review the totality of the circumstances, I find the statement on May 8th, 2020 was given voluntarily, freely, and intelligently. Those are my rulings." R. 61, ll. 16-20.

During the trial, Det. Pike again testified, and the video of Appellant's second interrogation was admitted into evidence.[4] R. 177, ln. 10—R. 178, ln. 5. On cross-examination, Det. Pike again agreed Appellant refused to speak with them without an attorney. Although he initially did not remember speaking with Appellant as they walked to the booking area, when pressed on the issue again, Det. Pike conceded that there was "maybe a little small talk" with Appellant on the way to booking. R. 198, ln. 3—R. 199, ln. 7; R. 213, ll. 10-25. However, he agreed with the State's leading question on redirect examination that "[i]f there had been a discussion, it wouldn't have been anything substantive, would it?" R. 216, ll. 9-11. Sheriff Wallace Also testified at trial regarding Appellant's statement on May 8, 2020, and acknowledged that toward the end he informed Appellant that he did not want to have to arrest Blackwell, and that Appellant finished the Sheriff's sentence saying, "that's the last thing we wanted to do." R. 319, ll. 4-24.

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[4] Although Appellant did not contemporaneous object to admission of the video, the trial court nonetheless ruled upon the constitutional matter prior to opening statements, and the State likewise relied upon the trial court's ruling and referenced Appellant's confession in its opening statement. R. 60, ln. 2–R. 61, ln. 20; R. 69, ln. 15—R. 70, ln. 1.

In its closing argument and reply, the State relied extensively upon Appellant's confession from May 8, 2020. Specifically, the State told the jury repeatedly that Appellant admitted to the conduct, saying "[d]on't take my word for it, he admits it," and playing portions of the video. R. 417, ln. 17—R. 419, ln. 5; R. 422, ln. 17—R. 424, ln. 17; R. 425, ln. 25—R. 427, ln. 17; R. 453, ll. 3-4; R. 454, ll. 6-22. At the end of his trial, Appellant was convicted on all counts, and the trial court imposed an aggregate concurrent sentence of thirty-five (35) years incarceration. R. 472, ll. 11-25; R. 478, ll. 1-23; R. 486-491.

This appeal follows.

ARGUMENT

The trial court reversibly erred by failing to suppress Appellant's second statement to law enforcement as involuntarily coerced where Appellant invoked his right to have an attorney present when initially brought to the police station, but where Appellant later agreed to speak and provided a confession because he believed police threatened to arrest the mother of his children for accessory after the fact to murder if he did not cooperate.

Appellant's second statement to law enforcement on May 8, 2020, was obtained by means of psychological coercion and should have been suppressed. Simply stated, police knew of Appellant's significant other, that she was the mother of his infant daughter and that she was pregnant with Appellant's son, and took full advantage of this vulnerability by threatening to arrest her in relation to the incident. Only after contemplating this matter in the booking area did Appellant relent and agree to speak with police without the presence of his attorney. Under the totality of such coercive circumstances, Appellant's subsequent interrogation and confession to law enforcement should have been suppressed as being involuntarily made.[5]

"The due process clause requires 'that state action, whether through one agency or another, shall be consistent with the fundamental principals of liberty and justice which lie at the base of all our civil and political institutions.'" Brown v. Mississippi, 297 U.S. 278, 286, 56 S.Ct. 461, 465, 80 L.Ed.2d 682 (1936) (quoting Herbert v. Louisiana, 272 U.S. 312, 316, 47 S.Ct. 103, 104, 71 L.Ed. 270 (1926)). "This requirement—of conforming to fundamental standards of

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[5] Appellant asserts that this issue is preserved. First, the matter is a constitutional issue that was raised by Appellant pretrial, and ruled upon by the trial court shortly before opening statements State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021) (holding that, where a trial court rules after a hearing regarding a constitutional matter, "the ruling is final and, unless something changes during trial that may reasonably cause the judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review."). Further, the State relied upon the trial court's ruling by referencing the confession in its opening statement to the jury. R. 60, ln. 2–R. 61, ln. 20; R. 69, ln. 15—R. 70, ln. 1. See, e.g., State v. Wiles, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009) (holding a pretrial ruling was preserved where the trial court's ruling was final, and the State referenced the contended matter in its opening statement). As such, the issue is preserved for appellate review.

procedure in criminal trials—was made operative against the States by the Fourteenth Amendment." Chambers v. Mississippi, 309 U.S. 227, 238, 60 S.Ct. 472, 478, 84 L.Ed. 716 (1940). Integral to such conformity is the importance of rejecting involuntary confessions extracted by the government. As the United States Supreme Court explained in Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959):

> The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.

Id. 360 U.S. at 320-21, 79 S.Ct. at 1205-06, 3 L.Ed.2d 1265; see also Blackburn v. Alabama, 361 U.S. 199, 206-07, 80 S.Ct. 274, 280, 4 L.Ed.2d 242 (1960) ("[I]n cases involving involuntary confessions, this Court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will"). Accordingly, "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." Jackson v. Denno, 378 U.S. 368, 378, 84 S.Ct. 1774, 1781 (1964).

"[T]he range of inquiry in this type of case must be broad, and . . . the judgment in each instance be based upon consideration of 'the totality of the circumstances.'" Blackburn, 361 U.S. at 206, 80 S.Ct. at 280, 4 L.Ed.2d 242 (quoting Fikes v. Alabama, 352 U.S. 191, 197, 77 S.Ct. 281, 284, 1 L.Ed.2d 246 (1957)). "In order to introduce 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, 84 U.S. 368, 84 S.Ct.

1774, 16 L.Ed.2d 694 (1964)." State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). Thus, "[t]he test for determining the admissibility of a statement is whether it was knowingly, intelligently, and *voluntarily* given under the totality of the circumstances." State v. Hook, 348 S.C. 401, 410, 559 S.E.2d 856, 860 (Ct. App. 2001) (emphasis added). See also State v. Corns, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). Additionally, "[t]he State bears the burden of establishing voluntariness by a preponderance of the evidence." Hook, 348 S.C. at 410, 559 S.E.2d at 860.

"In considering whether a statement was voluntarily given, the court must determine the existence or nonexistence of coercive police activity." Id. 348 S.C. at 411, 559 S.E.2d at 859. American jurisprudence has long "recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." Blackburn, 361 U.S. at 206, 80 S.Ct. at 279, 4 L.Ed.2d 242. See also Ferguson v. Boyd, 566 F.2d 873, 877 (4th Cir. 1977) ("It has long been recognized that involuntary confessions may be extracted as a result of mental coercion as well as physical abuse."). Indeed, "the rack and thumbscrew can be matched, given the proper subject, by more sophisticated modes of 'persuasion.'" Id. At bottom, "the question in each case is whether the defendant's will was overborne at the time he confessed." Lynumn v. Illinois, 372 U.S. 528, 534, 83 S.Ct. 917, 920, 9 L.Ed.2d 922 (1963); see also Ferguson, 566 F.2d at 877 ("The ultimate question is whether the pressure, in whatever form, was sufficient to cause the petitioner's will to be overborne and his capacity for self-determination to be critically impaired."). "If so, the confession cannot be deemed 'the product of a rational intellect and a free will.'" Lynumn, 372 U.S. at 534, 83 S.Ct. at 920, 9 L.Ed.2d 922 (quoting Blackburn, 361 U.S. at 208, 80 S.Ct. at 280, 4 L.Ed.2d 242). In other words, "certain circumstances may render an innocent defendant's will to have been overborne resulting in a confession induced by fear of

extraneous adverse consequences." State v. Register, 323 S.C. 471, 479, 476 S.E.2d 153, 158 (1996). Accordingly, "[a] confession may not be extracted by *any* sort of threats *or* violence, *or* obtained by any direct or implied promises, however slight, *or* by the exertion of improper influence." Corns, 310 S.C. at 552, 426 S.E.2d at 327 (emphasis added) (citing State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)).

In the case at bar, the totality of circumstances surrounding Appellant's confession on May 8, 2020, readily indicate it was a product of mental coercion while in custody at the police station. As such, the trial court reversibly erred as the confession should have been deem involuntarily made in violation of due process law.

First, investigators with the Marion County Sheriff's Office were aware of Appellant's relationship with Blackwell prior to his arrest. An example of this was the testimony of Investigator Robert Page (Inv. Page). As Inv. Page acknowledged on direct examination, he knew Appellant lived in the area part-time with his girlfriend, Blackwell. Inv. Page also acknowledged that, "having prior knowledge, I knew that [Appellant] was [Blackwell]'s children's father and that she had a longstanding relationship with him." R. 106, ll. 5-23.

Further, Appellant's testimony provided evidence that, after he invoked his right not to speak without an attorney present, Det. Pike leveraged their knowledge of Appellant's relationship with Blackwell to imply that if Appellant did not speak with police regarding the murder of Gerald, then Blackwell—the mother of his children—would be arrested. Specifically, Appellant indicated Det. Pike asked him where Blackwell was located, and that they would be getting an arrest warrant on her for accessory after the fact to murder. Appellant testified that he needed to care for Blackwell not only because she was the mother of his infant daughter, but also because she was four (4) months pregnant with his son. R. 39, ll. 5-16. Appellant further indicated that he

had until 5:00 pm to talk with police. R. 39, ln. 22–R. 40, ln. 3. He believed the only reason police would tell him that they would arrest Blackwell was because they wanted to talk with him—otherwise they would not have told him in advance. R. 50, ll. 6-10.

Under the weight of this theat, Appellant felt "trapped between a rock and a hard place" of putting his own life at risk, or that of his child. R. 49, ll. 15-20. He ultimately filled out a form to speak with Det. Pike and was taken back to an interrogation room with Det. Pike, Captain Parker, and Sheriff Brian Wallace (Sheriff Wallace). R. 28, ll. 8-15; R. 42, ln. 6-12. After being interrogated approximately two and a half hours, Appellant provided a confession. Yet, Appellant's testimony indicated he provided the confession based on the threat to arrest Blackwell: "I did what I had to do to make sure [Blackwell] was not arrested, and my son was not going to be put in a box at birth. My kids mean everything to me, and if that meant putting my life at risk for them, so be it." R. 42, ll. 20-23. As such, the statements of Det. Pike to Appellant regarding the implied threat to arrest Blackwell if Appellant did not speak with police amounted to an unconstitutional exertion of improper influence that mentally coerced Appellant's confession. See, e.g., Corns, 310 S.C. at 552, 426 S.E.2d at 327; see also Lynumn, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922.

Appellant's recollection of events is also supported at least in part by the interrogation video itself. As Sheriff Wallace acknowledged, when discussing the gun purportedly used to kill Gerald, he reminded Appellant of the desire to avoid Blackwell's arrest, and Appellant even finished Sheriff Wallace's sentence on the matter during interrogation. R. 319, ll. 4-24. This is likewise shown on

the video itself. Toward the end of the interrogation, Appellant stated the gun used was Blackwell's revolver. Soon after, the following exchange[6] occurred:

> **Appellant:** Basically, y'all got what y'all wanted.
>
> **Sheriff Wallace:** Well, here's the other thing you bring the thing up about you baby's mamma was, your baby's momma she's the one to the eight month old? That's the baby you're talking about?
>
> **Appellant:** [Shakes head "yes"].
>
> **Sheriff Wallace:** Okay, here's what we—I don't want to see happen, and that's why we want to get it from you, I don't want – you see where I'm going?
>
> **Appellant:** Right, you don't want to have to lock her up for—
>
> **Sheriff Wallace:** Right.
>
> **Appellant:** Here's the problem with that. She'll never be able to produce it to you.

State's Ex. #30, 2:18:24—2:18:52. This exchange again shows law enforcement's knowledge of Appellant's relationship with Blackwell. Although Appellant and police did previously speak of Blackwell and Appellant's daughter, it nonetheless confirms the knowledge Marion County Sheriff's Office investigators had about Appellant's relationship with Blackwell prior to his arrest, as demonstrated by Inv. Page. R. 106, ll. 5-23. Moreover, Appellant's preemptive response of, "Right, you don't want to lock her up," to Sheriff Wallace's questioning, "you see where I'm going," indicates Appellant's motive to provide a statement to law enforcement was guided at least in part by his belief that police were going to arrest Blackwell if he did not talk with them.

Furthermore, Det. Pike's testimony shows a gradual evolution on the matter. At first he simply did not recall talking with Appellant on the way to booking; later he began to remember

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[6] No transcript of the interrogation video from May 8, 2020, was entered into evidence. If any discrepancies are present, Counsel respectfully defers to the Court's interpretation of what is said on the video itself. State's Ex. #30, 2:18:24—2:18:52.

talking with Appellant; yet even when he finally remembered talking with Appellant on the way to booking he did not recall the specific details, and—guided by the State's leading question—believed it was likely only small talk. R. 198, ln. 3—R. 199, ln. 7; R. 213, ll. 10-25. In other words, Det. Pike's testimony simply fails to recall the details of the conversation he indeed had with Appellant in the hallway as he took Appellant to booking.

Therefore, under the totality of the circumstances, the trial court erred in its finding that no threats were made regarding the arrest of Blackwell, and that even if such threats were made that Appellant's will was not overborn by them as a result. R. 60, ln. 2—R. 61, ln. 15. First, the weight of evidence adduced readily indicates Det. Pike did indeed have such a conversation with Appellant. The evidence shows Appellant was arrested the morning of May 8, 2020, taken to the police station, whereupon he invoked his right to counsel. Appellant produced evidence—his testimony—that Det. Pike inquired about Blackwell, and indicated she was going to be arrested. Although Det. Pike initially denied remembering even speaking with Appellant in the hallway, his memory gradually changed to agree there was conversation between the two, yet his recollection still lacked the accuracy of particularities regarding what was said. Moreover, Appellant's response to Sheriff Wallace toward the end of his interrogation likewise support in part Appellant's prior belief that police were going to arrest Blackwell based upon his conversation with Det. Pike.

Second, the trial court's alternative ruling—that even if there were threats to arrest Blackwell, Appellant's will was not overborn by them—was likewise erroneous. As previously indicated, "the question in each case is whether the defendant's will was overborne at the time he confessed." Lynumn, 372 U.S. at 534, 83 S.Ct. at 920, 9 L.Ed.2d 922. In the context of custodial interrogations, "[a] confession may not be extracted by *any* sort of threats *or* violence, *or* obtained

by any direct or implied promises, however slight, *or* by the exertion of improper influence." Corns, 310 S.C. at 552, 426 S.E.2d at 327 (emphasis added) (citing State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)). Such threats and exertions of improper influence can take many forms, including threats to take away a defendant's children and government assistance, as well as threats to arrest close family members, such as a mother. See Lynumn, 372 U.S. at 534, 83 S.Ct. at 920, 9 L.Ed.2d 922 (holding defendant's confession was involuntary where police threatened that state aid would be cut off and her children taken if she failed to cooperate); see also Harris v. South Carolina, 338 U.S. 68, 69 S.Ct. 1354, 93 L.Ed. 1815 (1949) (reversing where defendant's confession was involuntarily given after lengthy interrogations, contradicted testimony regarding what was said and if defendant was struck, and where police threatened to arrest defendant's mother).

Here, Appellant's statement was given after Det. Pike spoke with Appellant on the way to booking. Although Det. Pike's memory did not recall the specific words spoken, Appellant did. Based upon his exchange with Det. Pike on the way to booking, Appellant believed police were going to arrest Blackwell unless he spoke with them without an attorney. He understandably felt "trapped between a rock and a hard place" of putting his own life at risk, or that of Blackwell and his child. R. 49, ll. 15-20. He ultimately filled out a form to speak with Det. Pike, was taken back to an interrogation room with three investigators, and provided the confession. R. 28, ll. 8-15; R. 42, ln. 6-12. Under the totality of these circumstances, Appellant's statement was involuntarily given as a product of mental coercion: his will was overborne by the threat of Blackwell's arrest and the impact it would have on his infant daughter and unborn son. Accordingly, the trial court erred by failing to suppress it.

Appellant was also prejudiced by the trial court's erroneous ruling. "It is clearly the law that the use of an involuntary statement in any manner violates due process of law." Hook, 348

S.C. at 415, 559 S.E.2d at 863; see also Blackburn, 361 U.S. at 210, 80 S.Ct. at 282, 4 L.Ed.2d 242 ("Where the involuntariness of a confession is conclusively demonstrated at any stage of a trial, the defendant is deprived of due process by entry of judgment of conviction without exclusion of the confession."). Here, the State repeatedly utilized Appellant's involuntary confession against him in all stages of trial: it referred to the involuntary confession in its opening statement; it introduced, published, and discussed the involuntary confession through its witnesses such as Det. Pike and Sheriff Wallace in its case in chief; it utilized the involuntary confession as impeachment in cross-examination of Appellant; and it played and argued the involuntary confession in its closing argument and reply.[7] As such, Appellant was prejudiced by the State's repeated use of his involuntary statement from May 8, 2020. Accordingly, the matter should be reversed. Id.

[7] R. 69, ln. 15—R. 70, ln. 1; R. 177, ln. 10—R. 180, ln. 3; R. 181, ll. 15-24; R. 186, ln. 19—R. 188, ln. 18; R. 307, ln. 17—R. 313, ln. 1; R. 417, ln. 17—R. 419, ln. 5; R. 422, ln. 17—R. 424, ln. 17; R. 425, ln. 25—R. 427, ln. 17; R. 453, ll. 3-4; R. 454, ll. 6-22.

CONCLUSION

For the foregoing reasons, Appellant Zachir Devaughnte McCall respectfully requests reversal of his convictions and sentences, and remand for new trial.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 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."

January 23, 2024

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Breen Stevens
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Jan 23 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable G.D. Morgan, Jr., Circuit Court Judges

THE STATE,

RESPONDENT,

V.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT

APPELLATE CASE NO. 2022-000921

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 23rd day of January, 2024.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

From: Leverett, Scott
To: jmaye@scag.gov
Cc: SC - D"ALESSIO DONNA; Stevens, Breen
Subject: Zachir Devaugnte Shyhiim McCall - Final Brief of Appellant - Appellate Case No. 2022-000921
Date: Tuesday, January 23, 2024 11:30:00 AM
Attachments: Zachir Devaugnte Shyhiim McCall - Final Brief of Appellant - Appellate Case No. 2022-000921.pdf

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Dear Mr. Maye,

Attached please find a copy of the Final Brief of Appellant in the above referenced case that is begin filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Breen Stevens
Appellate Defense