STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable G.D. Morgan, Jr., and the Honorable Michael G. Nettles,
Circuit Court Judges

THE STATE,

RESPONDENT,

v.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT.

Appellate Case No. 2022-000921

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

APPELLANT'S QUESTION PRESENTED

"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

Zachir Devaugnte McCall (hereinafter "Appellant") was indicted for murder, armed robbery, and possession of a weapon during the commission of a violent crime. (R. p. 472). Appellant proceeded *pro se* to a jury trial before the Honorable G.D. Morgan, Jr., and Michael G. Nettles from July 19th through 22nd, 2021. The State was represented by Assistant Solicitors J. Ryan White and Todd Tucker of the Twelfth Judicial Circuit Solicitor's Office. (R. p. 1).

At the conclusion of the trial Appellant was found guilty of all three charges. (R. p. 472). Judge Newman sentenced Appellant to 35 years for his conviction of murder, a concurrent 10 years for his conviction of armed robbery, and 5 years for his conviction for possession of a weapon during the commission of a violent crime. (R. p. 478). This appeal now follows.

STATEMENT OF FACTS

The Crime

Victim O'Neal Gerald walked out of his home on the evening of April 5th, 2020, carrying a shotgun in a zipped up bag. Victim told his wife, Tammy Pendegrass, that he was taking the gun to a man named Tyrell so that he could get it fixed and he was going to where they had his dogs kenneled. Victim never returned. Mrs. Pendegrass began to worry about his absence in the early hours of April 6th and organized an effort to look for him. Victim was found dead on the property where he kept his hunting dogs with a gunshot to the back of the head and another shot to the front of his head. (R. p. 75-80; p. 152-159). Victim's shotgun, blue trailblazer, and phone were all gone. (R. p. 81-82; p. 90; p. 104-105; p. 162-166).

The Trial

Following the discovery of Victim's death, Appellant became a person of interest to law enforcement officers when it was discovered that his phone number was among the recent contacts

in Victim's phone. Appellant came in for an initial interview with police, but he denied any wrongdoing. Following the interview, a search warrant was obtained for Appellant's phone. In the records retrieved it appeared as though Appellant and Victim were planning to meet at around 10:00pm for the purposes of a sexual encounter. (R. p. 249; p. 288-290; p. 301). Appellant confirmed in his first interview that he had preexisting relations with Victim. (R. p. 168).

Law enforcement concluded that Victim's likely time of death was at approximately 10:30pm given the text evidence, video evidence of Victim's vehicle, and the timeframe in which a nearby resident, Mr. Hendley, heard two gunshots coming from the area where Victim's body was found. (R. p. 169; p. 145-147). Investigator Page was responsible for collecting video footage from multiple locations along the route that Victim's vehicle traveled and was eventually left abandoned. These locations include the Pee Dee Academy, the Scotchman gas station, and the Housing Authority. (R. p. 105-106). Initially, Investigator Page was not able to identify the individual seen in the videos. However, they were able to identify which home he went into and they went and spoke to the homeowner, Jasmine Blackwell. Investigator Page knew Ms. Blackwell to be the mother of Appellant's children and that they were in a relationship together. Upon revisiting the video, Investigator Page was able to identify Appellant. (R. p. 106-107). In so doing, and in reviewing the other pertinent video evidence, law enforcement were able to confirm that Appellant was driving Victim's vehicle at approximately 11:16pm, wherein he parked and left the car at Reed's Garage and proceeded to walk to Ms. Blackwell's nearby residence. (R. p. 244-256).

Law enforcement also obtained a search warrant for Ms. Blackwell's car, wherein they found spent .38 caliber casings, the same caliber that would be consistent with the projectile fragments taken from Victim's autopsy. (R. p. 172; p. 223-225). Appellant's cellphone data also revealed Appellant's internet search history for April 6, 2020, which included searches for: "News

13, Marion, SC"; "Neal Gerald, Marion, SC"; "shot in Mullins"; and "shooting in Mullins, SC, 2020". (R. p. 284).

In addition to the evidence above, Appellant was arrested and chose to answer questions with law enforcement officers a few hours after his arrest. Therein, Appellant confessed that he was leading on Victim in his sexual advances in an attempt to get money. He confirmed that he went with Victim to the location of his death. He claimed that an altercation with Victim began when Victim wanted Appellant to engage in a sexual encounter and he refused. Appellant confirmed that Victim was shot with Ms. Blackwell's gun, which he identified as being a .38 caliber revolver. He further confessed to driving Victim's vehicle away from the scene. (State's Exhibit 31).

HOW THE ISSUE WAS PRESENTED AT TRIAL

A *Jackson v. Denno* hearing was held on July 19, 2021. The State called Detective Greg Pike to testify as to how Appellant became a suspect in the crime, and as to how his statements to law enforcement were obtained. He explained that Appellant initially became a person of interest, and he was contacted to see if he would sit down with law enforcement for questioning at the Sheriff's Office. Appellant agreed and was not under arrest or detained at this stage of the investigation. However, after the first interview Appellant became a suspect to the crime, rather than just a person of interest. (R. p. 21-23). A warrant was obtained for his arrest, and Appellant was arrested and taken into custody on May 8, 2020. Detective Pike was present at the time of Appellant's arrest and transportation to the Marion County Detention Center, and it was at this time that Appellant was asked whether he wished to speak to law enforcement. Detective Pike testified that Appellant said he did not wish to speak to them at that time. As a result, Appellant was processed without questioning. (R. p. 23-24).

Subsequently, Appellant obtained, signed, and dated a "Grievance Form"[1] indicating that he was willing to talk to the Sheriff's Department without his lawyer present. Appellant was brought to the same room where his first statement was taken. Detective Pike testified that Appellant was Mirandized and that he did not pressure Appellant in any way. Captain Parker joined Detective Pike for the interview, and Sheriff Brian Wallace also joined while questioning was ongoing. (R. p. 24-26; 27). Appellant signed the Miranda acknowledgment along with his waiver of rights to silence and spoke with law enforcement. Though there are occasions that Appellant would state he did not wish to continue talking, he chose to continue speaking without prompting by police. (R. p. 26-28). Detective Pike testified that Appellant did not appear to be under the influence or subject to any mental defect that would have hindered his understanding during questioning. (R. p. 29).

On cross-examination, Detective Pike testified that it was approximately 7:00am when they came to arrest Appellant. It was 1:49pm when Appellant, at his request, was brought in to speak and answer questions with law enforcement. (R. p. 31). On cross, Appellant proceeded to question Detective Pike on alleged commentary made during the time it took to walk him from the lobby and down the hall for booking. Detective Pike could not recall any comments. (R. p. 30-31). Appellant then asked whether Detective Pike mentioned arresting Appellant's pregnant wife during the course of the interview. Appellant did not give Detective Pike time to actually answer the question (See R. p. 33, lines 1-3) before asking questions regarding whether Detective Pike was aware of the risks posed to the unborn child as a result of the mother's stress. (R. p. 33). His efforts culminated in an argumentative posturing about the witness not remembering threatening

[1] Detective Pike testified that the form has multiple uses, but that here it was simply used to convey his willingness to talk to law enforcement without an attorney.

to arrest his pregnant wife. The claim was objected to as both not constituting a question, and not being based on presented testimony, and the trial court sustained the objection. (R. p. 34-35).

Appellant then took the stand to testify on his own behalf. He testified that he lied to police during his first statement to law enforcement. He then testified that after his arrest he asked for an attorney and did not intend to speak with law enforcement. However, Appellant claims that during their walk towards the booking room Detective Pike asked where Jasmine Blackwell (the mother of his children) was located. (R. p. 38-39). Appellant testified that she was four-months pregnant at the time and that Detective Pike told him they would be arresting her for accessory after the fact of murder. Appellant claims that when they got to the booking room, he had made his intention to speak to them known and was told he would need to sign a piece of paper and send that to the officers. He then suggested that he was given until either 4:00pm or 5:00pm to speak with police in order to clear her name. (R. p. 39-40). Appellant claims that he "begged" for the piece of paper needed to instigate questioning with the officers, so that he could prevent the arrest of Ms. Blackwell.[2] (R. p. 40). Appellant further claimed that he chose to speak without an attorney because he knew he would not have time to get an attorney before they arrested Ms. Blackwell.

Appellant then testified that after he started speaking with the officers, "I went ahead and told them that I met [Victim]. And, apparently, the story just wasn't good enough for them, and the longer and longer I implement myself a little more. I mean, you could tell it was a lie, obviously, but they really didn't care about any of that part." (R. p. 41). Appellant also claimed that his agreement to help find the firearm used in Victim's death was a lie, and that he "did what [he] had

[2] Of note, during the trial this issue was brought up again with Detective Pike. Detective Pike testified that they made small talk with Appellant while walking him to the booking room, but does not remember mentioning Ms. Blackwell in any context. (R. p. 213-215). On redirect, Detective Pike testified that any discussion that took place between he and Appellant would not have been substantive or relevant to the case. (R. p. 216-217).

to do to make sure the mother of my kids was not arrested, and my son was not going to be put in a box at birth." [3] Appellant then also challenged the 2-hour length of the interview as constituting pressure to confess. (R. p. 41-42).

On cross-examination, Appellant testified that his first statement and any portion of his second statement that implicated him in the crime was a lie, but the rest was a truthful version of events. (R. p. 43). Appellant confirmed his handwriting and signature on the Grievance Form expressing his desire to speak to law enforcement without an attorney present and conceded that his filling out the form and providing it to Detective Pike is what led to his subsequent questioning. (R. p. 45). He further confirmed his initials on the various Miranda warnings given to him. (R. p. 46-47).

The trial court took the matter under advisement to consider the motion and review the video interviews. The following day the court gave its ruling. The court found that the second statement to police was the result of custodial interrogation, and as such Miranda warnings were necessary and properly given. The trial court further found that Appellant had not been coerced into making a statement. He was not threatened, pressured, or deceived into providing the statement to police, nor was he promised leniency. While the court did recognize the statement taking approximately two and a half hours, the trial court did not find this to have resulted in coercion. Nor was there any mental or physical deficiency at issue. To the issue at hand, the trial court noted that in its review of the matter it did not find evidence supporting the contention that Appellant was threatened with the arrest of the mother his child. It further found that, "even if" there was such potential evidence, the court found that Appellant's will was not overborn by such

[3] Cross examination demonstrated that Ms. Blackwell was at some point arrested for charges unrelated to Victim's murder. (R. p. 44).

an alleged threat. In conclusion, the court found that by a preponderance of the evidence, and in light of the totality of the circumstances, the statement was given freely, voluntarily, and intelligently. (R. p. 60-61).

STANDARD OF REVIEW

The question of voluntariness regarding a statement to law enforcement is a mixed question of law and fact. *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023). An appellate court's review of the factual findings by the trial court is reviewed subject to an any evidence standard, with the legal conclusion being subject to *de novo* review.[4] *Id.* "The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to constitute an abuse of discretion." *State v. Franklin*, 390 S.C. 535, 539, 702 S.E.2d 568, 570–71 (Ct. App. 2010) (citing *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "An appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* "When reviewing a trial court's ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." *Id.* (citing *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). In criminal cases, appellate courts are bound by fact findings 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).

[4] The Supreme Court's holding in *Miller* effectively removed the bifurcation of voluntariness as being first considered by the court, and then ultimately presented as a question for the jury.

ARGUMENT

I. The proper standard of review is now set forth under *State v. Miller.*

Appellant has requested that this Court implement a standard of review so as to treat this issue as a mixed question of law and fact and apply *de novo* review to the "the ultimate legal conclusion". (See Brief of Appellant, p. 3-4). This issue was recently addressed and refined by the South Carolina Supreme Court in *State v. Miller*, 441 S.C. 106 (2023). Therein, the Supreme Court agreed that voluntariness of a statement presents a question of both law and fact, with issues of law being reviewed *de novo* and issues of fact being reviewed under an any evidence standard. *Id.*, at 119. As such, that standard of review is applicable to the case at hand. Nevertheless, to the extent the issue is even preserved, the trial court properly found no credible evidence supporting Appellant's alleged theory of coercion, and the court was correct to find the statements voluntarily made by Appellant. (*Infra*).

II. The issue is not preserved for appellate review because Appellant failed to make a contemporaneous objection at the time the evidence was offered and waived his prior arguments by explicitly informing the court that he did not have an objection to the offered evidence.

Appellant's issue is not preserved for appellate review. Consequently, his conviction and sentence should be affirmed.

Our courts have long held that a contemporaneous objection is required to preserve a legal issue for appellate review. "[M]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." *State v. Moses*, 390 S.C. 502, 511, 702 S.E.2d 395, 400 (Ct. App. 2010) (quoting *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840(2001)); *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996); *State v. Mitchell*, 330 S.C. 189, 193 n. 3, 498 S.E.2d 642, 644 n. 3 (1998).

The only limited exception being circumstances where the court makes a ruling on the admission of evidence "*immediately prior*" to the subject evidence being introduced at trial. *Id*; *State v. King*, 349 S.C. 142, 149, 561 S.E.2d 640, 643 (Ct. App. 2002); *State v. Mueller*, 319 S.C. 266, 460 S.E.2d 409 (Ct.App.1995). In *State v. Floyd*, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988), the Supreme Court has even gone as far as to explicitly state: "[w]e caution Bench and Bar that these pre-trial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence." Appellant has failed to satisfy the limited exception, and he has failed to abide the rule for preservation of his sole issue on appeal.

In *Moses*, voluntariness of the custodial statement was taken up by the parties during pretrial motions. *Id.*, at 509-510. However, when the statement was ultimately offered into evidence later in the trial (after intervening witness testimony), no objection was made. The same circumstances took place here; the *Jackson v. Denno* hearing was taken up as a pretrial matter, but *numerous* witnesses were examined prior to the State seeking to introduce Appellant's second statement to law enforcement (i.e. State's Exhibit 30). Moreover, not only did Appellant "fail to" object to the introduction of the statement, but he was explicitly questioned by the trial court as to whether he wished to object *and informed the trial court that he had no objection to the admission of the evidence*. (R. p. 177, line 23 through p. 178, line 5). The evidence was then published to the jury immediately following a 15 minute recess at the suggestion of the court.[5] (R. p. 178-179).

Appellant not only failed to contemporaneously object so as to preserve the issue for appeal, he seemingly abandoned any prior arguments by informing the court explicitly that he had

[5] Due to the length of the video and the later afternoon time that they began to publish the video, the publishing of the video was paused and finished the following morning. (R. p. 179-181).

no objection to the statement being entered into evidence.[6] Affirmatively informing the court that there is no objection to offered evidence, despite prior motion in limine arguments, constitutes a waiver of any dispute against the introduction of the evidence in question. *State v. Dicapua*, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007), aff'd, 383 S.C. 394, 680 S.E.2d 292 (2009); *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011). Appellant's claim is therefore not preserved for appellate review.

III. The trial court correctly found no credible evidence of threats from law enforcement officers nor any other basis of coercion that would render Appellant's confession involuntary and inadmissible.

The trial court's factual and legal conclusions were proper and supported by the record. There is no credible evidence that the alleged coercion took place against Appellant while walking to the booking room of the station. Moreover, in consideration of the totality of the circumstances, the record does not support a holding that Appellant's will was overborne. The trial court was correct and its ruling should be affirmed.

a. There is no credible evidence of coercion taking place and the trial court's findings of fact to that end were therefore proper.

Simply put, there is no credible evidence tending to support Appellant's claim that law enforcement officers, specifically Detective Pike, coerced Appellant into giving a confession by threatening to arrest the mother of his children. This is evident in the lack of supporting facts and evidence from Appellant's arrest and booking process. It is evident in the lack of support in the handwritten grievance form written by Appellant. It is evident in the content of Appellant's

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[6] "A *pro se* litigant who knowingly elects to represent h[im]self assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *State v. Bryant*, 383 S.C. 410, 418, 680 S.E.2d 11, 15 (Ct. App. 2009) (a *pro se* defendant is "required to comply with our preservation requirements."); *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 780 (Ct. App. 2013).

statement, and it is evident in the manner in which his statement came to be a confession.

Appellant relies solely upon his own self-serving testimony offered at the *Jackson v. Denno* hearing. However, there is no corroboration of his story and he failed to elicit any testimony from Detective Pike that furthered his argument. Moreover, at trial the record reflects that Detective Pike could not recall the specifics of any communications with Appellant, but was confident that any casual communications that may have taken place were not substantive in nature. (R. p. 198; p. 213; p. 216). Appellant attempts to paint Detective Pike's memory as "evolving" from a lack of recollection to not remembering specific details aside from confidence that it was only small talk. He then argues that the detective's failure to recall specific conversations is somehow proof that Appellant's allegation "indeed" took place. (Initial Brief of Appellant, p. 16). Such an argument is not a logical deduction, is not effective, and is not even a full articulation of the record on the matter. (See R. p. 2). A witness can truthfully not recall the content of casual communications *while also being certain* that "specific" discussions did not occur. This is what took place at trial. Detective Pike was asked if he "remember[ed]" making any mention of Ms. Blackwell – to which he answered "no" – and then moments later he testified on redirect that, notwithstanding the inability to remember his every innocuous utterance, he was confident that no substantive discussions regarding Appellant's arrest and charges occurred.[7] (R. p. 213, lines 23-25; p. 216, lines 8-15).

Next, Appellant claims that his decision to confess came as a result of Detective Pike's threat. However, the "Grievance Form" that Appellant was instructed to use to reestablish

[7] While this testimony retrospectively demonstrates the lack of credibility to Appellant's claim and supports affirmance, Appellant's untenable argument certainly cannot be relied upon as a reason for why the court erred; the court's pretrial ruling (R. p. 60-61), its subsequent inquiry for objection (R. p. 177-178), and its ultimate admission of Appellant's confession (R. p. 178) all came before any of this testimony took place (R. p. 198-216).

communication with law enforcement officers bears no mention of the issue. This was a handwritten note entirely within the control of Appellant, but it makes no mention of Ms. Blackwell. It likewise lacks any mention of Detective Pike's alleged threat, and lacks any articulation of the concerns supposedly borne by Appellant. (R. p. 35-36). Appellant's argument for coercion again finds no support in the evidence presented to the court.

Similarly, after the second interview begins, the content of Appellant's responses is informative to this issue. First, Appellant signed off on his understanding of his rights which included a right to attorney before questioning, a right against self-incrimination, and his waiver of such rights with the understanding that his statements are not the result of threats or pressure of any kind. (State's Exhibit 30, 0:00-3:45). Nothing inhibited Appellant from voicing his concern for Ms. Blackwell or stating his belief that coercion had taken place. He certainly had no obligation to sign the Miranda rights and waiver which constituted an explicit affirmation that coercion was not taking place to secure his statement to police. Of additional import to the lack of credibility of his supposed coercion is that Appellant does not mention any concern for Ms. Blackwell after two hours of questioning. In fact, the issue did not come up at all until after Appellant had already implicated himself in the murder and stated that Ms. Blackwell was the owner of the murder weapon. Law enforcement expressed a *concern and desire to avoid involving Ms. Blackwell* if she was in fact unaware of any of Appellant's actions. (State's Exhibit 30, at 2:18:30 – 2:21:00). Appellant's reaction to this was not one of anger or conflict, which would be expected had he truly been coerced to confess under the threat of Ms. Blackwell's arrest. Instead, his reaction was one of realization and understanding, and it appeared as though it was the first time he had really considered the issue at all. (State's Exhibit 30, 2:18:30-2:24:00). At no point did the officer threaten her arrest, and at no time did Appellant's answers and reactions to the officer's questions

indicate that he felt his confession was being coerced through the threat of legal action against Ms. Blackwell.

Lastly, and crucially, Appellant's argument is that the supposed threats made toward arresting Ms. Blackwell prior to his statement were coercive in producing his confession and that his false confession was necessary to avoid risking his unborn child's life. (R. p. 43-44). Yet, despite this supposed concern, his interview did not begin with a confession. He instead persistently denied any illegal involvement for a full hour. Appellant's argument lacks credibility because the pressure and concerns he seems so distraught over during the *Jackson v. Denno* hearing do not coincide with a confession so difficultly and slowly obtained.

These were the circumstances and evidence before the trial court in the *Jackson v. Denno* hearing, and as the record demonstrates, the only evidence tending to support Appellant's claim is the uncorroborated claim itself. The trial court is the arbiter of the facts in consideration of the voluntariness of a statement to police, and "there is no requirement under the law that the trial court must believe a criminal defendant's version of events." *State v. Johnson*, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015). Similarly, the trier of fact is not required to accept and believe uncontradicted testimony, and uncontradicted testimony does not render it undisputed testimony. *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991). Appellant set forth his argument of coercion after the conclusion of Detective Pike's testimony. It was disputed by the State via extensive cross-examination on Appellant's propensity for dishonesty and its incongruence with the manner in which his confession came about. It was later directly refuted by Detective Pike's testimony given during the trial.

This issue stands solely on the Appellant's uncorroborated testimony, which renders this issue largely one of judging credibility, and such findings are entitled to great deference. *Sumpter*

v. State, 312 S.C. 221, 224, 439 S.E.2d 842, 844 (1994). An appellate court cannot "usurp the authority of the trial court by attempting to judge the credibility of witnesses. The determination of credibility must be left to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity." *State v. Johnson*, 413 S.C. 458, 467–68, 776 S.E.2d 367, 371–72 (2015) (quoting *State v. Cutro*, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998). *While noting Appellant's testimony*, but explicitly finding that Appellant was not threatened, pressured, or deceived into giving the statement, and in explicitly stating: "I wanted to make sure that there was no such evidence [of threats of arresting the mother of Appellant's child]. I did look at it and I did not find any threats to arrest the mother of Mr. McCall's child" the trial court passed upon the credibility of Appellant's testimony and found it lacking.

Consequently, the findings of fact reached by the trial court were appropriate and entitled to deference. They further satisfy the standard for consideration of the voluntariness of a statement to police, as there is evidence presented to the court that supports the court's conclusions. In the absence of facts tending to establish Appellant's supposed coercion there is no basis to reverse the decision of the trial court and his convictions and sentence should be affirmed.

b. Under the totality of the circumstances, the trial court's ruling that Appellant's will was not overborne was proper.

The court's alternative ruling was also proper, wherein it found that even if there was "potential evidence" of alleged threats, Appellant's will was not overborne as a result. Appellant's confession to law enforcement was therefore voluntarily given.

"'The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence.'" *State v. Johnson*, 422 S.C. 439, 454, 812 S.E.2d 739, 747 (Ct. App. 2018) (quoting *State v. Parker*, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008)). Due process is deprived "if a conviction is founded, in whole or in part, upon an involuntary

confession." *Id.* (quoting *State v. Pittman*, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007). "This due process analysis is evaluated based on examining the totality of the circumstances." *Id.* Though no one factor is determinative, the relevant circumstances for consideration by the court, so as to judge whether the defendant's will was overborne during questioning, include: 1) the defendant's potential youth, 2) the defendant's potential low intelligence or lack of education, 3) a failure to Mirandize the defendant, 4) the length of defendant's detention, 5) the repeated and prolonged nature of questioning, and 6) the use of physical punishment such as deprivation of food or sleep. *State v. Pittman*, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)).

Appellant was 23 years old and had completed his high school education. He was neither susceptibly youthful, nor lacking sufficient education or intelligence for his circumstances. The nature of his responses to questions further demonstrates this point. Appellant was Mirandized and he was not deprived of sleep and food. Lastly, while the court did note that the interview lasted two and a half hours, the court did not find this duration or the location of the interview to be coercive.

As was proper, the court took into consideration the totality of the circumstances and found that Appellant's will was not overborne. This was an especially prudent articulation of its findings by the trial court since the topic of Ms. Blackwell's ownership of the gun, and law enforcements desire not to involve someone who is oblivious to Appellant's crimes was discussed during the interview, as opposed to threatened prior to the interview. In so ruling, the trial court addressed the possibility of "potential evidence" of alleged threats and reiterated that it found no such evidence. The court left no doubt that, neither prior to nor during the interview, did the topic of Ms. Blackwell create a basis for which Appellant's confession might be rendered involuntary.

To the extent the ruling of the trial court could be considered error (a position that the State does not adopt), such error would be deemed harmless. E.g. *State v. Medley*, 417 S.C. 18, 29, 787 S.E.2d 847, 853 (Ct. App. 2016). The facts set forth that Appellant and Victim were planning to meet up for purposes of a sexual encounter. Victim was found with his pants unbuckled and partially pulled down in a secluded area shortly after (R. p. 98; p. 324), and Appellant is caught on video driving and abandoning Victim's blazer less than an hour after the suspected time of death. The nature of the surrounding circumstances, the narrow window of time, and Appellant's possession of Victim's property so soon after Victim's suspected death render the case against Appellant compelling even without a confession.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

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CERTIFICATE OF COMPLIANCE

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

This 29th day of January, 2024.

s/ W. Joseph Maye
W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable G.D. Morgan, Jr., and the Honorable Michael G. Nettles,
Circuit Court Judges

THE STATE,

RESPONDENT,

v.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT.

Appellate Case No. 2022-000921

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent and Certificate of Compliance has been forwarded to Appellant's counsel, Breen Stevens, Esq., via email today, January 29, 2024 to bstevens@sccid.sc.gov and to his assistant at sleverett@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 29th day of January, 2024.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye
Assistant Attorney General
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