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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2023-001596

THE STATE, RESPONDENT

v.

JESSE DEWITT OSBORNE, APPELLANT

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. The family court judge erred in granting the state's request to waive Appellant's case from Family Court to General Sessions Court because there was insufficient evidence presented per the factors in *Kent v. United States* to order the transfer of the case.

2. The Circuit Court Judge erred in sentencing appellant to life imprisonment because this violated the cruel and unusual punishment clause of the Eighth Amendment to the extent that a sentence of life was disproportionate to the offenses charged in light of Appellant's juvenility and characteristics associated with his youth and the circumstances of the case.

3. The Family Court Judge erred in allowing Appellant's statement (and video) into evidence during the Kent hearing because said statement was given involuntarily in the case.

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the family court err in waiving up the Appellant's case to General Sessions after applying all of the *Kent* factors and determining that there was sufficient evidence presented for the Appellant's case to be heard in General Sessions court?

2. Did the court err in sentencing the Appellant to a seventy-five-year period of incarceration after the Appellant was afforded the opportunity to be heard in an *Aiken v. Byars* hearing where all of the *Aiken* factors were considered thereby not violating the Appellant's Eighth Amendment rights?

3. Did the family court err during the wavier hearing considering a statement given freely and voluntarily by the Appellant after Appellant was read his *Miranda* rights and he expressed to law enforcement that he understood and decided to confess waving his right to counsel?

STATEMENT OF THE CASE

On September 28, 2016, fourteen-year-old Jesse Osborne (Appellant) was arrested and charged with two counts of murder, three counts of attempted murder, and four counts of possession of a weapon during the commission of a violent crime. Due to the fact the Appellant was a minor, he was originally charged in family court pursuant to South Carolina law.

On October 6, 2016, the State petitioned the court for a waiver order so the case could be held in the Court of General Sessions. A waiver hearing was held before Family Court Judge Edgar M. Long beginning on February 12, 2016. Appearing before the court was the Appellant along with his counsel Frank Epps and Rame Campbell. Representing the State of South Carolina was Tenth Judicial Circuit Solicitor David Wagner, and Assistant Solicitor's Catherine Huey, Stephanie Looper, Lauren Price, and Scott McElhannon. After five days of testimony the Family Court Judge determined that in applying the *Kent* factors, sufficient evidence was presented allowing this case to be held in the court of General Sessions. The Family Court decided to grant the petition and waive his case up to General Sessions Court.

On May 22, 2018, the Anderson County Grand Jury indicted Appellant for two counts of murder, three counts of attempted murder, and four counts of possession of a weapon during the commission of a violent crime. On December 12, 2018, Appellant appeared before the Honorable R. Lawton McIntosh for a guilty plea. Appearing with the Appellant was his plea counsel Frank L. Eppes, and representing the State of South Carolina was Tenth Judicial Circuit Solicitor David R. Wagner. Since the Appellant was a juvenile, sentencing was held in abeyance until a hearing pursuant to the South Carolina Supreme Court decision of *Aiken v. Byars* could be held.

On November 12, 2019, Appellant again appeared before the Honorable R. Lawton McIntosh for a hearing pursuant to *Aiken v. Byars.* Appearing with the Appellant was his counsel

Frank L. Epps and Rame L. Campbell, and once again representing the State of South Carolina was Tenth Judicial Circuit Solicitor David R. Wagner, and Assistant Solicitors, Lauren Price, and Catherine Huey. After three days of testimony, the sentencing judge decided to sentence the Appellant to a term of incarceration for the remainder of his natural life for both offenses of murder and thirty years for each count of attempted murder. After sentencing, Appellant timely filed a motion for reconsideration.

On May 22, 2023, Appellant along with his counsel Frank Eppes appeared before the Honorable R. Lawton McIntosh requesting that the sentencing court reconsider his previous sentence. Appearing on behalf of the State of South Carolina was Tenth Judicial Circuit Solicitor David Wagner. After the conclusion of this hearing and after careful consideration of all of the facts presented, the sentencing judge decided to grant Appellant's motion and decided to change the sentence from a lifetime period of incarceration to seventy-five years.

Upon this re-sentencing the Appellant filed a timely notice of appeal. The brief of the Respondent follows.

STATEMENT OF FACTS

On September 28, 2016, in Anderson County, South Carolina, Appellant took a Springfield rifle and a .40 caliber handgun from his parents' bedside nightstand. (R. p. 1176 l. 14-16). Appellant took the guns into the living room where his father Jeffery was seated on the couch reading paperwork. (R. p. 1176 l. 22-23). Appellant took one of these guns and shot his father multiple times in the back and once in the back of the head, killing him instantly. (R. p. 1176 l. 16-18). After killing his father, the Appellant took his keys and stole his truck. (R. p. 1176 l. 24-25).

Appellant drove his father's truck to nearby Townville Elementary School. Once he arrived, Appellant jumped out of the truck allowing it to run into a nearby fence and bushes. (R. p. 1177 l. 3-4; 6-7). At that time a class of first graders was on the playground for recess. Appellant then started shooting the .40 caliber handgun at the first-grade class. (R. p. 1177 l. 4-6; 8-9). While they were running back to the building, one of the children was shot through the leg. (R. p. 1177 l. 10). Another first grader was shot in the neck (R. p. 1177 l. 15-17), and a third student received a gunshot wound through his foot. (R. p. 1177 l. 17-18). One of the first-grade teachers, Meghan Hollingsworth, also received gunshot wounds to the chest and mouth. (R. p. 1177 l. 18-20).

The first child that was shot in the leg suffered a large amount of blood loss. He was rushed to the hospital where he was placed on life support for seven days. The six-year-old later succumbed to his injuries and died. (R. p. 1177 l. 10-14).

During this attack the Appellant was wearing a tactical styled vest and had a partially full box of .40 caliber ammunition. (R. p. 1178 l. 3-5). While Appellant was shooting, the students ran to the side of the school and the Appellant followed them in that direction. (R. p. 1178 l. 7-8). During the shooting, two off duty firemen who lived nearby heard the 911 call on their radio and decided to respond. James Brock and Billy McAdams were the first to arrive. (R. p. 1178 l. 8-11).

McAdams, a paramedic, decided to go into the school to attend to the wounded. (R. p. 1178 l. 12). Brock went around the school where he found the Appellant. While he was also armed, Mr. Brock saw the Appellant, he told him to freeze and to get on his knees. (R. p. 250 l. 24-25). Brock held the Appellant there at gunpoint until Sheriff's deputies could arrive. (R. p. 1178 l. 15-17). The Appellant was then arrested and charged with murder and attempted murder.

Appellant was taken to the Sheriff's Department where he was read his *Miranda* rights, and he gave a full confession. (R. p. 1178 l. 24-25). During this confession the Appellant told law enforcement officers that he originally hoped he could have killed twenty to thirty children. (R. p. 1178 l. 25 – p. 1179 l. 1). He also told officers how he attempted to break into his father's gun safe by spraying the lock pad with soap to try and get the combination to get better weapons to use. (R. p. 1179 l. 1-6).

During the investigation, the Federal Bureau of Investigation (FBI) was brought in to do a forensic analysis of the Appellant's computers, cell phone, and social media accounts. (R. p. 1179 l. 7-9). They found out that the Appellant had been planning this attack for months. (R. p. 1179 l. 9-10). Appellant had also joined a secret group on Instagram of would-be school shooters that would detail and discuss their goals and plans in shooting up their respective schools. (R. p. 1179 l. 15-20).

In this group the Appellant discussed the Columbine shooting at length and on his phone, there were videos of him attempting to make crude bombs. In this Instagram group, Appellant was informing others how to make these bombs as well.

ARGUMENTS

1. **The Family Court did not err in waving up this case to General Sessions Court when the Family Court applied the *Kent* factors, sufficient evidence existed revealing that this case should be heard in General Sessions Court.**

Relevant Facts

Due to the fact the Appellant was a juvenile when he committed this crime, his case was originally charged in Family Court pursuant to South Carolina law. In order for this case to be waived up to General Sessions the Solicitor's office had to file a waiver petition in Family Court. Once that petition was filed, a waiver hearing was held where the Court had to rely on the *Kent* factors in order to determine if there was sufficient evidence to waive this case to General Sessions Court. Between February 12 -16, 2018, a wavier hearing was held in Family Court before the Honorable Edgar M. Long. At the conclusion of this hearing Judge Long made the determination that sufficient evidence was provided, and pursuant to the *Kent* factors this case should be heard in General Sessions court. Judge Long ordered that this case be waived up to General Sessions Court. Appellant would no longer be entitled to any benefits he may have received in Family Court. (R. p. 1127 l. 14-15).

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827 (2001). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim,* 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson,* 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016). The decision to transfer jurisdiction of a child accused of criminal activity lies within the

discretion of the family court. The appellate court will affirm the family court's decision absent an abuse of discretion. *State v. Pittman,* 373 S.C. 527, 559, 647 S.E.2d 144, 162 (2007).

Discussion

Appellant argues that the Family Court erred when they decided to waive up his case to General Sessions Court. Appellant argues that the Family Court relied on insufficient evidence when they decided to waive the case to General Sessions Court. According to the doctors that examined the Appellant, they determined that the Appellant was still a danger to the community, and due to the heinous crimes committed and his lack of remorse, and his current mental state, which would not be cured within the time spent in the Department of Juvenile Justice, Appellant should be made to answer for these charges in General Sessions Court.

The Appellant at the age of fourteen was charged with two counts of murder, and three counts of attempted murder. Both classified as A-Felonies which carry a penalty of thirty years or more.[1] The solicitor's office issued a petition for his case to be remanded to General Sessions Court. According to South Carolina law,

> If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court after full investigation and hearing, may determine it contrary to the best interest of the child or the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

S.C. Code Ann. §63-19-1210(5)(1976).

[1] A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-3-20 (2018). A person who, with intent to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section must be imprisoned for not more than thirty years. S.C. Code Ann. §16-3-29 (2018).

Within his brief Appellant constantly states that he was "essentially" thirteen years old, however, he was actually fourteen when he committed these violent offenses. That is the reason the Solicitor had the ability to request that the Family Court order this case be held in General Sessions Court.

On October 6, 2016, the Solicitor's office filed a petition for transfer pursuant to Section 63-19-1210(6) of the South Carolina Code of Laws.[2] Between February 12-16, 2018, a hearing was held before the Honorable Edgar M. Long to determine if the Appellant's case should be waived to General Sessions Court. During this hearing it was determined that it would be in the best interest for the Appellant and society if his case was held in general sessions court.

In order to make this determination the Court had to consider what is called the eight *Kent* factors. In order to waive a case to general sessions court the family court must consider the following factors:

> (1) The seriousness of the alleged offense; (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) The prosecutive merit of the complaint; (5) The desirability of trial and disposition of the entire offense in one court; (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living; (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions; (8) The prospects for adequate protection of the public and the likelihood or reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available.

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[2] In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, and 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows. . . (6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view of proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. S.C. Code Ann. §63-19-1210(6)(2018).

State v. Jones, 392 S.C. 647, 651, 709 S.E.2d 696, 699 (2011), *citing, Kent v. United States,* 383 U.S. 541, 566-67, 86 S.Ct. 1045 (1966).

During the waiver hearing the State called to testify doctors James Bellenger and Mark Wagner. Dr. Ballenger was found by the Family Court to be qualified as an expert in the fields of psychiatry and forensic psychiatry. (R. p. 916 l. 15-16). Dr. Ballenger testified that he saw the Appellant three times for three hours each visit. Dr. Ballenger saw the Appellant on December 12, 22, and 27, 2017. (R. p. 918 l. 1-4). Dr. Ballenger testified that there was no doubt that the Appellant was solidly in the average range of intelligence and intellectual abilities. (R. p. 926 l. 10-12). Dr. Ballenger found that the Appellant was squarely in the normal range of adolescence. Appellant seems like other fifteen-year-olds. (R. p. 929 l. 22-24). Dr. Ballenger diagnosed the Appellant as malingering in addition to having conduct disorder. (R. p. 938 l. 6-7).

Dr. Ballenger testified that the Appellant's conduct disorder is revealed in his attitude of indifference, lack of remorse, and lack of feeling about harming other people. (R. p. 943 l. 6-9). Dr. Ballenger said that when speaking with him the Appellant thought that he could be immediately famous and get on the "front page." Appellant sensed that he had no life and was going to be famous. Appellant thought he would be the best shooter ever who was going to be worshiped for a long time. (R. p. 947 l. 22 – p. 948 l. 1). Dr. Ballenger revealed that Appellant had a bad attitude and was uncaring. Appellant stated to him that the people he shot were pieces of trash. He said shooting his father was doing him a favor because his parents were drug addicts. (R. p. 950 l. 14-19). Appellant did not understand why people were so upset that he killed only two people. (R. p. 950 l. 20-23). Dr. Ballenger felt that Appellant still had the mindset of indifference towards the victims, he had no remorse, and that revealed that Appellant had Conduct Disorder. This is also why he remains dangerous. (R. p. 951 l. 18-22).

Dr. Ballenger also found Appellant malingering. Dr. Ballenger stated that he tested the Appellant and the computer offered thirteen major psychiatric syndromes which is indicative of someone grossly malingering. (R. p. 956 l. 6-17). Dr. Ballenger testified that the Appellant repeatedly lied to him and Dr. Wagner. Appellant lied to everybody, which is an example of continuing Conduct Disorder. (R. p. 958 l. 17-19).

Dr. Ballenger was finally asked if the public would be adequately protected if Appellant were to remain in juvenile court, and what would be his likelihood of rehabilitation. Dr. Ballenger told the court that in his opinion as a psychiatrist and a forensic expert, the Appellant should be waived up to General Sessions for the protection of the public. (R. p. 968 l. 1-4) Dr. Ballenger's opinion was that the Department of Corrections was better suited since they have better treatment options, and they would have control of him for a longer period of time. If he was going to respond, they would need more time and control. (R. p. 968 l. 4-7). Dr. Ballenger believes that Conduct Disorder by itself is hard to treat if someone has already murdered two people, and who thinks that killing is fun. (R. p. 968 l. 20-25).

The State also called Dr. Mark Wagner to testify. Dr. Wagner was found qualified as an expert in the field of clinical psychology and clinical neuropsychology. (R. p. 799 l. 11-13). Dr. Wagner met with the Appellant on December 27, 2017, for about six hours. (R. p. 799 l. 18-21; p. 800 l. 1-2). Dr. Wagner testified that he administered an I.Q. test, a Delis-Kaplan test, and Test of Memory Malingering (TOMM) which rules out poor effort in the cognitive portion of the exam. (R. p. 805 l. 7-9; l. 17-22).

Dr. Wagner testified that he did not notice anything that concerned him about Appellant's frontal lobe function. (R. p. 806 l. 22-24). Across the board all cognitive measures were within range. (R. p. 806 l. 8-9). Dr. Wagner did state that Appellant was over-exaggerating some

symptoms of a psychological disorder. (R. p. 807 l. 18-21). Tests revealed Appellant was malingering an ill-detained psychiatric illness. (R. p. 811 l. 18-20).

When asked about his diagnoses Dr. Wagner stated:

> "So, the first opinion was that he is of average intellectual ability. I did not feel there was any evidence of brain dysfunction. I felt he was developmentally at his expected age in terms of cognitive function. The second opinion was that there was no signs of psychotic behavior, that he did not exhibit any gross psychopathology. My third opinion was that he had a diagnosis most consistent with Conduct Disorder, adolescent onset type severe and that he had developing, that he had features of a developing antisocial behavior with the caveat that that diagnosis cannot be made in that form until age 18" (R. p. 833 l. 8-21).

Dr. Wagner also felt that there was strong evidence of malingering of a psychiatric ill-defined psychiatric condition. (R. p. 834 l. 4-6).

Finally, Dr. Wagner testified that he thought that it would endanger the public if the Appellant were to be released. (R. p. 840 l. 22-23). Dr. Wagner testified that Appellant told him that if he does not get fixed, he would commit the crime again. (R. p. 840 l. 25 – p. 841 l. 2). Appellant told him that he frequently enjoys thinking about killing other people, even when he interviewed him over a year after the crime was committed. (R. p. 841 l. 2-4). Dr. Wagner also testified that the Appellant's prognosis is "extremely guarded for rehabilitation." He believes that he has a condition that's very serious, and the potential to correct this with therapies is not likely going to be successful. (R. p. 841 l. 14-18). Dr. Wagner stated that he thought the Appellant should be tried as an adult, because he meets all of the *Kent* criteria, and he is a danger to society. Dr. Wagner is of the opinion that there is no treatment available at this point in time that would be able to rehabilitate him. (R. p. 842 l. 13-18).

The Appellant argues that there was not sufficient evidence for the court to grant the petition and waive the case to General Sessions Court. Respondent argues that there was more than

sufficient evidence pursuant to *Kent* for this case to be waived up to General Sessions Court. Pursuant to the *Kent* factors the evidence revealed:

1. The seriousness of the alleged offense **–** The Appellant committed two counts of murder in which he shot his father in the back numerous times and also in the head. Appellant then stole his father's truck, drove to a nearby elementary school, and opened fire into a class of first graders on a playground during recess. This shooting resulted in one child being murdered and two more being wounded. A teacher was also injured from gunshot wounds. The serious nature of the offenses is a major factor in the transfer decision. *Sanders v. State,* 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984).

2. Whether the alleged offense was committed in an aggressive, violent, premediated or willful manner **–** The violence and aggressiveness of his offense is obvious. However, this crime was also carefully planned out. During the Waiver Hearing, Agent Shandal Ewing of the FBI testified. Agent Ewing is a staff operations specialist, and her job was to retrieve messages from the Appellant's phone using social media platforms such as Facebook, Google, Twitter, and Skype. (R. p. 375 l. 14-16) Agent Ewing also retrieved messages Appellant made within an Instagram group called "True Crime," a worldwide group of individuals focused on mass murders and serial killers. During her testimony Agent Ewing stated that the Appellant told members of this group of his plan. The Appellant stated that his plan was:

> "Shooting my dad, getting his keys, getting in his truck, driving to the elementary school four minutes away. Once there gear up, shoot out the bottom school classroom windows, enter the building, shoot the first class, which will be the second grade, grab the teacher's keys so I don't have to hassle to get though any doors." (R. p. 378 l. 23 – p. 379 l. 6).

This was posted on September 22, 2016, six days before the incident. (R. p. 379 l. 11-13). According to messages retrieved from Appellant's phone, he also did research regarding police

response times. Within his messages it stated, "I was planning on shooting my middle school up when it was lunchtime so all I had to do was shoot the one cop and then go on a killing spree, but I looked up police response time in that area and it's literally two minutes. The elementary school's police time is fifteen minutes and the time it takes SWAT to get there is one hour and then about twenty minutes for them to reach the building." (R. p. 390 l. 22 – p. 391 l. 5). .

3. *Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted* – This offense was against the Appellant's father, a class of first graders and their teacher. He killed his father, a first grader, and wounded two more children and their teacher.

4. *The prosecutive merit of the complaint* – The Appellant was caught at the scene by fireman Jamie Brock, who saw the Appellant near the school with a black vest and a box of ammunition. (R. p. 250 l. 11-13). The Appellant also told him where the gun was located. (R. p. 251 l. 10-13). After being arrested, the Appellant was brought to the Sheriff's department, and after being read his *Miranda* rights Appellant gave a full confession. There is more than enough evidence proving the Appellant committed this crime beyond a reasonable doubt.

5. *The desirability of trial and disposition of the entire offense in one court* – Both Drs. Wagner and Ballenger testified that the Appellant was not going to be able to get sufficient treatment if he was held in juvenile custody. This is due to the fact according to South Carolina law, the Appellant would have to be released no later than his 21st birthday, only 6 years after the hearing. Both doctors felt that the amount of treatment needed to *possibly* get him well enough not to want to kill, if it could be done at all, could only be done if he was incarcerated for a long period of time. This case had to be heard in General Sessions Court.

6. *The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living* – Dr. Wagner testified that the Appellant had a relatively stable home environment. He had two parents that, by some accounts were very supportive and loving. There were mixed messages of alcohol use, but overall he met the criteria. (R. p. 838 l. 4-9). Dr. Ballenger testified that he did not think that the Appellant's home was ideal, however, he did not think it was grossly atypical. (R. p. 962 l. 3-5). Dr. Ballenger thought that the Appellant's level of sophistication was no different than his peer group, except the Appellant could have been even more sophisticated. (R. p. 962 l. 7-8). Dr. Ballenger stated that, "The complexity of what he thought about and planned to do and searched out is impressive. It's staggering, actually. He's an expert on shooters now, and for me, that's one of the main aspects of the criteria about sophistication. Not many 14- and 15-year-olds are terribly sophisticated in the world, but he's sophisticated as his peer group." (R. p. 962 l. 7-14).

7. *The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions prior periods of probation, or prior commitments to juvenile institutions* – The Appellant previously brought a hatchet to school and was charged with bringing a weapon onto school grounds. Dr. Danielle Atkinson testified that the current offense was committed by Appellant while he was on probation for the previous offense. In her opinion, probation did not dissuade the Appellant from continued antisocial behavior. She thought that individuals who have not responded to injunctions of Family Court and efforts by DJJ can be difficult to rehabilitate. (R. p. 598 l. 19-25).

8. *The prospects for adequate protection of the public and the likelihood or reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available* – Dr. Atkinson testified that:

> "He made verbal statements of remorse for his past antisocial activity, but non-verbal behavior was indifferent or nonchalant making his statements indicating that they were superficial in nature. His feelings of remorse have not served to inhibit his antisocial behavior. Individuals who do not feel genuine remorse for their actions and are not willing to change their behavior are found difficult to rehabilitate. Jesse showed limited evidence of empathy for others including the victims of his past and present offenses and their families. Jesse made verbal statements of empathy for others, but his non-verbal behavior was indifferent and nonchalant it makes these statements indicating there were superficial in nature. In addition, Jesse's verbal statements reflected a shallow superficial understanding of the impact his behavior have on victims and their families. Individuals who do not feel empathy for others may not be motivated to change their behavior and can be difficult to rehabilitate. While Jesse accepted some responsibility for his past and present offenses, he also attempted to blame others. Individuals who do not accept responsibility for their actions may be difficult to rehabilitate. Jesse is reporting symptoms of a serious mental illness. Individuals who suffer from mental illness can be more difficult to rehabilitate. There are several indications that Jesse attempted to deceive this examiner. Individuals who are purposely deceptive and non-disclosing are not likely to engage themselves as active participants in the rehabilitation process and they may be difficult to rehabilitate." (R. p. 599 l. 1 – p. 600 l. 9).

Both Drs. Ballenger and Wagner testified that they did not think that the Appellant would be able to get the proper necessary treatment in juvenile justice to rehabilitate. They both thought that the Appellant would remain a danger to the community because he would not be able to be cured of the mental illness he is suffering from.

All of the circumstances of this case point to the family court doing the right thing in waiving this case to general sessions court. All eight *Kent* factors applied to this case. The wavier was lawful.

Out of the eight *Kent* factors all applied to the current case. The family court clearly made the conclusion that in the best interest of the juvenile and the public, this case should appear in General Sessions Court.

2. **Sentencing the Appellant to a seventy-five-year period of incarceration after the application of the factors listed in *Aiken v. Byars* did not violate the Appellant's Eighth Amendment rights.**

Relevant Facts

After the conclusion of the *Aiken v. Byars* hearing the sentencing judge gave the Appellant a sentence of a lifetime period of incarceration without the possibility of parole. A motion to reconsider was filed by the Appellant. A subsequent hearing was held in which the sentencing judge granted the motion and changed the sentence to seventy-five years.

Since the Appellant was fourteen when he committed this crime, he now argues that the trial court violated the South Carolina Supreme Court decision of *Aiken v. Byars* by not considering the hallmark features of youth thereby violating the Eighth Amendment. The Respondent argues that the trial court ultimately did not give the Appellant a life sentence. However, the sentencing judge did apply all of the *Aiken v. Byars* factors. The sentence given was lawful, revealing it applied the *Aiken v. Byars* factors so this decision should stand and not be subject to reversal.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827. 829 (2001). On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant,* 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment, the appellate court's standard of review extends only to the correction of errors of law. *State v. Finley,* 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

Discussion

In *Miller v. Alabama,* the United States Supreme Court held that a mandatory life sentence without the possibility of parole for a juvenile offender violated the Eighth Amendment prohibition against cruel and unusual punishment. *Miller v. Alabama,* 567 U.S. 460, 465, 470, 132 S.Ct. 2455, 2460, 2463 (2012). In *Miller* the United States Supreme Court stated:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Id., 567 U.S. at 477, 478, 132 S.Ct. at 2467, 2468. (emphasis added).

In the case of *Aiken v. Byars,* the South Carolina Supreme Court applied those *Miller* factors to South Carolina juveniles sentenced to life without parole sentences. In *Aiken* the South Carolina Supreme Court determined, "whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment. *Aiken v. Byars,* 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014)(emphasis added).

The Appellant claims that the trial court erred by not considering the *Aiken* factors prior to sentencing. Respondent argues that the record is clear. The *Aiken v. Byars* factors were considered prior to sentencing. However, since the Appellant is currently serving a seventy-five-year sentence *Aiken v. Byars* no longer applies.

In reviewing all the juvenile cases that were decided by the United States Supreme Court prior to *Aiken* relating to Eighth Amendment violations, they all were regarding life sentences or sentences of death. *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183 (2005)(sentencing a juvenile to death is a violation of the Eighth Amendment); *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011(2010)(The Eighth Amendment prohibits a sentence of life without parole for a juvenile convicted of a nonhomicidal offense); *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455 (2012)(a juvenile cannot be sentenced to a mandatory term of life imprisonment without the possibility of parole until the sentencing court considers the hallmark features of youth). *Aiken v. Byars,* applied the logic and created criteria that must be considered before a trial judge sentences a juvenile to a life sentence without the possibility of parole. All of the above referenced cases refer to a life sentence without parole, they say nothing about being sentenced to a length of time, but still having the possibility of being released in the future.

In *State v. Smith* the South Carolina Supreme Court ruled that the sentencing statute imposing a mandatory minimum sentence of thirty years' imprisonment on those convicted of murder regardless of whether they are a juvenile or an adult does not violate the Eighth Amendment.[3] *State v. Smith,* 428 S.C. 417, 836 S.E.2d 348 (2019). In *Smith* the Supreme Court made this finding,

> It is clear neither the Eighth Amendment nor *Miller* speaks directly to the issue of the constitutionality of mandatory minimum sentences. In so holding we join the overwhelming majority of jurisdictions that has found mandatory minimum sentences constitutional under the Eighth Amendment and *Miller.*

Id., 428 S.C. at 421, 836 S.E.2d at 850.

[3] The Appellant Terrell Artieth Smith was sentenced to thirty-five years for murder.

Seven months prior to the *Smith* decision the South Carolina Supreme Court decided *State v. Slocumb.* Slocumb is currently serving a one-hundred and thirty (130) year sentence for two counts of criminal sexual conduct in the first degree, burglary in the first degree, armed robbery, kidnapping, and escape. Slocumb committed all of these offenses as a juvenile. The Appellant in *Slocumb* argued that the United State Supreme Court decisions of *Miller* and *Graham* do not allow de facto life sentences. In *Slocumb,* the South Carolina Supreme Court decided[4],

> We decline to extend *Graham's* explicit holding based solely on the general rationale underlying the opinion without further input from the Supreme Court as to how the Eighth Amendment applies to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time.
>
> Rather than predict what the Supreme Court may or may not do, we believe the proper course is to respect the Supreme Court's admonition that lower courts must refrain from extending federal constitutional protections beyond the line drawn by the Supreme Court.

State v. Slocumb, 426 S.C. 297, 312, 313, 827 S.E.2d 148, 156 (2019)

It is clear in *Slocumb* the South Carolina Supreme Court did not wish to intrude into the decision of the United States Supreme Court in *Graham* and *Miller.* The Appellant in the present case received a seventy-five-year sentence. Less than Slocumb and the Appellant killed two people and shot three others, Slocumb never committed murder. If the South Carolina Supreme Court

[4] In *Slocumb* the South Carolina Supreme Court followed the rational found in the Sixth Circuit United States Court of Appeals case of *Bunch v. Smith* when the Court of Appeals wrote, "At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? There is language in the *Graham* majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years. Without any tools to work with, however, we can only apply *Graham* as it is written. *Id., quoting, Bunch v. Smith,* 685 F.3d 546, 552 (6th Cir. 2012).

only wishes to follow the United States Supreme Court in *Slocumb,* identical parameters should hold true in the present case. *Miller* and *Aiken* are clear, the criteria is only allowed prior to a life sentence without the possibility of parole, and the sentencing court still followed the *Aiken* factors and the Appellant eventually did not receive a life without parole sentence. There exists no violation by the trial court sentencing the Appellant because he did consider all of the *Aiken* criteria. At the conclusion of the *Aiken v. Byars* hearing this was the colloquy of the judge prior to sentencing:

> "For the purposes of what we have been doing this week, and I said at the outset of this case and I will repeat on the record the factors that I've considered with that structure that I just went over or spelled out in *Aiken v. Byars.*
>
> Those factors would include the following: The chronological age of Mr. Osborne and the hallmark features of youth, which would include immaturity, impetuosity, failure to appreciate the risks and consequences of his acts, irresponsibility and recklessness, also Mr. Osborne's family home environment, the circumstances surrounding the offense, in considering the extent of the participation by Mr. Osborne and how any familial or peer pressure may have affected him, the incompleteness associated with youth. An example in the case given, the inability to deal with police officers, prosecutors, or help his attorneys or assist his attorneys. And lastly, the possibility of rehabilitation given the child's diminished culpability and high capacity for change. The appropriate occasion for sentencing juveniles with the harshest penalty would be very uncommon.
>
> With that being said let me go over the factors as I see them. I have read in excess of 2,000 pages prior to coming to court today, listened to all the testimony. I have read more during this week.
>
> It is clear that Mr. Osborne is immature. He's impetuous. He was when he was 14. His mind isn't developed fully, and I think he is now. In many respects, when he committed these acts on September 28, 2016. I think he was a normal 14-year-old boy. But in other respects, you methodically researched and planned out this attack, as well as other aspects of your case. I don't believe for a second that Mr. Osborne failed to appreciate the risk of his consequences and his conduct. I think he did.
>
> On the other hand he may not have known what it felt like to actually kill somebody, but I think he understood that his actions could lead to his being killed or him having to spend life in prison or a lengthy prison sentence.

Also responsibility. There are elements that show that Mr. Osborne was responsible, and that is that he got up and worked in the family business, he did chores around the house. This also is an element of severe responsibility. He stopped doing his schoolwork, stayed up all hours of the day on the Internet, stayed on social media, roughly unchecked by either his father or mother.

Clearly, and I agree with Dr. Maddox wholeheartedly, that the family and home environment were problematic. They clearly had an impact on this gentleman. I don't see how possibly they couldn't have had an impact on this gentleman.

With that being said, his father was found to be verbally and physically abusive to both Mr. Osborne and other members of his family. He was a substance abuser. Likewise, Ms. Osborne from the records that I read appears to be somewhat of a substance abuser to some degree. Certainly not to the extent that Mr. Osborne was, but appeared to me and my impression of it is she was somewhat absent in this case. My meaning of that is Mr. Osborne was allowed, essentially, to exile himself in the basement. He stayed up all hours of the day. He had unfettered access – unchecked access and unfettered access to the Internet and social media, which allowed him to come – coupled with this Rainbow group that was out there. He wasn't required to do school assignments by reports and they were allegedly done by his mother.

On the other hand, the maternal grandparents, paternal grandparents seemed to be a bright spot for him. They seemed to give some guidance and stability.

But the concern that I have in this case is that – I've known Dr. Maddox for a long time. I have hired her as a court witness as the Court's witness. I don't know Drs. Wagner or Ballenger. I have no reason to disregard them. They seem to be extremely well qualified. But either choice leaves me with some problems.

First, if I were to follow Dr. Ballenger or Wagner, this gentleman is not going to get better. He doesn't have a treatable – he can't be treated. He's always going to be there. I tend not to do that.

I agree with Dr. Maddox is probably right in that he has suppressed emotional problems. And I'm just a junior psychiatrist over here, psychologist, making observations. Obviously, I don't know.

But even so, by Dr. Maddox's own testimony, what SCDC can provide is insufficient. He is going to require to get private work while he is incarcerated in SCDC for him to have any hope. And that's where my concern lies.

The testimony that I believe to be accurate is that this family has irreparable differences between Mr. Osborne's mother and the grandfather and grandmother. They're currently fighting and they have been, and the family system is broken down. While Mr. – the grandfather said, I will provide him with this needed extra private psychiatric help, I'm not convinced that's going to happen. As he said

himself, he's old. I think he characterized himself as being a dead man walking, which I don't agree with, but the problem is, assuming he did, once he's gone, once him and his wife are gone, we're all getting older, I don't believe he would get any help. So that leads us back to square one.

Although Mr. Osborne had a tough upbringing, clearly impacted on him, there are other people out there who have had tough upbringing. They have alcoholic parents, they have abusive parents, or they have a combination.

This was a heinous murder or murders. If it had stopped with your dad, we may have a different situation here. I don't know. I'm not saying that dad's a bad person. But when he drank obviously, he had a propensity for violence and abuse.

But wherever peer pressure may have led to your decision to go out and shoot up this school, do the things you did, you did them. And you planned them. Quite frankly, reading the social media posts, I can't tell whether you were leading that group or they were leading you. You were certainly the first one out of the chutes to go do this. You certainly were the one, although cut and paste, Mr. Eppes pointed out, the information about pipe bombs.

Sadly, and who knows what difference it would have made, while you needed to have counseling, you and your granddad are out there throwing these pipe bombs or Drano bombs out there and shooting automatic weapons. I hunt, I fish, I understand guns. I don't see anything wrong with you shooting guns. I see the impropriety here or what's wrong here is that your parents, your mother and your dad, who's no longer with us let you down in that they didn't get you the help that may have made a difference. May not. Because, quite frankly, that was just a few short months before you engaged in horrific acts involved in this case. So we're all familiar with the actions or the facts surrounding these murders.

As to his fourth factor, the incompleteness associated with youth, there's certainly no evidence he hasn't been able to help his attorneys in this matter, to assist his attorneys. And while it might have been – while it may not have been the best of decisions to waive the *Miranda* and speak to law enforcement at the time he did, quite frankly, I don't think necessarily it would have made much of a difference. The overwhelming evidence in this case was that he was guilty. But when he decided to talk to law enforcement, he did so very articulately. He was able to engage with his questioners and the people who was speaking with him, and I saw no signs of any incompetencies in that regard.

With that being said, I want to point out to law enforcement, that concerns me to a great deal, the fact that this gentleman had a lawyer requested for him and y'all refused. I know you had a right to. If that comes before me, one of the factors under *Jackson v. Denno* is isolating a child from its parents. That is a real concern.

> In this case Mr. Osborne was sophisticated enough to engage in symptom magnification or fabrication. He looked up different ailments, tried to act as if he had those. He knew from the start that that's what he was going to have to do. I feel comfortable he manipulated the facts in this case. Quite frankly, when he was – outside evidence where he was bullied and he reported that bullying at West-Oak. It's clear. However, that expanded to bullying going on back at Townville Elementary, and I have seen – other than his statements in that regard, I've seen nothing about that. I heard something about it from his grandfather today. But if you look at his school records, that doesn't seem to be indicative of any such thing going on.
>
> The reason I say that is that Mr. Osborne has been smart enough and clever enough to manipulate the facts if it suits him and provides him with a defense in this case. I certainly agree with the finding that he's more sophisticated socially than most, although he has an average intelligence, he might be a somewhat of a social outcast because of the fact that you were by yourself and essentially a loner.
>
> I tell you, quite frankly, one of the things that stands out the most to me is your lack of remorse. That is a great concern. Dr. Maddox says that she feels like it is likely the result of him suppressing his emotions and dealing with those, and at some point he will. Again, that's going to require outside or private counseling inside the Department of Corrections that nobody can count on.
>
> I, quite frankly, don't think that, under those circumstances, Mr. Osborne will be rehabilitated. Not because he can't be, but I don't think that he will be. On the other hand, if Drs. Ballenger and Wagner are right he can't be." (R. p. 1828 l. 13 – p. 1836 l. 9)

At the end the sentencing judge gave the Appellant a sentence of life without parole. However, this later changed to a seventy-five-year sentence. It is clear that the above referenced remarks reveal not only the amount of work and seriousness that the court took prior to sentencing, but that he followed all of the *Aiken* factors prior to making the final sentencing decision. There exists no error in how the court sentenced the Appellant. The decision of the court should be upheld.

3. **The statement given by the Appellant was given after his *Miranda* rights were read to him, and he stated he understood the Family Court did not err in allowing Appellant's statement into evidence during the waiver hearing.**

Relevant Facts

During the Waiver hearing a *Jackson v. Denno* hearing was held regarding statements and the confession made by the Appellant upon being arrested. During this hearing Deputy Ronald Wood of the Anderson County Sheriff's Department testified. Deputy Wood was one of the first people to arrive at the crime scene. He took the Appellant into custody and placed him in the back of his police cruiser. When the Appellant was in the police vehicle Deputy Wood testified that he made an excited utterance. Deputy Wood testified that the Appellant told him, "No, I know I killed my father," "A good thing my gun jammed or I would have killed more," (R. p. 55 l. 14-18) This was stated by the Appellant on his own. He was never questioned by Deputy Wood. (R. p. 55 l. 10-12).

Also testifying during the *Jackson v. Denno* hearing was Agent Aleta Bollinger of the FBI. Agent Bollinger was the supervisor of the Greenville/Spartanburg field office. She was present with Deputy Tracy Call when he read the Appellant his *Miranda* rights. Agent Bollinger testified that Appellant told them he could read and write, and he was asked to initial the advice of rights form. (R. p. 68 l. 7-25). Agent Bollinger testified that during the reading of his *Miranda* rights the Appellant told them " I just want to get this over with." It was then explained to him that he did not have to talk, he told them he understood and signed the advice of rights form. (R. p. 70 l. 11-18). The Appellant then gave a full confession that was also videotaped. The written and videotaped confession was made a part of the record and viewed by the Family Court Judge. At the conclusion of this hearing the family court judge made the following ruling:

> "The *Jackson v. Denno* decision is the fundamental issue here today and in order for the Court to admit the confession, the Court must determine two things: (1) whether the alleged confession was given voluntarily; (2) whether it complies with *Miranda.*
>
> I will address the second factor first. This was clearly a custodial interrogation where the juvenile was in police custody at the time the confession was elicited. I do find that the sheriff's office, as well as the FBI agent, clearly complied with the

portions of *Miranda* as far as the warnings to be given, the admonitions regarding the same. And so, I do find that that prong of the statue has been met and did comply with the *Miranda* warnings as required under *Jackson v. Denno* ruling.

The second issue, that of voluntariness requires, as Mr. Eppes correctly stated, a review of the totality of the circumstances and the seminal case on the factors to consider in the totality of the circumstances were set forth in the *Schneckloth v. Bustamonte* case and they listed a number of factors: whether there was any police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity, education, physical condition and mental health; and the failure of any police to advise the defendant of his right to remain silent and to have counsel present during the custodial interrogation.

As previously stated, the police clearly complied with the last two provisions of that ruling that the defendant did have a right to remain silent and to have counsel present during the custodial interrogation.

Now, the 5th Amendment right to remain silent has, in my personal opinion, been applied in certain circumstances that I considered harsh and in some cases in a highly technical manner. This is the present case law as I understand it. It doesn't necessarily apply in this case, but I'm just making a comment that this 5th amendment right against self-incrimination has been applied in certain cases where I felt it was a very technical ruling. That is just a comment on the present state of the law.

As Mr. Eppes correctly pointed out, North Carolina has taken steps of passing law that requires that parents or an attorney be present during questioning. In addition, in one of the cases that I read, Justice Pleicones, in his descent advocated for a firm rule based upon public policy that anyone fourteen or under has an absolute right to have an attorney or parent present. However, the legislature has seen fit not to act upon that and there are no cases decided by the appellate court that require that to be in place. Indeed, many of the cases which I just read clearly state that age, in and of itself, is not sufficient basis to declare that a statement was given involuntarily.

So having stated that, I do find that based on the totality of the circumstances, I do find the statement was voluntarily given and I do find that it does comply with the *Miranda* decision and I will, therefore, rule that the confession will be admitted into evidence in the case in chief and later on." (R. p. 155 l. 1 – p. 157 l. 6).

Standard of Review

The admission or exclusion of evidence falls within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion, which occurs when the trial

court's decision is based on an error of law or upon factual findings that are without evidentiary support. *State v. McEachern,* 399 S.C. 125, 136-37, 731 S.E.2d 604, 609-10 (Ct. App. 2012)

When this Court reviews a trial court's admission of a defendant's statement as knowing, intelligent and voluntary, this 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. *State v. Saltz,* 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). For an improperly admitted statement to warrant reversal, the statement's introduction must have prejudiced the defendant. *State v. Easler,* 327 S.C. 121, 129, 489 S.E.2d 617, 621-622 (1997), *overruled on other grounds by, State v. Greene,* 423 S.C. 263, 814 S.E.2d 496 (2018). A minor has the capacity to make a voluntary confession… without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of factors with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement. *State v. Pittman,* 373 S.C. 527, 566, 647 S.E.2d 144, 164-65 (2007), *citing, Jenkins v. State,* 265 S.E. 295, 300, 217 S.E.2d 719, 722 (1975).

Discussion

A statement obtained from custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his or her rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966). "If a suspect is advised of his *Miranda* rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Arrowood*, 375 S.C. 359, 366-67, 652 S.E.2d 438, 442 (Ct. App. 2007). "If admitted, the jury must then determine whether the statement was given freely and voluntarily beyond a reasonable doubt." *State v. Parker*, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008).

A voluntary waiver need not be express. Rather, "(1) the 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 (2) the waiver must be 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" *State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (2010) (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 382, 130 S.Ct. 2250, 2260 (2010)). "In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession." *Id.* "Coercive police activity is a necessary predicate to finding a statement is not voluntary." *State v. Miller*, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007). "Coercion is determined from the perspective of the suspect." *Id.* (citing *Illinois v. Perkins*, 496 U.S. 292, 110 S.Ct. 2394 (1990)).

The "[d]etermination of whether a statement is involuntary [also] 'requires more than a mere color-matching of cases.'" *Mincey v. Arizona*, 437 U.S. 385, 401, 98 S. Ct. 2408, 2418 (1978) (quoting *Reck v. Pate*, 367 U.S. 433, 442, 81 S.Ct. 1541, 1547 (1961)). "[E]ach case requires careful scrutiny of all the surrounding circumstances." *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007). The factors to be considered are frequently examined and broadly defined. The defendant's "background, experience, and conduct" are relevant, as are the circumstances creating the environment in which the statement is made: the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." *State v. Miller*, 375 S.C. at 385, 652 S.E.2d at 452 (quoting *Withrow v. Williams*, 507 U.S. 680, 113 S.Ct. 1745 (1993) (collecting cases)).

The initial statement made by the Appellant to Deputy Wood is definitionally admissible due to his excited utterance which is an exception to the Hearsay rule.[5] The other statements made by the Appellant while in police custody were definitely admissible. He was given his *Miranda* rights in which he verbally stated he understood, he actually wanted to give a confession to "get this over with." There is no evidence that he was denied food, sleep or the ability to go to the bathroom if he asked. The fact he was a juvenile is not a determination of whether or not a statement should be admissible. When the only evidence presented is the young age of the appellant, this alone is not probative or coercion. *In re Tracy B.,* 391 S.C. 51, 67, 704 S.E.2d 71, 79 (Ct. App. 2010). The evidence presented during the *Jackson v. Denno* totally displayed that the confession was not coerced it was freely given so it was admissible.

The Respondent also argues that even if the court erred in allowing this statement into evidence it would not have any effect on the final result so any error should be considered harmless. Although the Respondent is not conceding this argument, there was overwhelming evidence against the Appellant revealing that he committed this heinous crime. So, the decision to waive this up to General Sessions Court did not hinge on the fact he confessed. There was other evidence that when the *Kent* factors were applied, the Family Court judged to waive it up to General Sessions Court. This confession had no bearing on the final result so any possible error should be considered harmless. Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018).

When there is overwhelming evidence of guilt as in the present case a confession being improperly admitted can be considered harmless. In some cases, the properly admitted evidence

[5] A statement relating to a startling event or condition made while the declarant was under stress or excitement caused by the event or condition. Rule 803(2), SCRE.

of guilt is so overwhelming, … it is clear beyond a reasonable doubt that the improper use of the admission was harmless error. *State v. Henson,* 407 S.C. 154, 167, 754 S.E.2d 508, 515 (2014), *quoting, Schneble v. Florida,* 405 U.S. 427, 430, 92 S.Ct. 1056, (1972).

The admission of the Appellant's confession during the waiver hearing was definitely proper. There was no evidence of coercion nor was there any evidence revealing that the Appellant not knowingly, willfully and voluntarily gave up his *Miranda* rights after being read them and expressing to law enforcement he understood and that he did not have to make a statement if he wished not to. This matter was properly allowed into evidence; therefore, it should not be subject to reversal by this court.

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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April 14, 2025

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
The Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

Respondent,

v.

JESSE DEWITT OSBORNE,

Appellant.

Appellate Case No. 2023-001596

PROOF OF SERVICE

I, Tommy Evans, Jr., hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Wanda Carter, Esq., via email today, April 14, 2025 to WCarter@sccid.sc.gov, and to her assistant, Scott Leverette to SLeverette@sccid.sc.gov.

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

This is the 14th day of April 2025.

s/Tommy Evans, Jr.
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ATTORNEY FOR RESPONDENT

Brandy Rankin

From: Brandy Rankin
Sent: Monday, April 14, 2025 8:26 AM
To: wcarter@sccid.sc.gov
Cc: Leverett, Scott; Tommy Evans, Jr.
Subject: The State v. Jesse Osborne - Appellate Case No. 2023-001596 - Final Brief of Respondent
Attachments: Osborne Final Brief of Respondent.pdf

Dear Ms. Carter,

Please find attached the Final Brief of Respondent which will be filed today, April 14, 2025, with the South Carolina Court of Appeals along with a copy of this email. Thank you.

Sincerely,

Brandy Rankin

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