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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALEXANDER CRAVETS,

APPELLANT

APPELLATE CASE NO. 2024-001371

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting Appellant's statements, where the second statement should have been excluded because the first statement was given at a time when law enforcement knew or should have known Appellant was too impaired to voluntarily waive his *Miranda*[1] rights, since the statements should have been excluded pursuant to *Miranda v. Arizona*, *Jackson v. Denno*,[2] and *Missouri v. Seibert*?[3]

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1 *Miranda v. Arizona*, 384 U.S. 436 (1966).

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

3 *Missouri v. Seibert*, 542 U.S. 600 (2004).

STATEMENT OF THE CASE

On April 14, 2021, a Richland County Grand Jury indicted Christopher Cravets, Appellant, for first-degree burglary, criminal conspiracy, and armed robbery. R. *(indictments). Appellant was also indicted for murder. Tr. 5, ll. 12-23. Appellant was tried before the Honorable Daniel M. Coble and a jury, from August 12 – 15, 2024. Scott Hayes represented Appellant. Carter Potts and Nick Fowler prosecuted the case. Tr. 1. During pretrial motions, the court permitted the State to amend the indictment for armed robbery to attempted armed robbery. Tr. 34, l. 11 – 37, l. 1; Tr. 114, ll. 2-6.

Appellant was convicted of first-degree burglary, criminal conspiracy, and attempted armed robbery. Tr. 440, l. 23 – 441, l. 24. The jury hung on the offense of murder, and a mistrial was declared as to that charge. Tr. 434, l. 22- 438, l. 9; Tr. 444, l. 25 – 445, l. 1. Appellant was sentenced to serve consecutive terms of imprisonment of life for first-degree burglary, five years for criminal conspiracy, and twenty years for attempted armed robbery. Tr. 455, ll. 13-22.

This appeal follows.

STANDARD OF REVIEW

"[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." *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023).

ARGUMENT

The court erred by admitting Appellant's statements, where the second statement should have been excluded because the first statement was given at a time when law enforcement knew or should have known Appellant was too impaired to voluntarily waive his *Miranda*[4] rights. The statements should have been excluded pursuant to *Miranda v. Arizona*, *Jackson v. Denno*,[5] and *Missouri v. Seibert*.[6]

Relevant facts

On the night of November 25, 2019, Delon Summersett (Decedent) was shot and killed in his Columbia home when three men broke the glass of a rear bedroom window and entered the house to steal marijuana and cash. Tr. 130, l. 14 – 132, l. 6; Tr. 351, l. 13 – 363, l. 6; Tr. 139, ll. 17-18; Tr. 193, l. 14 – 195, l. 10; State's Exhibit #27. Decedent confronted one of the men. State's Exhibit #27; State's Exhibit #28. The man shot Decedent seven times. Tr. 353, ll. 5-8. Decedent's girlfriend, Angela Homewood (Homewood), who was in bed asleep, was woken by the sound of glass breaking and the home security alarm going off. Homewood went to turn the alarm off and saw a tall, slender person fighting with Decedent. Homewood ducked back into the bedroom when a shot was fired at her. State's Exhibit #4; Tr. 139, l. 17 – 153, l. 121.

A neighbor's security camera showed three suspects walking past the home, cutting in between Decedent's home and the home next door, and heading towards the back of the properties. A few minutes later, glass is heard breaking and shots ring out. Two figures run back out from between the homes. (The third suspect apparently left by a different route.)

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[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] *Jackson v. Denno*, 378 U.S. 368 (1964).

[6] *Missouri v. Seibert*, 542 U.S. 600 (2004).

State's Exhibit #31. Law enforcement was able to find other video that showed three suspects getting out of a car near the crime scene. The car belonged to a woman with the last name Pitt. Tr. 254, l. 8 – 258, l. 9.

A window in the back bedroom was broken out. Tr. 193, ll. 8-22. A crime scene investigator swabbed red stains on the back bedroom doorway, and the swabs were submitted to SLED for DNA analysis. There were at least two or three different stains on the door but the officer swabbed all three stains with the same swab. Tr. 187, l. 7 – 188, l. 3; Tr. 196, ll. 10-23; Tr. 199, l. 8 – 201, l. 21. At trial, an expert in DNA analysis would testify that she found a mixture of DNA on the swab from the back bedroom door. She testified the DNA profile mixture from the door was "approximately 65 octillion" times more likely if Appellant and an unrelated, unidentified individual contributed to the mixture than if two unidentified, unrelated individuals contributed to the mixture. She further opined there was "very strong support" for this likelihood ratio. Tr. 321, l. 25 – 322 l. 4; Tr. 328, l. 21 – 334, l. 25.

Decedent was a graphic designer but had a "side business" "selling marijuana." Tr. 140, l. 11 – 141, l. 18. He had a friend named Ralph Pitt (Pitt), that was involved in the "side business." Tr. 142, l. 21 – 143, l. 11. Law enforcement found a "significant amount" of marijuana in Decedent's home. Tr. 287, ll. 3-14. Law enforcement expected a DNA match from the bloodstains in the house to come back to Pitt due to the way the investigation was going, but instead a DNA hit came back to Appellant. Tr. 296, l. 22 – 297, l. 16. Warrants were obtained for Appellant's arrest. Tr. 297, l. 17 – 298, l. 10.

Homewood wore eyeglasses, and when she was awakened the night of the incident she did not have them on. She admitted she was not able to see the face of the person who was fighting with Decedent. She did not see the other two suspects. However, she would claim at

Appellant's trial that Appellant's height and stature matched that of the shooter. Tr. 151, l. 24 – 152, l. 4; Tr. 166, l. 5 – 170, l. 11; Tr. 181, ll. 2-4; Tr. 178, l. 5 – 179, l. 8.

On or about December 27, 2019, Appellant was arrested in Conyers, Georgia, and held at the Conyers Police Department. Investigator Chauncey Duckett (Duckett) with the Columbia Police Department quickly drove to Georgia to interview Appellant. Appellant was interviewed (first interview) and the interview was recorded. R. *(Court's Exhibit #3); Tr. 265, l. 1 – 270, l. 23; Tr. 298, ll. 6-21; Court's Exhibit #7; State's Exhibit #27. Appellant was interviewed again after extradition (second interview), in Columbia, on or about January 28, 2020. That interview was also recorded. R. *(Court's Exhibit #4); Tr. 271, l. 3 – 276, l. 21; Tr. 284, l. 23 – 285, l. 21; State's Exhibit #28. At the beginning of both interviews, Investigator Duckett read Appellant his *Miranda* rights, and got him to sign "Advice of Rights" forms, but both times Duckett misleadingly told Appellant that signing the forms was nothing more than an acknowledgement that he was advised of his rights. Instead, the signature reflected a waiver of *Miranda* rights. R. *(Court's Exhibit #3; Court's Exhibit #4); State's Exhibit #27; State's Exhibit #28.

Appellant made incriminating statements during both interviews. In the first interview, he said he went into the home with two others, one of whom broke out the window and shot Decedent. Appellant was hesitant to name the other two men; he said he was worried about retaliation against his family. However, he provided nicknames for the two other men. Appellant further stated the crime was planned by Pitt, who was the drop-off and getaway driver. State's Exhibit #27.

In the second interview, Appellant again admitted going into the house, but this time he claimed that he was the shooter, and that the other two persons he had initially named were not involved. Appellant maintained the crime was set up by Pitt. State's Exhibit #28. In closing

argument, defense counsel argued Appellant was not guilty of murder. Counsel posited Appellant merely took the blame for the murder during the second interview because he was afraid for his family. Tr. 399, l. 13 – 404, l. 25. As seen, the jury hung on murder. Tr. 434, l. 22- 438, l. 9; Tr. 444, l. 25 – 445, l. 1.

The difference in Appellant's speech and demeanor during the two interviews is striking. In the second interview, the one in Columbia, his speech and demeanor are unremarkable. In the first interview, in Georgia, Appellant is visibly and audibly impaired.

The unredacted video preceding the first interview, which includes video of Appellant in the interrogation room prior to Duckett's arrival, is illuminating. Court's Exhibit #7.[7] It is roughly two hours and forty minutes long. The beginning of the video shows Appellant being brought into the interrogation room by Conyers police officers. He is in street clothes. His speech is very rapid and trails off when being searched. He sits down in the chair. He is alone in the interview room. Thereafter the video runs the gamut of Appellant talking to himself, thrashing, panting, sleeping, snoring, burping, yelling, cursing, laughing, coughing, mumbling, singing, and slurring his words. He talks aloud to himself in streams of conscious. He repeatedly complains about how cold he is. He says he is being punished with the air conditioning and is freezing. (This is in December and he is in a tank top.) *See* Court's Exhibit #7 at approximately 16:43:00. He asks more than once if he is being tortured. *See* Court's Exhibit #7 at approximately 16:43:00; 16:55:20. He asks for help. A Conyers officer comes in the room and Appellant says, "Please do not tase me no more, please do not tase me no more.

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[7] The unredacted video of Appellant in the Conyers, Georgia, interrogation room prior to the arrival of Columbia Police Department officers may be located by opening Court's Exhibit #7, clicking on the subfolder that says: "Georgia interview," then clicking on the subfolder that says: "Disc 1 or 3," then clicking on the compact disk icon that says: "Autoplay," and then selecting the image next to "Parts 1 – 3 played consecutively."

Fuck that shit hurt." at approximately 15:29:10. He repeatedly talks about being tased and how much it hurt in stream-of-conscious. *See* Court's Exhibit #7 at approximately 15:56:00; 16:12:20; 16:29:50; 16:30:30. At approximately 16:39:40, he says something about being "discombobulated" and having his balance thrown off. At approximately 17:04:50, he says he cannot take the cold anymore. By the end of this portion of the recording he falls asleep again. State's Exhibit #27 (also Court's Exhibit #5) shows what happens next, when the Columbia officers arrive from South Carolina to interrogate Appellant in Georgia. Again, this is after Appellant is arrested in Conyers but before he is taken to the jail; he is still at the Conyers Police Department.

The video of the first interview, State's Exhibit #27, shows Appellant is sleeping when the officers walk in. He is snoring and has a blanket on. They call his name and one of the officers observes Appellant is "trying to get your bearings together." Appellant moans and is unsteady on his feet while being unshackled, at approximately 3:30 of the video. Appellant's speech is slurred at approximately 4:00 minutes into the video. Approximately thirty seconds later, Appellant asks: "Are y'all gonna play good cop and bad cop and shit, put your hands on me?" Duckett tells him no. Appellant rubs his eyes, is coughing, shaking his head, working his mouth oddly.

Duckett starts to fill out the *Miranda* form. At approximately 5:00 of the video, Appellant's speech is slurred when he states his last grade was tenth. Duckett then states that they are at the Conyers Police Department. At approximately 5:25 of the video, Appellant, slurring, says, "Conway, where's that at?" Duckett says: "Conyers." Appellant says, "Oh, Conyers. I used to live here before," slurs, giggles, and bobs his head. Duckett reads Appellant his *Miranda* rights and instructs him to sign the form: "Just get you to sign that. Only thing that

this means is that I advised you of your rights. Doesn't mean anything, no admission of guilt. No admission of innocence. Just, hey, Investigator Duckett told you about your rights." That is at approximately 6:10 of the recording. Appellant, coughing and wobbling, signs the form.

At approximately 6:45 of the video, Duckett asks Appellant if he knows why he is in custody. Appellant, slurring, stuttering, and bobbling his head indicates he has been trying to do right but doesn't know what he is doing sometimes. Duckett then asks Appellant an unintelligible question. Appellant responds to the unintelligible question with: "I'm not high, man. I'm fucked up," at approximately 6:50 of the video. Duckett begins interrogating Appellant about the details of the crime. The redacted interview is approximately an hour and three minutes long. Appellant objectively appears to be impaired: perhaps from illegal drugs, medication, tasering, or injury. His speech and demeanor are those of someone impaired throughout the majority of the interrogation, although he appears to become more alert and normal the further along it goes. State's Exhibit #27. At approximately 9:20 of the recording, Appellant is slurring and wobbly. At approximately 13:10 of the video he is again still slurring his words. Shortly thereafter he continues to slur his words, his knees shake, his voice is halting. At approximately 15:10 of he recording he continues to slur his words. Between approximately 16:00 and 18:00 minutes he is fidgeting, coughing, working his jaw oddly, stuttering, slurring his words, sticking his tongue out. The coughing, stuttering, and slurring continues: he is still doing those things leading up to approximately 26:00 minutes in. He slowly appears to become more lucid after that. However, his speech is still repeatedly slurred, such as between approximately 31:00 minutes and 36:00 minutes. As the interrogation goes on, he continues to appear more lucid, but is still slurring his speech repeatedly, again for example between approximately 42:00 and 43:00 minutes. At approximately 47:50 minutes, Appellant puts the blanket over his head.

When asked about certain details of the crime, at approximately 55:00 of the video, Appellant states: "That's how much I'm fucked up because I don't even remember that." The video ends with Appellant vigorously blowing his nose.

Appellant is next interrogated post-extradition, approximately a month later at the Columbia Police Department after Appellant was brought back to town by Duckett and another officer. State's Exhibit #28 (also Court's Exhibit #6) is the redacted recording of the second interrogation. His affect is completely normal. There is no sleeping or slurred speech or other indications of impairment. Appellant is again provided with his *Miranda* warnings, but at this point he is already on hook, having admitted he was present during the initial interview. Duckett once again in the same manner gets Appellant to sign a waiver of his rights. At the beginning of the interview, at approximately 5:00 of State's Exhibit #28, Duckett refers back to the initial statement and asks what Appellant wants to "clear up" about the "initial story": "What's different?" As noted above, Appellant again gives an incriminating statement. State's Exhibit #28.

Appellant moved pre-trial to suppress evidence of the interrogations as involuntary. The court held a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), heard testimony from Duckett, and considered the interrogation videos. The videos were provided to the court several weeks in advance of trial. Tr. 88, ll. 2-3. The following items were made Court's Exhibits: the unredacted interview videos (Court's Exhibit #7); the advice of rights forms (Court's Exhibit #3 and #4); the redacted Georgia interview video contained in State's Exhibit #27 (Court's #5); and the redacted Columbia interview video contained in State's Exhibit #28 (Court's Exhibit #6). Tr. 112, ll. 8-40. These exhibits are on file with this Court. For consistency, when referring to time stamps on the exhibits, this brief refers to State's Exhibit #27 for the first interview, State's

Exhibit #28 for the second interview, and Court's Exhibit #7 for the period preceding the first interview.

Regarding the first interrogation, the one in Georgia, Investigator Duckett testified he did not know the circumstances of Appellant's arrest in Conyers. He noted the interrogation was recorded. He stated he provided Appellant with *Miranda* warnings, and Appellant was given a blanket. He noted he did not "put hands" on Appellant, although Appellant asked if the officers were going to. Duckett claimed Appellant did not appear mentally ill or under the influence. Tr. 54, l. 12 – 59, l. 1; Tr. 68, l. 17 – 70, l. 4. He admitted Appellant was "asleep" when they went in to interview him. Tr. 64, ll. 11-13. It was 6:45 p.m. at the time. Duckett agreed that Appellant's demeanor and speech were "much different" during the interview in Conyers and the one in Columbia. However, he again denied that Appellant appeared under the influence. Duckett obfuscated when asked whether Appellant indicated he did not even know he was in Conyers, Georgia. Tr. 66, ll. 19-23; Tr. 70, l. 25 – 71, l. 8; Tr. 72, ll. 8-14; Tr. 81, ll. 19-21.

As seen, Duckett transported Appellant back to Columbia about a month later and interviewed him at Headquarters when they arrived. Regarding the second interview, Duckett testified he did not intend to question Appellant again, but Appellant stated that "he wanted to clear up some things that he told me the first time[.]" Appellant was *Mirandized* and gave another incriminating statement. Tr. 59, l. 2 – 64, l. 7.

Defense counsel argued the first statement should be suppressed as involuntary because the video, which "speaks for itself" showed Appellant was "out of it," was even "having trouble with his speech at the beginning," and was "having trouble understanding what's going on." Counsel submitted it was "obvious" from the video that Appellant was "high out of his mind" during the first interrogation. Counsel argued these officers did not know the circumstances of

Appellant's Georgia arrest, and Appellant could have been "riding around smoking methamphetamine in a car for all they know." Tr. 83, l. 15 – 85, l. 2; Tr. 86, ll. 1-5. "Mr. Cravets doesn't have his wits about him. They put some influence on him." Tr. 84, ll. 18-19. Counsel argued the second statement should also be suppressed because "if it weren't for the first statement, the last statement would never have occurred." "[I]f we don't have the first statement, then we won't have the last one[.]" Tr. 86, ll. 17-18; Tr. 87, ll. 8-10.

The State argued that the investigator did not believe Appellant was under the influence during the first interview, and that he appeared to get his bearings about him after he woke up, such that his will was not overborne. The solicitor also argued Appellant was "laughing and jovial" during the second interview and he was again provided with *Miranda* warnings. Tr. 87, l. 13 – 89, l. 9.

The court ruled the evidence was admissible.

> I'm denying the motion to suppress any of the statements. I find that all of the statements were voluntarily given and the first and second did comply with *Miranda*.
>
> The first statement, *Miranda* was given and was properly given, witnessed, signed, verbally and written. Initially, it was a voluntary statement while Mr. Cravets was – appeared to be sleepy, they did give him a minute to collect himself. I find the testimony of Sergeant Duckett credible, that he did not appear to be under the influence of any alcohol or drugs but they gave him a minute to gather himself. I reviewed the video here in court with everyone else. He appeared to understand what was going on. He was given water to drink, the opportunity for that. He wasn't threatened or coerced and I believe it was voluntarily given.
>
> As to the third [sic] statement, even more so, he was given his *Miranda* Rights all on video, as well as **he was much more lucid, you could say**. So even more so it was voluntarily given, there was no doubt about that at all. He understood what he was doing.

Tr. 114, ll. 7 – 115, l. 5 (emphasis added).

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)). As to due process, 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 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*). A totality of the circumstances inquiry may include consideration of the physical and mental condition of the accused, including whether he was intoxicated. *E.g.*, *State v. Miller*, 441 S.C. at 120-21, 893 S.E.2d at 313-14. Coercive police activity is necessary predicate to finding confession is not voluntary within the meaning of the Due Process Clause. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). "Coercion is determined from the perspective of the suspect." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (citation omitted). *See also State v. Collins*, 442 S.C.

444, 900 S.E.2d 426 (2024) (false assurance of confidentiality from law enforcement is inherently coercive because it interferes with layperson's ability to make fully informed decision whether to engage in interview under such circumstances).

"The second constitutional basis which requires confessions to be voluntarily given is the Fifth Amendment's prohibition of compelled self-incrimination." *State v. Miller*, 441 S.C. at 127, 893 S.E.2d at 317 (citing *Dickerson*, 530 U.S. at 433). "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*, 384 U.S. at 479). 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.*

"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. 370, 382–83 (2010) (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).

"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. at 384 (cleaned up).

Appellant's initial *Miranda* waiver and his resulting first statement were involuntary due to his impairment. The court found Investigator Duckett credible when he testified he did not believe Appellant was under the influence. Perhaps the impairment was due to tasering, or a combination of illness, drugs, and tasering. Regardless, the videos show that Appellant objectively appeared impaired during the provision of *Miranda*, as well as prior to and after that. State's Exhibit #27; Court's Exhibit #7. Because Appellant was read his *Miranda* rights when he was so impaired the prosecution did not show his waiver was knowing, intelligent, and

voluntary. *Berghuis v. Thompkins*, 560 U.S. at 384. His *Miranda* waiver was invalid. *See State v. Hill*, 425 S.C. 374, 384, 822 S.E.2d 344, 350 (Ct. App. 2018) ("We cannot suspend reality and find the *Miranda* warnings effective at the late stage they were given."). Moreover, Duckett instructed Appellant to sign the *Miranda* waiver and misleadingly told Appellant that signing the waiver of rights was simply an acknowledgement he had been read his rights. Instead, it reflected a waiver of those rights. If this was truly just an acknowledgement of rights, there would have been two signature blanks—one that said I waive my rights and one that said I do not waive my rights; or simply a blank that stated I acknowledge I have been provided my rights. Court's Exhibit #3; Court's Exhibit #4. *Cf. State v. Collins*, 442 S.C. at 454; 459, 900 S.E.2d at 431; 434 (*Miranda* warnings ineffective where the warnings were then negated by law enforcement's false assurances of confidentiality; misleading statements about *Miranda* rights undermine the fundamental fairness that every defendant is entitled to under the law).

In addition to the *Miranda* waiver being involuntary, the first statement was involuntary for the same reason. If a defendant demonstrated similar speech and demeanor during a guilty plea, no judge would accept the plea. If the driver of a car exhibited a similar demeanor and speech, no reasonable person would accept a ride. Duckett apparently asked Appellant if he was high early on in the interview. Although Duckett's question was unintelligible, Appellant's answer was not: he stated, "I'm not high, man. I'm fucked up." State's Exhibit #27. He objectively appeared to be so. Duckett questioned him anyway. Appellant's demeanor and speech did not begin to normalize until well into the interview. It was error to find the first interview was voluntary and admissible. Appellant's statement was not the product of a free and unconstrained choice. *Schneckloth v. Bustamonte*, 412 U.S. at 225-26. There was coercive police activity because Appellant was *Mirandized* and interrogated while objectively impaired.

Court's Exhibit #5; Court's Exhibit #7. The first statement was involuntary under the totality of the circumstances and the court erred in admitting it. *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.

The second statement should have been excluded as well. Law enforcement had Appellant on the hook from the first interrogation, which should never have happened. They referred back to the first statement in getting the second. Where an innocent *Miranda* violation requires that an unwarned earlier admission must be suppressed, whether a subsequent statement is admissible turns on whether it is knowingly and voluntarily made. *Oregon v. Elstad*, 470 U.S. 298, 309 (1985). "[A]bsent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement." *Id.*, 470 U.S. at 314. However, mere recitation of the litany of *Miranda* rights is not always sufficient to satisfy *Miranda*. *Missouri v. Seibert*, 542 U.S. 600, 611 (2004).

In *Seibert*, the Supreme Court held both a first and second confession inadmissible where officers used a "question-first" tactic to elicit an incriminating statement, then provided *Miranda* warnings, and elicited a second incriminating statement. *Id.*, 542 U.S. at 604-05. It is "unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations subject to independent evaluation simply because *Miranda* warnings formally punctuate them in the middle." *Id.*, 542 U.S. at 614. "[R]elevant facts that bear on whether *Miranda* warnings delivered midstream could be effective enough to accomplish their

object [include]: the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first." *Id.*, 542 U.S. at 615.

In applying these factors, the Supreme Court reasoned that the first questioning was systematic and exhaustive, with "little, if anything, left unsaid." *Id.*, 542 U.S. at 616. The Court also considered that the same officer conducted both interrogations, that the police did not advise the suspect her prior statement could not be used, and that the questioning appeared to be a mere continuation of the earlier questions which "was fostered by references back to the confession already given." *Id.*, 542 U.S. at 616-17. "These circumstances must be seen as challenging the comprehensibility and efficacy of the *Miranda* warnings to the point that a reasonable person in the suspect's shoes would not have understood them to convey a message that she retained a choice about continuing to talk." *Id.*, 542 U.S. at 617.

Whether there is a deliberate police practice of "question first" is not determinative of the admissibility of the subsequent statements. *State v. Navy*, 386 S.C. 294, 304, 688 S.E.2d 838, 842 (2010). In *Navy*, the South Carolina Supreme Court addressed the admissibility of statements taken where a defendant who was not in custody was questioned and gave a statement, the nature of the interrogation then changed because he gave suspicious answers, the police provided *Miranda* warnings, and two additional incriminating statements were obtained. *Id.*, 386 S.C. at 298-300, 688 S.E.2d at 839-41. The Court recited the *Seibert* factors as: "1) the completeness and detail of the question and answers in the first round of interrogation; 2) the timing and setting of the first questioning and the second; 3) the continuity of police personnel; and 4) the degree to which the interrogator's questions treated the second round as continuous

with the first." *Id.*, 386 S.C. at 302, 688 S.E.2d at 841-42. The Court cited to Justice Kennedy's concurrence in which he agreed "the statements must be suppressed unless 'curative measures' were taken. As examples of curative actions, Justice Kennedy suggested a substantial break in time and circumstances between the pre-warning statement and the warned, or an additional warning before questioning resumes that the pre-warned statement is not admissible." *Navy*, 386 S.C. at 302–03, 688 S.E.2d at 842. Our Supreme Court concluded the subsequent statements were inadmissible due to the *Seibert* violation. It found the four elements of *Seibert* were met, and also noted that the curative measures suggested by Justice Kennedy were not present. *Id.*, 386 S.C. at 303, 688 S.E.2d at 842.

In this case, as seen, although *Miranda* warnings were given at the outset of the first interrogation, those warnings were ineffective as Appellant was too impaired to voluntarily waive his rights. Any reasonable person would have known Appellant was impaired based on his speech and demeanor. Therefore, there were improper or coercive tactics by law enforcement. Thus, *Seibert* and *Navy* provide the framework for analyzing the second statement. Applying those factors to this case: 1) The question and answers in the first round of interrogation were complete and detailed. Duckett did not cease questioning Appellant until he had obtained all of the information he wanted. 2) The first and second interviews were in different locations and a month apart. However, while the setting was different in location, the setting was not different in substance: Appellant had been in police custody the entire time and had not spoken with or been provided with counsel prior to the second statement. 3) The police personnel questioning Appellant on both occasions was the same: Investigator Duckett. 4) The interrogator's questions treated the second round as entirely continuous with the first; the content

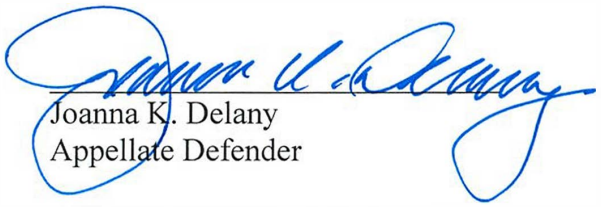
of the two statements was overlapping. Duckett referred back to the first statement in obtaining the second. All four *Seibert* factors were met.

As to curative measures, Appellant was not warned his first statement was inadmissible. Appellant had already put himself at the scene of the crime. The second *Miranda* provision was too late and ineffective. Moreover, Duckett again got squirrely with the second *Miranda* waiver, by telling Appellant a waiver of rights was "nothing more" than an acknowledgement of rights. *Cf. State v. Collins*, 442 S.C. at 454; 459, 900 S.E.2d at 431; 434 (*Miranda* warnings ineffective where the warnings were then negated by law enforcement's false assurances of confidentiality; misleading statements about *Miranda* rights undermine the fundamental fairness that every defendant is entitled to under the law).

The trial court erred in finding Appellant's subsequent statement was admissible despite the fact that he appeared "more lucid." Application of the *Seibert* factors required exclusion. *Jackson v. Denno*, 378 U.S. at 385; 386 S.C. at 302; *Seibert*, 542 U.S. at 615; *Navy*, 688 S.E.2d at 841-42; U.S. Const. amend. V; US. Const. amend. XIV.

CONCLUSION

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



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This 5th day of May, 2025.