RECEIVED
Oct 11 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTERRIS JAVON CARMICHAEL,

APPELLANT

APPELLATE CASE NO. 2023-000162

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

South Carolina Cases

Other Jurisdictions

Constitutional Provisions

Rules

STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred by refusing Appellant's request to individually poll the jurors, since a poll must be taken if a request for polling is made?

2.

Whether the trial court erred by admitting a recorded custodial interrogation of Appellant, where Appellant invoked his right to counsel, but law enforcement, in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), told Appellant he could only have a lawyer if he "ha[d] one on retainer," since the resulting statement was not knowingly, voluntarily, and intelligently given?

3.

Whether the trial court erred by admitting the testimony of one law enforcement officer, that based on other officers' interviews of witnesses in a Cadillac, Appellant and his codefendant were the only suspects developed, where Rule 802, SCRE, prohibits the introduction of hearsay absent an exception, since the testimony was inadmissible hearsay?

STATEMENT OF THE CASE

During the May term of 2021, a Florence County Grand Jury indicted Quinterris Carmichael, Appellant, for murder and possession of a weapon during the commission of a violent crime. Appellant was tried jointly with his codefendant, Tirik Johnson-Epps, before the Honorable D. Craig Brown and a jury, from January 23 – 27, 2023. Appellant was represented by William "Josh" Edgeworth, III. Gregory Ammons represented Johnson-Epps. J. Ryan White and Todd Tucker prosecuted the case. Appellant was convicted as indicted, and he was sentenced to life imprisonment without parole for murder. No sentence was imposed for the weapons charge.[1]

This appeal follows.

[1] R. 539 – 542; R. 1; R. 226; R. 514, ll. 6-14; R. 536, ll. 5-20; R. 543 – 546.

ARGUMENT

1.

The trial court erred by refusing Appellant's request to individually poll the jurors, since a poll must be taken if a request for polling is made.

Appellant timely requested the jurors be individually polled. The court refused the request to poll. This error was reversible per se.

Standard of review

The appellate courts of South Carolina review questions of law de novo. *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). "We clarify that appellate courts review questions of law de novo, with no deference to trial courts." *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 840 (2018).

Relevant facts

After the verdicts were announced, the court conducted the common practice of collective polling. It addressed the jury as a body, asking: "if this was and still is your verdict, please indicate by raising your right hand." The court then stated,

> All right, let the record reflect that all 12 jurors have raised their hand pursuant to the question that I've asked of this jury. All right, at this time anything, Mr. Edgeworth, at this time?
>
> MR. EDGEWORTH: Your Honor, I'd move to have each of the jurors individually polled.
>
> THE COURT: All right, Mr. Ammons?
>
> MR. AMMONS: I join in that motion, your Honor.
>
> THE COURT: All right. Can the lawyers approach please?
>
> (WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

> THE COURT: All right, defense counsel has asked that each individual juror be polled. I have previously asked this jury whether or not this is their verdict and whether or not it is still their verdict, as I indicated on the record, each of those 12 jurors have raised their hands. I believe that that is sufficient under the circumstances, and therefore **I'm not going to individually poll each juror**. I've given an opportunity for them to respond pursuant to my question, and they've responded and I think that's appropriate under the circumstances.[2]

Discussion

Polling is a means to ensure the validity of the verdict, by addressing each juror separately as to his or her concurrence in the verdict. "Polling is a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict." *State v. Linder*, 276 S.C. 304, 308, 278 S.E.2d 335, 338 (1981) (citing *Sanders v. Charleston Consol. Ry. & Lighting Co.*, 154 S.C. 220, 151 S.E.2d 438 (1930)). "'Individual' polling requires each juror to be individually questioned as to whether they 'assented and still assent to the verdict.'" *State v. Wright*, 439 S.C. 101, 102, 886 S.E.2d 206, 207 (2023) (quoting *Linder*, *supra*). "Individual polling is commonly accomplished by separately asking each juror, 'Was this your verdict?' If the answer to that question is 'yes,' the customary follow-up question is, 'Is this still your verdict?'" *Wright*, 439 S.C. at 102–03, 886 S.E.2d at 207. In this case, the jurors were not polled—they were not individually asked, "Was this your verdict?" and "Is it still your verdict?"

A request for polling must be timely. "We note the common practice for collective polling to be conducted immediately after the verdict is published; when collective polling is conducted, the request, if any, for individual polling must take place immediately after the collective polling is concluded." *Wright*, 439 S.C. at 103, 886 S.E.2d at 207. Appellant's request

---

2 R. 514, l. 23 – 515, l. 23 (emphasis added).

for an individual poll was timely: it was made immediately after the collective polling was concluded.

Polling safeguards important rights. "The right to poll the jury is not in itself a constitutional right but a procedural protection of the defendant's constitutional right to a unanimous verdict." *State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), *aff'd*, 439 S.C. 101, 886 S.E.2d 206 (2023) (citing *State v. Pare*, 755 A.2d 180, 188 (Conn. 2000)). "It also safeguards the right to a public trial. If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial. *Wright*, 432 S.C. at 369, 852 S.E.2d at 470 (citing *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007)).

Whether to individually poll the jury is not discretionary. If the request is made, polling is mandatory. "Whether a poll of the jury will be conducted is discretionary with the trial judge unless a polling is requested. If the request is made, a poll must be taken. We establish this rule to dispel any doubt a party might entertain as to the propriety of a jury verdict as rendered." *Linder*, 276 S.C. at 308, 278 S.E.2d at 338. Appellant requested, and was denied, individual polling of the jury. The verdict was therefore improper. It was not within the judge's discretion to deny Appellant individual polling.

The denial of a timely request to poll the jury necessitates reversal. Denial of a poll defies harmless error analysis. *Wright*, 432 S.C. at 371, 852 S.E.2d at 472. "[T]he denial of a defendant's request for individual polling is reversible per se." *Wright*, 439 S.C. at 103, 886 S.E.2d at 207. The error in this case requires reversal. *Wright*, 439 S.C. at 103, 886 S.E.2d at 207.

2.

The trial court erred by admitting a recorded custodial interrogation of Appellant, where Appellant invoked his right to counsel, but law enforcement, in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), told Appellant he could only have a lawyer if he "ha[d] one on retainer," since the resulting statement was not knowingly, voluntarily, and intelligently given.

Appellant was in custody, his statement was made in response to interrogation, and he had invoked his right to counsel. Investigator Shelley improperly negated the *Miranda* warnings that had just been provided. (Appellant: "Can I um, I get my lawyer up here right now? Shelley: I mean, if you have one on retainer, they can come up here.") Appellant's subsequent statement was admitted in violation of *Miranda*, was involuntarily made under the totality of the circumstances, and was admitted in error.

Standard of review

"[W]e take this opportunity to revisit and clarify the appropriate standard of review for determining the voluntariness of a criminal defendant's statement." *State v. Miller*, 441 S.C. 106, 118, 893 S.E.2d 306, 312 (2023). "We agree with those jurisdictions that have found voluntariness presents a mixed question of law and fact." *Id.* at 119, 893 S.E.2d at 313. "[W]e will review the trial court's factual findings regarding voluntariness for any evidentiary support. However, the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review." *Id.*

Relevant facts

At approximately 3:30 a.m. on September 12, 2019, eighteen-year-old Tydrecus Williams (Decedent) was shot and killed outside the Tiger Mart (also called the Speedy Mart) in Florence.

Decedent and his friend, Kareem Jones (Jones), walked to the Tiger Mart to buy cigars. The State alleged that surveillance footage[3] from cameras outside the Tiger Mart captured the following: Appellant and his codefendant, Johnson-Epps, went to the Tiger Mart in a car with two women. Appellant and Johnson-Epps got out of the car. Appellant and Jones argued, and Appellant struck Jones. Part of Johnson-Epps's body appeared on camera and his hand fired shots at Decedent. Decedent ran toward the road and collapsed. The surveillance system, which was motion-triggered, stopped recording. When recording resumed, Decedent was gone, out of frame. Appellant and Johnson-Epps jointly stood trial for murder.[4]

The State alleged that Johnson-Epps and Appellant went around the corner of the building. Shortly thereafter, Johnson-Epps got back in the car with the women, drove a short distance away, and stopped to wait for Appellant to get back in the car. All four left. Law enforcement arrived almost immediately, and found Decedent's body near the store, off-camera. Decedent had been shot approximately eight or nine times and died at the scene. Authorities collected a pair of jeans from Johnson-Epps's home that had a spot of Decedent's blood on them. Appellant was arrested and interrogated approximately a week later. The admissibility of that interrogation is the subject of this discussion.[5]

---

3 The surveillance footage is State's Exhibit #3 and is on file with this Court.

4 State's Exhibit #3; R. 248, l. 6-7; R. 403, l. 2 – 407, l. 3; R. 88, l. 15 – 92, l. 9; R. 101, l. 6 – 115, l. 3; R. 101, l. 15 – 133, l. 21; R. 184, l. 6 – 192, l. 23; R. 1.

5 State's Exhibit #3; R. 111, l. 12 – 116, l. 4; R. 181, l. 4 – 182, l. 20; R. 282, l. 17 – 290, l. 17; R. 320, l. 22 – 328, l. 3; R. 19, l. 6 – 20, l. 11.

During the pretrial *Jackson v. Denno*[6] hearing, the court heard argument and testimony on the admissibility of Appellant's recorded statement to police officers about the crime. It was undisputed Appellant was in custody and being interrogated when he was interviewed by Investigator Shelley on September 20, 2019. Appellant was handcuffed. A second officer was also present in the room with Appellant and Shelley. State's Exhibit #2 is the video and audio recording of Investigator Shelley's interrogation of Appellant as it was redacted before the trial judge and the jury, and it is on file with this Court.[7]

Shelley began the interview by filling out a *Miranda* waiver form and stating, "What this is, a waiver of rights form."[8] Shelley stated that Appellant's name had come up during an investigation. Then Shelley read Appellant his *Miranda* rights, and Appellant invoked his right to counsel. The interview proceeded as follows.

> Shelley: Do you understand what your waiver of rights is; I'm going to read you what your constitutional rights are. Okay. I'm going to read them aloud to you. This is, before we ask you any questions, you must understand your rights. All this is a cover form. I'm gonna ask you to sign it when we're finished, and the only thing your signature is indicating is I read it to you, you understood what I read to you, and that if you didn't understand what I read to you, please tell me and I'll try to clarify it for you. Okay? Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say, can and will be used against you in a court of law. You have the right to talk to a lawyer, and have him or her present with you while you're being questioned. **If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish**. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand that part of it?
>
> Appellant: **Can I um, I get my lawyer up here right now**?

---

6 *Jackson v. Denno*, 378 U.S. 368 (1964).

7 R. 23, l. 19 – 24, l. 8; State's Exhibit #2.

8 The *Miranda* form was admitted as State's Exhibit #1 and is located at p. 547 of the Record on Appeal.

Shelley: **I mean, if you have one on retainer, they can come up here**. Let me read the next part for you. I, then we get you to put your name there, Quinterris Javon Carmichael, voluntarily, without threats, duress, force, promises of immunity or reward, agree to be questioned by the Florence Police Department. Do you understand what that part means?

Appellant: Say that one more time?

Shelley: I, Quinterris Javon Carmichael, voluntarily, without threats, duress, force, promises of immunity or reward, agree to be questioned by the Florence Police Department. That just means I'm not holding a gun to your head, make you answer any questions for me, not promising you anything to make you answer questions for me. Nothing like that. Okay? This is a completely voluntary meeting between you and I. You've got a story to tell. I want to hear it. You're grown, so you can make the decision whether or not you want me to hear your side of the story, or you don't. I'm not in here to trick you. Not in here to lie to you. This stuff's in the news. You know why we're here. It's been [unintelligible] to you. You've seen the media. I know why we're here. So, we're not, neither one of us going to act like we don't. Okay.

Appellant: [unintelligible].

Shelley: Okay. So what I want you to do for me, the only thing we're doing right now is just, what your rights are, okay, and that you understand them.

Appellant: **My lawyer can still come**?

Shelley: Any time that you want a lawyer, you can ask for a lawyer. What you need to understand is, any time that you ask us for a lawyer, that you don't want to talk to us anymore, we're done. I can't talk to you anymore. I can't hear anything else you've got to say, from that point forward.

Appellant: Where do I have to sign?

Shelley: Just print your name there, and sign your name right there for me. The only thing that this right here indicates, is that we went over this, and that you told me you understand it, that you don't have any questions about it. Is that true? Okay.[9]

9 State's Exhibit #2.

Despite Appellant's three recorded requests[10] for a lawyer (located at approximately 05:29, 06:47, and 12:57 of the recording, State's Exhibit #2), Shelley continued to interrogate Appellant. Appellant signed the form. Shelley questioned Appellant about the murder, and Appellant made incriminating statements: Appellant admitted being at the scene at the time shots were fired. Appellant stated he was confronted by, and hit, a "little dude." Appellant stated: "I'll take a assault charge." Later in the interview, Appellant stated, "I need my lawyer, bro." The video recording, as redacted by the solicitor, ended shortly afterwards.[11]

At the *Jackson v. Denno* hearing, when asked why he did not end the interrogation when Appellant first invoked his right to counsel, Shelley dissembled, claiming he could not give Appellant legal advice as to whether he needed an attorney: "I will have people who aren't familiar with the system that may ask that question, you know, do you think I should get an attorney, and I can't give them legal advice. I can only tell them that they have the right to an attorney, if they want one."[12] As seen, however, Appellant did not ask whether he should get an attorney, he asked for an attorney.

Appellant moved to suppress the statement. "It's a complete and utter violation of my client's Fifth Amendment rights." "[W]hen my client asked for counsel, asked to call his attorney, it's kind of sidestepped and continued on . . . there was no cooling off period for him to

---

10 Appellant made a total of five requests for a lawyer during the interview, but two were redacted out of the recorded interview by the solicitor. The interrogation continued for another thirteen minutes past Appellant's statement, "I need my lawyer, bro," but that portion was also redacted out. An unredacted version of the interview was not made a part of the record. R. 27, l. 17 – 30, l. 7; R. 35, ll. 1-21.

11 State's Exhibit #2.

12 R. 30, l. 12 – 32, l. 4.

continue to talk, which would be required." "[H]e asked for his attorney on multiple occasions." The solicitor responded by arguing Appellant did not make an unambiguous request for counsel until he stated, "I need my lawyer."[13]

The court ruled the statement voluntary and admissible. The court found Appellant did not make an unambiguous request for counsel until just before the end of the recording (i.e., the 12:57 mark). The court ruled it was "bother[ed]" by Shelley's statement that Appellant could have a lawyer only if he had one on retainer, but concluded, "'I can get my lawyer up here right now' is not an unambiguous request for counsel. Furthermore . . . law enforcement proceeded to advise the defendant of his rights pursuant to *Miranda*, and the defendant initialed the *Miranda* form, signed the *Miranda* form, after being advised of his rights." The court found the statement voluntary under the totality of the circumstances.[14]

Discussion

"There are two constitutional bases requiring any confessions admitted into evidence to be voluntary: the Due Process Clause of the Fourteenth Amendment and the Fifth Amendment right against self-incrimination." *State v. Miller*, 441 S.C. 106, 120, 893 S.E.2d 306, 313 (2023) (citing *Dickerson v. United States*, 530 U.S. 428, 433 (2000)). It is "axiomatic that 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. at 385 (citing *Rogers v. Richmond*, 365 U.S. 534 (1961)). The standard for determining the voluntariness of a confession is whether, under the totality of the circumstances, the confession is the product of an essentially free and unconstrained choice by

13 R. 34, l. 18 – 35, l. 22; R. 36, l. 10 – 37, l. 5.

14 R. 64, l. 23 – 68, l. 4.

its maker or whether his free will has been overborne and his capacity for self-determination critically impaired. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). "In analyzing whether a defendant's will was overborne and the resulting confession was offensive to due process, courts must consider the totality of the circumstances, including the details of the interrogation and the characteristics of the defendant. *Miller*, 441 S.C. at 120, 893 S.E.2d at 313–14 (citing *Schneckloth v. Bustamonte*, *supra*).

"In *Miranda v. Arizona*, the Court determined that the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney." *Edwards v. Arizona*, 451 U.S. 477, 481–82 (1981) (citing *Miranda*, *supra*). A suspect "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation." *Miranda*, 384 U.S. at 479. "After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." *Id.*

A defendant has the right to "object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness[.]" *Jackson v. Denno*, 378 U.S. at 377 (citing *Rogers v. Richmond*, *supra*). "In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary *and* taken in compliance with

Miranda." *State v. Middleton*, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986) (citations omitted) (emphasis in original). "If the State establishes that a *Miranda* warning was given and the accused made an uncoerced statement, this showing, standing alone, is insufficient to demonstrate a valid waiver of *Miranda* rights. The prosecution must make the additional showing that the accused understood these rights." *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) (cleaned up). "The State bears the burden of proving by a preponderance of the evidence that a statement allegedly given by an accused was voluntary and that the accused voluntarily, knowingly, and intelligently waived his rights to silence and to have counsel present during interrogation." *State v. Henderson*, 286 S.C. 465, 470, 334 S.E.2d 519, 522 (Ct. App. 1985) (citations omitted).

A "waiver must be voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception, and made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Berghuis v. Thompkins*, 560 U.S. at 382–83 (cleaned up). "[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Edwards v. Arizona*, 451 U.S. at 482 (cleaned up).

"[L]aw enforcement officers must immediately cease questioning a suspect who has clearly asserted his right to have counsel present during custodial interrogation." *Davis v. United States*, 512 U.S. 452, 454 (1994). "If the accused indicates that he wishes to remain silent, the interrogation must cease. If he requests counsel, the interrogation must cease until an attorney is present." *Edwards v. Arizona*, 451 U.S. at 482 (cleaned up). The authorities may not, "at their

instance, [] reinterrogate an accused in custody if he has clearly asserted his right to counsel." *Edwards v. Arizona*, 451 U.S. at 485.

The trial court erred when it determined that Appellant's requests for counsel were ambiguous. In the context of invoking the right to counsel, a suspect must do so "unambiguously." *Davis v. United States*, 512 U.S. at 459. "[H]e must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect." *Id.* (citing *Moran v. Burbine*, 475 U.S. 412, 433 n. 4 (1986)). The *Edwards* prophylactic rule applies only when the suspect's request "can reasonably be construed to be an expression of a desire for the assistance of an attorney." *McNeil v. Wisconsin*, 501 U.S. 171, 178 (1991) (emphasis removed) (citing *Edwards*, *supra*).

Appellant stated, "Can I um, I get my lawyer up here right now?" *Shelley plainly understood Appellant had invoked his right to counsel since he told Appellant he could only have a lawyer if he had one on retainer*. *See State v. Kennedy*, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998) ("it is obvious from the record the solicitor and everyone involved viewed petitioner's request as an invocation of his right to counsel"). Unambiguous assertions of the right to counsel during custodial interrogation have been found in *State v. Kennedy*, 333 S.C. 426, 429-31, 510 S.E.2d 714, 715 (1998) ("Well, I think I need a lawyer"); *State v. Henderson*, 286 S.C. 465, 469, 334 S.E.2d 519, 521-22 (Ct. App. 1985) (defendant asserted he would make no statement until he spoke with an attorney); *State v. Cox*, 287 S.C. 260, 262, 335 S.E.2d 809, 810 (Ct. App. 1985), *aff'd in part, rev'd in part on other grounds*, 290 S.C. 489, 351 S.E.2d 570 (1986) ("I'll tell you about it when I talk to my lawyer"). Appellant's invocations ("Can I um, I get my lawyer

up here right now?"; "My lawyer can still come?") were, like the above invocations, unambiguous assertions of his right to counsel. *Compare Davis v. United States*, 512 U.S. at 462 ("Maybe I should talk to a lawyer" was not an unambiguous request for counsel.).

The trial court's ruling, that any error was cured by subsequent signing of the form was also erroneous. Appellant's statement was taken after his *Miranda* right was invoked, in violation of the Fifth Amendment. Shelley's misrepresentation about the retainer directly contradicted and neutralized the *Miranda* warnings. *Shelley never thereafter advised Appellant he could have a lawyer even if he could not afford one*. Shelley was required to cease questioning once Appellant asserted his right to counsel. U.S. Const. amend. V; *Davis v. United States*, 512 U.S. at 454; *Edwards v. Arizona*, 451 U.S. at 482.

Appellant's statement was involuntary under the totality of the circumstances. U.S. Const. amend. XIV. It was not the product of a "free and unconstrained choice" given Appellant's invocations and Shelley's misrepresentation. *Schneckloth v. Bustamonte*, 412 U.S. at 225-26. The signing of the form was instead the product of "intimidation, coercion, *or deception*." *Berghuis v. Thompkins*, 560 U.S. at 382 (emphasis added). The State did not show Appellant "voluntarily, knowingly, and intelligently waived his right[] . . . to have counsel present during interrogation." *State v. Henderson*, 286 S.C. at 470, 334 S.E.2d at 522.[15]

In sum, Shelley asked Appellant if he understood his rights, and Appellant asked for a lawyer. Shelley told Appellant he could not have a lawyer unless he had counsel on retainer. That was the wrong answer, and it was an answer which negated the provision of *Miranda* warnings. The resulting statement was involuntary under the totality of the circumstances and

---

[15] Problematically, Shelley also told Appellant: "I'm not in here to trick you. Not in here to lie to you," in connection with his *Miranda* rights; and Shelley told Appellant that signing the *Miranda* form was simply a reflection that Appellant understood his rights. Signing the form was instead a reflection that Appellant waived those rights. State's Exhibit #2.

thus it should have been excluded. *Miranda*, 384 U.S. at 479; *Jackson v. Denno*, 378 U.S. at 385; *Edwards v. Arizona*, 451 U.S. at 482; *State v. Miller*, 441 S.C. at 120, 893 S.E.2d at 313–14; U.S. Const. amend. V; US. Const. amend. XIV.

3.

The trial court erred by admitting the testimony of one law enforcement officer, that based on other officers' interviews of witnesses in a Cadillac, Appellant and his codefendant were the only suspects developed, since this was inadmissible hearsay.

Investigator Chatlosh was improperly permitted to testify to what eyewitnesses told other police officers, according to those officers' notes and the witnesses' written statements. Those eyewitnesses purportedly had a "great view" of the crime.

Standard of review

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* at 429–30, 632 S.E.2d at 848.

Relevant facts

Decedent was killed off-camera, around the corner of the convenience store. During Investigator Chatlosh's testimony, the codefendant elicited that at least two people were in a Cadillac "right beside where the shooting happened." This would have given them an exclusive viewpoint of the killing. Those witnesses did not testify at trial. During redirect examination, the solicitor asked Chatlosh what law enforcement had learned from the witnesses in the Cadillac.[16]

> Q Okay. That Cadillac the defense has mentioned, did you interview folks in that Cadillac?
>
> A I did not. Lieutenant Nida and Sergeant Clark did?
>
> Q They were interviewed?

16 R. 394, ll. 3-18; R. 407, l. 4 – 408, l. 25.

A Yes.

Q Did you review the notes and the interview during the course of your investigation?

MR. EDGEWORTH: Objection, your Honor. He's trying to elicit hearsay testimony.

MR. WHITE: But I'm not.

THE COURT: Hadn't gotten there yet.

A Restate the question please?

Q Are you aware of what they said in their statements to law enforcement?

A Yes.

Q And are you aware that the primary witness in that vehicle was a Ms. Merlietha Geathers?

A Yes.

Q Are you aware that we had no idea where Ms. Geathers is?

A Correct.

Q Based on the entirety of your investigation and the statement taken from Ms. Geathers who would have had a great view, did you develop any other suspects at all –

MR. EDGEWORTH: Objection, your Honor—

Q – other than Tirik Johnson-Epps?

MR. EDGEWORTH: – hearsay testimony.

THE COURT: First, let him finish his question please before you object. I can't have two people talking at the same time makes it very difficult on my court reporter. So make sure please that you let him finish his question.

MR. EDGEWORTH: Yes, sir.

THE COURT: Based upon that question respecting your objection, I'm going to overrule it okay.

BY MR. WHITE:

Q You spoke—or Ms. Geathers was interviewed?

A Yes.

Q And we don't know where she is to get her here?

A Correct.

Q But based on that interview in the entirety of your investigation, were you able to develop any other suspects other than these two individuals?

A No, sir.

MR. EDGEWORTH: Objection once again the same.

THE COURT: So noted for the record overruled.

A No, sir.[17]

Discussion

Chatlosh's testimony about this matter was inadmissible hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "Hearsay is a statement, which may be written, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted." *State v. Brockmeyer*, 406 S.C. 324, 351, 751 S.E.2d 645, 659 (2013) (cleaned up). "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

The murder took place around the corner of the building, off-camera. None of the witnesses who testified saw the fatal shots. The occupants of the Cadillac were, in the solicitor's words, in a "great" position to know who killed Decedent. The Cadillac's occupants were not

17 R. 407, l. 4 – 408, l. 25.

present in court. The substance of their statements was offered for the truth of the matter asserted—that no other suspects were developed; the defendants were the shooters. It does not matter Chatlosh did not testify to exactly what the witnesses said, his testimony had no purpose other than to prove the truth of the matter asserted. Rule 801(c), SCRE; *see State v. Williams*, 285 S.C. 544, 550–51, 331 S.E.2d 354, 358 (Ct. App. 1985) (police officers' testimony "amounted to their saying what they had been told outside of court and, even though they did not testify as to exactly what had been said, their testimony had no purpose other than to prove the truth of the matters asserted").

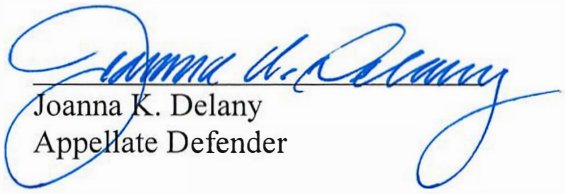
Chatlosh's testimony was not proper simply because it regarded the investigation. "Investigative information" may not be used to circumvent the rules against hearsay. *State v. King*, 422 S.C. 47, 66–67, 810 S.E.2d 18, 28 (2017). *See, e.g.*, *State v. Thompson*, 352 S.C. 552, 559, 575 S.E.2d 77, 81 (Ct. App. 2003) (officers' testimony regarding statements made by bystander were not entered for truth but to explain and outline officers' investigation and reasons for going to defendant's home. Thus, the evidence was not hearsay.); *State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (statements were not entered for their truth but rather to explain why the officers began their surveillance). "[W]e caution against the use and admission of 'investigative information.' While it may be couched in terms of explaining an officer's conduct during an investigation, it may not be used to offer the substance of an out-of-court statement that would otherwise violate our state's rules against hearsay." *King*, 422 S.C. at 68, 810 S.E.2d at 29.

Chatlosh's testimony was offered to enter hearsay. Notably, it contained two levels of hearsay: from the witnesses to other police officers and from other police officers to Chatlosh. The State did not identify exceptions to the hearsay rule that would make this testimony

admissible. *See King*, 422 S.C. at 66, 810 S.E.2d at 28 ("officer's testimony was hearsay as it was based exclusively on what witnesses told her during neighborhood canvas and was offered to prove that defendant fired more than one gunshot; State has not cited any exception to hearsay rule that would provide for admissibility). The admission of this evidence was error. Rule 801, SCRE.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of October, 2024.

RECEIVED
Oct 11 2024
SC Court of Appeals

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."

October 11, 2024.

Joanna K. Delany
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED
Oct 11 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

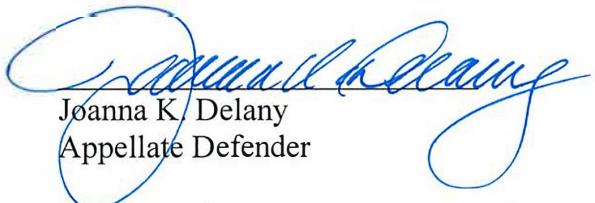
QUINTERRIS JAVON CARMICHAEL,

APPELLANT

APPELLATE CASE NO. 2023-000162

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 11th day of October, 2024.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT