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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JESSE DEWITT OSBORNE,

APPELLANT

APPELLATE CASE NO. 2023-001596

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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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.

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[2] 383 U.S. 541 (1966).

STATEMENT OF THE CASE

Appellant Jesse Osborne was served with juvenile petitions dated September 29, 2016, and October 3, 2016, from the Anderson County Family Court charging him with three counts of attempted murder, two counts of murder, and five counts of possession of a weapon during the commission of a violent crime. On October 6, 2016, the state filed a motion to transfer appellant's case to General Sessions Court. A transfer hearing was convened on February 12-16, 2018, at the Anderson County Family Court before Judge Edgar H. Long. Attorneys David Wagner, Catherine Huey, Stephanie Looper, Lauren Price, and Scott McElhannon appeared at the hearing on behalf of the state, and Attorneys Frank Eppes and Rame L. Campbell appeared at the hearing on behalf of appellant. At the close of the hearing, Judge Long granted the state's motion to transfer appellant's case from Family Court to General Sessions Court.

On December 12, 2018, appellant pled guilty to two counts of murder and three counts of attempted murder at the Anderson County General Sessions Court before Judge R. Lawton McIntosh. Solicitor David R. Wagner and Attorney Frank L. Eppes appeared at the guilty plea proceeding. A sentencing hearing was held on November 12, 2019, at the Anderson County General Sessions Court before Judge McIntosh. Solicitor David Wagner and Assistant Solicitors Lauren Price and Catherine Huey appeared on behalf of the state at the sentencing hearing, and Attorneys Frank Eppes and Rame L. Campbell appeared on behalf of appellant. Appellant was sentenced to life imprisonment on both murder convictions and thirty years on the attempted murder convictions. A sentencing reconsideration hearing was held on May 22, 2023, at the Anderson County General Sessions Court before Judge McIntosh. On September 22, 2023, Judge McIntosh issued an amended sentence of seventy-five years imprisonment on both murder convictions. Appellant appealed. This brief follows.

STANDARD OF REVIEW

S.C. Code Ann. 63-19-1210 (Supp 2005) authorizes the Family Court to determine whether it is appropriate to transfer the case of a juvenile charged with murder to General Cessions Court. The appellate court will affirm a transfer order unless the Family Court abused its discretion in the matter. Sanders v. State, 281 S.C. 53, 314 S.E.2d 319 (1984); State v. Wright, 269 S.C. 414; 237 S.E.2d 764 (1977).

When considering whether a sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment in juvenile cases, the appellate court's standard of review extends only to the correctness of errors of law. Therefore, the appellate court will not disturb a circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's findings are based on an error of law or grounded in factual conclusions without evidentiary support. State v. Mack, 441 S.C. 526, 894 S.E.2d 800 (2023).

On appeal, the conclusion of the trial judge as to the voluntariness of a statement will not be reversed unless it is so erroneous as to show an abuse of discretion. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996). When reviewing a trial judge's ruling concerning the voluntariness of a statement, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

QUESTION I

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 listed in Kent v. United States[3] to order the transfer of the case.

On September 28, 2016, appellant shot his father at their home. Immediately thereafter, appellant drove his father's truck to Townville Elementary School where he fired shots near the back of the school building. Jeffrey Osborne, who was appellant's father, died at the scene. At the school, student Jacob Hall was fatally wounded from a gunshot wound, and a teacher and two other students who were at the school were injured from the gunfire. R. 35, l. 19 – p. 41, l. 5; R. 51, l. 17 – p. 55, l. 21; R.165, l. 8 – p. 174, l. 23; R. 246, l. 4 – p. 253, l. 11; R. 223, l.9 – p. 234, l.25. Appellant's case was transferred from Family Court to General Sessions Court.

Per the holding in Kent v. United States, 383 U.S. 541 (1966), a family court judge must consider the following factors when deciding whether to waive jurisdiction over a juvenile:

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;
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; and

[3] 383 U.S. 541 (1966).

8.) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committee the alleged offense) by use of procedures, services and facilities currently available.

Prior to the transfer hearing, appellant was evaluated by six medical professionals: 1.) Dr. Danielle Atkinson; 2.) Dr. Mark Wagner; 3.) Dr. James Ballenger; 4.) Dr. Ernest Martin; 5.) Dr. Julian Sharman; and 6.) Dr. George Jones. Based on the facts of the case and the medical opinions given, it was clear that per the Kent factors as applied in this case, there was insufficient evidence to support the family court judge's waiver of appellant's case from Family Court to General Sessions Court for judicial adjudication.

1.) **THE SERIOUS OF THE ALLEGED OFFENSE**

Appellant was charged on the offenses of attempted murder (3 counts) and murder (two counts).

2.) **THE AGGRESSIVENESS, VIOLENT, PREMEDITATIVE OR WILLFUL NATURE OF THE COMMISSION OF THE ALLEGED OFFENSE**

Appellant's mental state would have negated and nullified willfulness to commit the crimes.

3.) **THE OFFENSE ALLEGATIONS WERE AGAINST PERSONS OR PROPERTY**

The charges filed against appellant involved offenses against people.

4.) **THE PROSPECTIVE MERIT OF THE CHARGES**

Appellant had various mental and neuropsychological brain defects in his defense that would have thwarted the state's ability to prove the charges against him beyond a reasonable doubt.

5.) **THE DESIRABILITY OF A TRIAL AND DISPOSITION IN ONE COURT.**

Appellant did not object to the adjudication and sentencing in Family Court.

6.) **THE SOPHISTICATION AND MATURITY OF THE JUVENILE AS DETERMINED BY CONSIDERATION OF HIS HOME, ENVIRONMENT SITUATION, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING.**

SOPHISTIFICATION OF APPELLANT AS A JUVENILE

Clearly, appellant was unsophisticated. Appellant was in effect 13 years old at the time of the shootings. Technically, appellant was only 20 days in after turning age 14 years old when the shootings occurred. Appellant showed average to above average intelligence compared to his age peers based on examinations conducted by Dr. Atkinson and Dr. Ballenger. R. 592, lines 1-3; R. 587, lines 13-16; R. 600, l. 24 – p. 601, l. 1. Regarding brain development, Dr. Atkinson and Dr. Ballenger both testified that a juvenile brain is not fully developed at age 14 with respect to the comprehension of his or her actions and consequences. R. 1004, l. 8 – p. 1005, l. 12. Dr. Atkinson testified that between the ages of 12 and 15 there is drastic brain development that goes on in juveniles, and that there is poor impulse control between the ages of 12 and 13 whereas they are unable to control emotions that flood their brains during that time. Dr. Atkinson explained that between the ages of 12 and 13 it is common for juveniles to go from being very angry to being very distraught, and also at that age there is very little executive functioning, which would be the discipline and ability to manage control of their behaviors and/or foresee the consequences of their actions. Dr. Atkinson added that the brain does not fully develop until age 25 for males, and that an unstable home life and lack of relationships with friends, both of which appellant experienced, would further reduce brain function. R. 620, l. 8 – p. 623, l. 5.

In addition, Dr. Atkinson stated that juveniles are very susceptible to peer influences, and that negative peer influences cause juveniles to act impulsively, particularly if there is isolation in a juvenile's life. R. 627, l. 3 – p. 631, l. 18. Furthermore, it is common for juveniles to listen to rap music that would tend to glorify violence, and in effect be influenced by it according to Dr. Atkinson's research. R. 629, l. 19 – p, 630, l. 10. Note that simulated computer games of

violence and shootings, which appellant watched, have been deemed detrimental to juveniles because juveniles are impressionable also according to Dr. Atkinson. R. 634, l. 1 – p. 635, l. 3; R. 635, l. 13-16. Dr. Atkinson concluded that appellant was immature and influenced by his internet friends and peers who were members of an on-line rainbow group that espoused violence and killings through shootings and killings, and that appellant's regular communications with this negative group of on-line peers resulted in cynical thoughts that penetrated his mind because he was isolated and lacked no other social contacts. R. 655, lines 1-6.

Dr. Martin testified that appellant was very immature. Dr. Martin stated that between the ages of 13-15, the brains of juveniles begin to develop and mature, and that juveniles are in myelination at that time, which is a process of anatomic physiologic development wherein they are in the process of simply growing up. R. 1037, lines 18-19; R. 1047, lines 8-22; R. 1054, lines 8-25. Dr. Martin explained that showing no sign of remorse is explainable because juveniles are not fully mature enough to process fully such an emotion. R. 1059, lines 7-15; R. 1074, lines 14-19. With respect to remorse, Dr. Atkinson found that appellant showed some verbal remorse for the killings, but did not understand the impact of his actions or the seriousness of his actions. R. 592, lines 7-19; R. 593, lines 22-24; R. 599, lines 16-19.

Dr. Wagner testified that poor judgment is typical of juveniles, and that a juvenile might have a plan, but that such a plan would usually go awry or flat. R. 854, lines 12-15; R. 1004, l. 8 – p. 1005, l. 12. This was consistent with Dr. Atkinson's testimony regarding a juvenile's inability to conduct tasks involving executive functioning, and that this shortcoming is a typical juvenile characteristic.

APPELLANT'S HOME LIFE

Appellant's home life was violent, chaotic, abusive (physically, verbally, and mentally), and completely unstable. Appellant was adjudicated delinquent for bringing weapons to school (hatchet and axe) in March 2016. R. 650, lines 20-22; R. 648, lines 19-22. Appellant was sent to DJJ, and then placed on probation and sent home on August 9, 2016. R. 550, lines 3-4. Appellant was home schooled after he was released from DJJ, and during that time he remained isolated in his dungeon of a room located downstairs at the basement of the house. It was there in that dark room where appellant remained daily, which resulted in countless hours of time spent on the internet with negative peers associated with the rainbow group. Appellant's confinement to his room was a strategy to avoid contact with his abusive father, but the hiding also created loneliness, isolation and too much internet contact with the rainbow group. R. 856, lines 17-21; R. 590, l. 12 – p. 591; l. 3; R. 856, l. 22 – p. 857, l.4; R. 1035, lines 13-14. Appellant would spend consecutive days (up 3 days at a time) alone in his room sans sunlight, and he was denied food by his father during that time also.

Dr. Atkinson testified that appellant revealed that his father was physically and verbally abusive toward him in the past (physical abuse was used a form of discipline) and that his father was drinking on the day of the shootings. R. 574, lines 9-25. There was a report of appellant's father previously hitting him with a baseball bat and hitting him in the chest. R. 575, lines 16-23. In addition, appellant reported that his father pushed him down the stairs intentionally during his intoxicated state on the day of the shootings. R. 575, l. 24 – p. 576, l. 3. Note that witnesses indicated that appellant's father was not drinking alcohol on the morning of the shootings; but after the father picked up his check on that that day, he was despondent over the amount of the check, and the inference was that he did drink alcohol on that morning in question. R. 644, lines

10-19. Atkinson concluded that appellant experienced social isolation, depression, anxiety, difficulty with reality, and possible paranoia while on home detention after his DJJ incarceration. R. 582, lines 1-7; R. 590, lines 13-14; R. 590, lines 15-24; R. 583, lines 3-11. Consequently, it appeared to Dr. Atkinson that appellant blamed his father's abusive treatment and his negative and violent on-line friends (rainbow group) for his bad behavior on the day in question. R. 593, lines 11-18.

In addition, Dr. Atkinson testified that appellant's unstable family life included abuse from his (appellant's) father toward his wife, who was appellant's mother. R. 595, lines 23-25; R. 619, l 22 – p. 620, l.3. Appellant's mother reported that the physical discipline appellant's father inflicted upon appellant was excessive, and that the beatings appellant received from his father would leave marks on his (appellant's) body. Appellant's mother added that appellant's father called appellant names like faggot and fatty regularly, but that she was too overwhelmed by the physical abuse she suffered from appellant's father to challenge him. R. 616, lines 21- p. 618, l.8; R. 645, lines 5-11. Appellant knew that his mother had contacted a divorce attorney, which was mature information for appellant to have processed in addition to the turmoil he experienced at the family home. R. 671, l. 1 – p. 672, l. 2.

Appellant's grandfather, who was appellant's father's father, admitted that appellant's father was a drunk. R. 618, lines 15-18. When appellant's grandfather arrived at the crime scene on the day in question, he stated that appellant "did not have a home life and that his (appellant's) parents stayed drunk and that he (appellant) stayed in his room." R. 60, lines 10-25. It was common knowledge that appellant's father used alcohol excessively, which contributed to problems in their home. R. 618, lines 11-25. Abuse in that household was so egregious and extreme that appellant's half-brother, who was also abused by appellant's father also, left the

household when he went off to college in Texas in 2015 and never returned. Unfortunately, when appellant's half-brother departed, the father's abuse was turned full force and solely on appellant. R. 639, l. 18 - p. 640, l. 25. Appellant's father's daughter stopped visiting, cut ties with the father, and never returned to that household. R. 645, lines 2-4. DSS was called out to appellant's home in response to a report filed by appellant's half-brother because of the abuse perpetrated upon them by appellant's father. R. 570, l. 14 – p. 571, l. 5.

Appellant told Dr. Martin that after he returned home from DJJ, his father's abuse against him worsened physically and verbally in part because his father drank alcohol a lot. Appellant's father threatened to harm his pet rabbit, which was appellant's only source of happiness. R. 1035, l. 22 – p. 1036, l. 13. Dr. Ballenger stated that the discipline appellant received from his father was too harsh. R. 950, lines 1-2. Dr. Atkinson stated that the unsteady and unstable home environment that appellant experienced precluded any measure of support for the juvenile. R. 671, l. 7 – p. 672, l. 2.

APPELLANT'S EMOTIONAL SITUATION

Appellant reported to Dr. Atkinson that he had been bullied at school. R. 568, lines 5-8. Appellant's grandfather stated that appellant was transferred to West Oak because of the bullying he experienced at his prior school. R. 60, lines 20-25. However, the bullying continued at the new school (West Oak) as well. R. 626, lines 9-25; R. 568, lines 5-13. The bullying was so intense there that a conference was held at the school to address the issue, but nothing changed and the school bullying increased and escalated to dangerous levels. R. 945, l. 20 – p. 946, l. 2; R. 1000, l. 24 – p. 1001, l. 25. Appellant told Dr. Martin that he had been beaten by the bullies at school, and that the bullying problem never improved. R. 1034, lines 2-17; R. 1083, l. 22 – p. 1084, l. 4; R. 1096, lines 2-19. Appellant reported that he hated his life. R. 313, l. 22 – p. 314, l.

3. Note that appellant was an easy target for bulling at school as he stood 6 feet and weighed 142 pounds at that time. R. 1046, lines17-22. Appellant had been routinely excluded socially and rejected for many years at school. R. 624, l. lines 3-9. Note further that counselors finally realized that the bullying appellant received at school was severe and underreported. R. 1104, lines 1-9. Appellant had absences from school due to sicknesses that occurred because of the stress of the incessant bullying he endured at school. The total impact of appellant's tortuous situation at school and the family dysfunction where he was completely terrorized and brutalized at home created a life that was clearly too stressful and overwhelming for appellant him to endure. R. 1099, lines 15- p. 1101, l.8.

Note that appellant's father's ownership of a poultry farm contributed to appellant's dejected emotional existence as well. Appellant's father assigned appellant the duty of killing sick chickens (usually manually with his hands), which Dr. Atkinson concluded could not have been a normal situation for appellant. R. 647, lines 19- p. 648, l. 4. The state made much of that fact that appellant watched a video of kittens being killed, (R. 660, lines 1-5), but appellant was assigned the job of killing chickens on his father's farm so therefore activities involving killings seemed commonplace to him. Also, some brain diseases such as meningitis, encephalitis, and conjunctivitis have been associated with exposure to chickens on poultry farms. Appellant was exposed to this. R. 880 l. 7 – p. 883, l. 4.

Appellant told Dr. Martin that he did feel sorry about what happened, and that he would think about the shootings. R. 1037, lines 16-22; 1052, l. 13 – p. 1053, l.6.

Dr. Sharman saw appellant twice in March 2016 after he was expelled from school. Appellant told Dr. Sharman that he had been bullied in school, and that he had no choice in effect other than to deal with the problem on his own, and that he had taken a hatchet and axe to

school because his parents told him to fight the bullies. R. 1080, lines 5-25; R. 1081, lines 20-21; R. 650, lines 20-21; R. 1097, lines 9 – 15; R. 1105, l. 23 – p. 1106, l. 2. Also, appellant told Dr. Sharman that his solution was not the correct one, and that he let his thinking get out of control. R. 1083, lines 1-11. Dr. Sharman recommended counseling for appellant and his family after her interview with appellant. R. 1085, lines 1-6. Appellant went home on house arrest from March 11, 2016 – September 28, 2016. Dr. Sharman believed that it was not in appellant's character to kill anyone. R. 1088, lines 2-6. That was an accurate assessment because appellant only acted the way he did on that day in question because he had no options and believed it was up to him to help himself and others who were being bullied. R. 1089, lines 7-9. Note that appellant never received the counseling Dr. Sharman recommended for him in the case. R. 1085, lines 1-6.

Dr. Jones testified that the school group meeting that was held to address the bullying matter did not resolve the issue, and that appellant bought the weapons to school only to scare the bullies. R. 1096, lines 2-19. Appellant told Dr. Jones that there were too many kids bullying appellant for him to fight back, which is why he bought weapons to school per his parents' instructions (bad advice) on handling the bullying matter. R. 1097, lines 9-15. R. 1105, l.23 – p. 1106, l. 2. Dr. Sharman and Dr. Jones were told by appellant that he never intended to bring guns to the school. R. 1098, l. 17 – p. 1099, l.9. Dr. Jones and Dr. Sharman both believed that the bullying appellant experienced was severe and underreported. R. 1103, l. 3 – p. 1104, l. 9. The pain of the bullying was obviously excruciating and detrimentally impacted appellant emotionally and mentally.

EMOTIONAL ATTITUDE & PATTERN OF LIVING

At the time of the shootings, appellant was acting under the stress of being bullied at school, and the stress of a chaotic and abusive homelife, and the negative influence of his on-line rainbow group friends who encouraged school shootings and shootings in general. The on-line rainbow group members were able to easily influence appellant because he was friendless and living in complete isolation while at home. R. 578, lines 13-19. Also, note that the counseling appellant was ordered to receive (in March 2016) never came to fruition. Appellant received no counseling despite Dr. Sharman's March 2016 recommendation for the same. R. 1085, lines 1-6. This meant that appellant was not afforded the treatment he desperately needed and was unable to grow and repair mentally after his first legal misstep. R. 636, l. 22 – p. 637, l. 13; R. 624, l. 18 – p. 625, l. 3; R. 641, l. 3 – p. 642, l.4. In other words, appellant's unhealthy pattern of living never changed and continued unabated up until the shootings occurred in September 2016. Appellant's home life worsened when he left DJJ and was on home detention because this gave his father access to beat and abuse him all day on every day. Appellant told Dr. Atkinson that his father, who drank alcohol incessantly, was drinking on the day of the shootings. R. 574, lines 9-23. Also, appellant reported to investigators that his father pushed him down the stairs on the day of the shooting. R. 428, l. 12 – p. 429, l. 19. Appellant's father's drunken daily state and the torture appellant suffered at the hands of his father literally existed as commonplace in appellant's daily life.

Dr. Atkinson testified that he believed that if appellant had received the required counseling after March 2016, then that assistance would have made a difference in his life. Dr. Atkinson implied that had counseling been provided for appellant, then the possibility existed that these shootings might not have occurred. R. 624, l. 18 – p. 625, l. 3. Similarly, Dr. Jones

stated that appellant's issues were never addressed because he never received post-expulsion help after leaving DJJ. R. 1114, lines 9-19. In addition, Dr. Jones stated that the home and school abuse, which had not been reported fully and followed up on, were bad factors in appellant's life. R. 1095, lines 18-20. Again, appellant received no treatment prior to the shootings. R. 1123, lines 17-24. R. 1114, lines 9-20; R. 1103, l. 3 – p. 1104, l. 9.

Moreover, appellant was plagued with incessant physical illnesses most probably arising from his exposure to the poultry (chicken) farm his father owned and operated, which likely formed the basis for the brain disease and dysfunction within him. R. 881, l. 9 – p. 885, l. 23. Note that appellant was charged with the duty of killing the sickly chickens on that farm. A task such as killing sick chickens assigned to a child as young as age 13 and below was clearly not normal and very unhealthy. This explained appellant's viewings of kittens being killed, and his pastime hobbies of pulling the arms off crickets, shooting birds, and his obsession with violent video games and songs, as well as the association with people (rainbow group members on-line) who endorsed activities such as shooting people for fun. R. 867, lines 23-25; R. 944, lines 1-18; R. 973, lines 12-16; R. 976, lines 21-25; R. 931, lines17- 19; R. 941 l. 21 – p. 942, l.21; R. 943, lines 20-23; R. 949, lines 1-19. R. 944, lines 18-19.

Thus, appellant's life was centered around killing sick chickens, starvation, isolation, and enduring verbal and physical abuse from his father and the bullies at school. The beatings from his father never ceased. Also, counseling was never introduced to appellant. Appellant's pattern of living was ghastly. Consequently appellant's emotional and physical states clearly deteriorated, and he experienced physical illnesses also as a result. Therefore, appellant's life contained enough voids to make him ripe for signing onto the negative peer pressures and influences of the rainbow group.

The isolation appellant lived through while alone at home in his basement dungeon of a room where he hid out for consecutive days to avoid his father's abuse to the point where he had no food led to the use of the computer and the finding of solace via his on-line peers from the rainbow group, who deposited warped suggestions that finally took hold of appellant's mind. R. 632, lines 5-18.

RECORD AND PREVIOUS HISTORY OF THE JUVENILE

Appellant was detained on possessing a hatchet and axe on March 4, 2016, at West Oak School. On March 8, 2016, appellant was committed to DJJ after being prosecuted on a disturbing schools charge emanating from that incident. Appellant was placed on probation and home detention on August 9, 2016. Appellant had no other prior criminal record.

ADEQUATE PROTECTION OF THE PUBLIC

Dr. Sharman did not view appellant as a threat to the community despite the shootings that occurred, particularly due to the fact that appellant had now been removed from the bullies that led to these shootings. R. 1090, lines 1- 13. Dr. Sharman stated clearly that there was no evidence that appellant was a danger to the community. R. 1012, l. 24 – p. 1013, l. 1. Dr. Ballenger refused to say that appellant would always be a danger to society despite the fact that it would be difficult to treat his psychiatric needs. R. 969, l. 22 – p. 970, l. 9. R. 1025, l. 13 – p. 1026, l. 14. Additionally, Dr. Jones agreed that appellant was not a danger to the community and believed treatment would be helpful. R. 1111, l. 25 – p. 1112, l. 15. Note that the employees at the detention center who came in contact with appellant described him as compliant and cooperative, and that he followed the rules. R. 494, l. 2 – p. 499, l. 4; R. 512, l. 23 – p. 513, l. 9. The threats against appellant had not been removed, and appellant clearly stated that he did not want to kill anyone. R. 454, l. 24 – p. 455, l. 4.

REHABILITATION OF THE JUVENILE

Dr. Ballenger's diagnosis (R. 950, l. 24- p. 963, l. 10) that appellant suffered from conduct disorder was **refuted** roundly and denied by the majority of doctors who diagnosed appellant. The overall view was that appellant was suffering from depression, and also that he was completely rehabilitatable.

Dr. Martin did not agree with the conduct disorder diagnosis. Dr. Martin diagnosed appellant with PTSD and depressive disorder with psychotic features that were in remission. R. 1050, lines 1-4; R. 1051, lines 2-6; R. 1048, l. 24 –p. 1049, l. 1; R. 935, l. 16 - p. 937, l. 3; R. 1066, lines 20-23. Dr. Martin stated that depression is treatable. R. 1062, lines 12-25. Note that appellant's mother suffered from depression also. R. 987, l. 22 – p. 988, l.9. Dr. Martin surmised that appellant did not suffer from conduct disorder because he caused no problems while jailed. R. 1048, lines 9-19. Dr. Sharman agreed that there were no problems with appellant while jailed primarily because appellant had been removed from his father and the school bullies. R. 1090, lines 1-13. Appellant admitted to Dr. Sharman that his solution to bring weapons to school to scare the bullies was in effect not a good idea. R. 1083, lines 1-11. Dr. Sharman added that the act of killing another human being was in effect not consistent with appellant's character. R. 1088, lines 2-6. Hence, appellant was deemed treatable because these triggers no longer existed in his life.

Similarly, Dr. Wagner refused to assert that appellant met the criteria for conduct disorder. R. 859, l. 17 – p. 860, l. 4; R. 905, lines 6-10. Moreover, Dr. Jones did not diagnose appellant with conduct disorder. R. 1114, lines 2-4. Dr. Jones stated that appellant could be treated and rehabilitated, and that future good behavior was possible. R. 1111, l. 25 – p. 1112,

l.5. Dr. Atkinson testified that appellant was intelligent and that this was a positive for rehabilitation. R. 592, lines 1-3; R. 587, lines 13-16; R. 600 l. 24 – p. 601 l, 1.

Note, however, that although Dr. Ballenger misdiagnosed appellant, his ultimate assessment was favorable. Dr. Ballenger refused to declare that appellant was a danger to society despite the fact that treatment would be difficult. R. 969, l. 22 – p. 970, l. 9. Dr. Ballenger stated that there was hope for a normal life for appellant. R. 1026, lines 2-14.

Also, appellant indeed possessed emotions and empathy contrary to the state's position on this subject. R. 950, l. 24 – p. 951, l. 23. For example, Dr. Ballenger was informed by appellant that in the midst of the event, appellant was distraught after the shootings, and began to cry after the shootings, and that he threw the gun down and did not go through with additional shootings. R. 951, lines 2-3; R. 873, lines 5-22; R. 985, l. 15 – p. 986, l. 17; R. 987, lines 1-20; R. 992, l. 25 – p. 993, l. 6. Dr. Ballenger noted that appellant had an emotional breakdown after the shootings. R. 948, lines 15-22. Dr. Martin was told by appellant that the gun jammed, but the inference is that appellant did not desire to continue with the shootings. R. 1036, lines 19-22. Multiple witnesses at the scene stated that appellant was crying at the scene and pacing around and appearing to be very distraught and highly upset. R. 57, lines 3-24; R. 197, lines 17-20; R. 198, lines 2-22; R. 251, lines 1-8; R. 260, lines 11-12; R. 317, lines 8-17. Appellant's grandfather, whom appellant called upset during the shooting event, testified that appellant was totally distraught during their conversation. R. 53, lines 13-14.

Dr. Sharman testified that appellant revealed that he did not want to kill anyone, and reminded all that appellant never acted upon or used the ax and hatchet that he brought to school. R. 1088, lines 2-6; R. 864, lines 1-3; R. 454; R. 1098, l. 17 – p. 1099, l.9. Appellant wanted the bullying to stop. R. 1089, lines 7-9.

Finally, Pastor Bill Davis, who counsels incarcerated juveniles as part of his ministry, testified that he assisted appellant after appellant reached out via a prayer card asking for prayer and requesting help. Pastor Davis stated that he met with appellant on approximately a dozen occasions and worked with him on spiritual matters. Pastor Davis stated that appellant memorized scriptures, and that he was kind to the other juveniles, and that he was a cooperative and thoughtful young man. Pastor Davis added that appellant was not a troublemaker. R. 1115, l. 12 – p. 1119, l. 22. Again, appellant just wanted the bullying to stop. R. 1082, lines 14-15; R. 1086, lines 7-9.

SUMMARY

In response to a motion to transfer jurisdiction, the family court judge must consider the eight Kent factors and determine what is in the best interests of both the child and community before deciding whether to grant or deny such a request. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). Based on an analysis of the case presented at the Kent hearing, it was clear that there was insufficient evidence to support the family court judge's decision to transfer appellant's case from Family Court to General Sessions Court. Appellant was unsophisticated, immature, and heavily under the dark influence of his friends who were members of the on-line rainbow group that condoned shooting people. Moreover, appellant's home life was brutal, abysmal, and saturated with chronic physical, emotional, and psychological abuse that came from his father, who drank alcohol to the maximum. Sadly, appellant's school life contained more of the same physical emotional and psychological abuse that he received at home. Appellant's emotional situation was raw, uncounseled, and spiraled out of control. Appellant's pattern of living was inhumane, which negatively impacted his unhealed emotional attitude. Nonetheless, however, appellant was not a danger to the community from which the public

needed to be protected because he was free from the stressors that previously dominated his life. Finally, appellant was and remains rehabilitatable. The family court judge erred in waiving appellant's case from Family Court to General Sessions Court.

QUESTION II

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 life sentence was disproportionate to the offenses charged in light of appellant's juvenility and characteristics associated with his youth and the circumstances of the case.

In Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court cited to Miller v. Alabama[4] and Graham v. Florida[5] in support of the rule that when a life sentence is considered in juvenile cases, the judge must assess the factors of youth, which include immaturity, irresponsibility, impetuousness, recklessness, and the impact of family and peer pressures, and also a child's diminished capacity, and the capacity to change as well. The Court in Miller and Graham held that children are constitutionally different from adults for sentencing purposes, and as such, the factors that should be taken into consideration prior to sentencing a juvenile are listed below:

1.) The chronological age of the offender and hallmark features of youth, including immaturity, impetuosity, and the failure to appreciate risks and consequences;
2.) The family and home environment that surrounded the offender;
3.) The circumstances of the homicide offense, including the

[4] In Miller v. Alabama, 567 U.S. 460 (2012), the U.S. Supreme Court held that the Eighth Amendment forbade states from imposing on juveniles mandatory sentences of life without the possibility of parole for homicide offenses.

[5] In Graham v. Florida, 560 U.S. 48 (2010), the U.S. Supreme Court held that the Eighth Amendment prohibited the imposition of a life without parole sentence on a juvenile offender who did not commit a non-homicide offense.

extent of the offender's participation in the conduct and how familial and peer pressures might have affected him;

4.) The incompetencies associated with youth-for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) of [the offender's] incapacity to assist his own attorneys; and

5.) The possibility of rehabilitation.

In the case at bar, the life sentence given to appellant violated the Eighth Amendment because such a sentence was a disproportionate sentence in light of the evidence presented at the sentencing hearing.

THE CHRONOLOGICAL AGE OF THE OFFENDER AND HALLMARK FEATURES OF YOUTH, INCLUDING IMMATURITY, IMPETUOSITY, AND THE FAILURE TO APPRECIATE RISKS AND CONSEQUENCES

For all practical purposes, appellant was only13 years old when the shootings occurred. R. 1418, l. 15 – p. 1419, l. 4; R. 1569, lines 6-15. Technically, appellant was only 20 days into his 14th year of life when the shootings happened. Dr. Schwartz testified that appellant was very immature at that time in his life. R. 1681, l. 10 – p. 1682, l. 17; R. 1645, l. 16-25.

Dr. Martin testified that adolescents lack of maturity because the frontal cortex of their brain is underdeveloped. Dr. Martin explained that the frontal cortex does not develop until one reaches the age of 25, and that the brains of adolescents do not develop until the age of 20 years old. Dr. Martin stated that before adolescents reach age 20 or even 25, they lack maturity and are not able to engage in executive functioning and decision-making skills. Dr. Martin added that before age 25, there is no rational thinking in adolescents and their level of impulsivity is high. Dr. Martin advised that 14-year-olds are impetuous and immature and cannot appreciate the risks and consequences of their actions. Dr. Martin opined further that it logically followed that appellant's idea to shoot people did not arise via an assessment of the risks and consequences, but rather was an idea based on emotional stressors in his life, and in response to support from

the dark influences of the members of the rainbow group with whom he associated with on-line. Dr. Martin stated that children fantasize about doing something and then decide they don't like doing it, or the plan goes awry, as it did in this case. This type of immaturity was consistent with the mindset appellant possessed on the day of the shootings. R. 1370, l. 8 – p. 1371, l. 25; R. 1379, l. 15 – p. 1382, l. 11. Appellant's plan to have a shoot-out with the police and kill himself never materialized. R. 1291, lines 15-17; R. 1214, lines 3-5. The reality was that appellant stopped shooting after he decided that this was not what he wanted to do after all, and he realized that he did not like or enjoy the shootings. R. 1418, lines 1-14. Appellant's behavior on the day of the shooting, to the extent that he stopped the shooting and claimed it was not fun, was an example of an incomplete and underdeveloped frontal cortex of the brain, which appellant possessed at the time of the shootings.

Dr. Wagner agreed that appellant was immature and impetuous at his age on the day of the shootings, and that he was unable to appreciate the risks and consequences of his actions. Note that Dr. Wagner confirmed that the frontal lobes within the brain do not begin to connect until age seventeen, and that maturity is unlikely before then. R. 1417, l. 4 – p. 1419, l. 4.

Dr. Schwartz testified that when she met appellant a month after the shootings, he was barely fourteen years old and had not even reached puberty. Appellant stood six feet tall and weighed 145 pounds at that time. Dr. Schwartz stated that appellant was immature emotionally and underdeveloped socially. R. 1645, lines 16-25; R. 1681, l. 9-24. Dr. Schwartz explained stated that appellant was underdeveloped because he was at the age when his frontal lobes had not yet developed as that part of the brain will not develop until well after a person turns 20 years old. R. 1657, l. 16 – p. 1661, l. 12. Dr. Shwartz added that this is why juveniles at that age have poor executive functioning skills.

Dr. Schwartz diagnosed appellant with Other Specified Trauma and Stress Related Disorder, and went on to state that the trauma appellant experienced at the hands of his abusive father, who assaulted him physically and mentally, and from being bullied at school, and from seeing his mother and siblings being abused by his father, all created a negative cognition in his mind. This explained why appellant held a bad view of his life and the world in general. R. 1698, l. 16 – p. 1699, l. 17; R. 1706, lines 17-22. Dr. Schwartz stated that the abuse appellant suffered from all fronts affected his mental cognitive development, and when coupled with his immaturity, it was understandable that he was clearly unable to comprehend feelings. R. 1721, l. 6 – p. 1722, l. 22. Dr. Schwartz concluded that appellant's brain had not formulated anywhere near completion on the date of the shootings, and that when this was analyzed in conjunction with the trauma of the abuse he suffered at home and school, then it was obvious that appellant was acting out due to incompetence and an inability to function normally when the shootings occurred. R. 1733, l. 7 – p. 1736, l. 8.

Dr. Teichner found that appellant had brain developmental delays and mental illnesses, and noted the high impact that the abuse (physical and psychological) that appellant suffered at home and school played into the formulation of appellant's maladaptive brain. R. 1522, lines 1-7. Dr. Teichner testified that appellant's frontal lobes were not developed and working at age 14, which in turn meant that appellant had executive functioning problems, poor insight, poor judgment, and the inability to plan ahead. R. 1530, lines 16-23; R. 1535, lines 3-8; R. 1544, l. 23 – p. 1545, l. 19. Dr. Teichner explained that juvenile brains are not the same as adult brains, and that the brain of a 13-year-old is not even the same as far as development is concerned as a 14-year-old brain. Dr. Teichner added that juvenile brains are undeveloped and immature, and that as a result, juveniles are impulsive, make poor decisions, and cannot think things through. R.

1552, l. 5 – p. 1553, l. 24. Dr. Teichner concluded that appellant's ADHD diagnosis also reinforced his finding that appellant's mental state was impetuous, immature, reckless, and devoid of any capability to make rational decisions. R. 1547, lines 13-19; R. 1572, lines 20-21; R. 1573, l. 23 – p. 1574, l. 25.

THE FAMILY HOME ENVIRONMENT THAT SURROUNDED APPELLANT

Appellant informed Dr. Schwartz that his (appellant's) father drank alcohol and bullied him, and referred to him (appellant) as trash, worthless, a fatty, a faggot, and a wimp. R. 1724, lines 11-1; R. 212, lines 15-16. Appellant's grandfather admitted that appellant's father drank alcohol incessantly, and appellant's half-brother testified that appellant's father drank alcohol **every single day**. R. 322, lines 16-18; R. 1504, lines 13-25; R. 1593, l. 19 – p. 1594, l. 9. Appellant's father was such an abusive and volatile alcohol drinker that he even threatened appellant's grandfather, who had to carry a gun with him when visiting appellant's father. R. 1596, l. 12 – p. 1597, l. 24.

Dr. Martin testified that appellant had a bad home life due to his verbally and physically abusive father who drank alcohol constantly, and that the torment appellant suffered living in such an abusive and dysfunctional environment contributed to what happened in connection with the shootings. R. 1381, lines 18-20; R. 1369, lines 3-20. Dr. Wagner stated that appellant's homelife was so difficult that appellant would stay locked in his dungeon-like basement room (sometimes for 3 consecutive days) during his time of home confinement, which in turn bent his mind to set the course for the violence that came to pass. R. 1407, lines 4-17; R. 1419, lines 16-25.

Dr. Schwartz stated that appellant also possessed rage, which stemmed from family trauma, domestic violence, and the unmerciful beatings he received almost daily from his father

at 30 licks per session. R. 1669, l 19 – p. 1669, l. 24. Appellant's home environment was so horrendous that his half-brother stayed at the residence with appellant rather than visit his own biological father in order to protect appellant from these consistent beatings (sticks and belts were used), which went on routinely until appellant screamed out loud. R. 1669, lines 5-18. Dr. Schwartz recalled an incident with a baseball bat that appellant's father used to assault appellant. R. 1684, lines 1-17. Also, appellant suffered anxiety over his father's abuse according to Dr. Schwartz's notes to the extent that appellant never knew when he would be beaten because any little thing might set off a series of beatings, especially after he started drinking alcohol. On the day of the shootings, appellant's father pushed him down the stairs. Dr. Schwartz adduced that appellant learned to suppress his emotions because of the repeated beatings he received, which in turn rendered him unable to identify emotions. R. 1714, lines 14-25. Note that Dr. Schwartz learned that appellant's mother, who drank alcohol also and was abused by appellant's father, could not protect appellant as she was overwhelmed with hopelessness. Dr. Schwartz connected the dots as to how this type of home instability certainly provided an open door for suicidal and homicidal thoughts to invade appellant's mind. R. 1685, l.23 - p. 1686, l. 23. The family brokenness increased to a higher level of dysfunction after appellant lost the support of his grandparents during his period of home detention. R. 1677, lines 15-24.

Dr. Schwartz added that she agreed with Dr. Teichner's finding that the abuse appellant suffered created anger in addition to the rage on the inside of him. R. 1525, lines 10-18. The unsupportive, abusive, and traumatic home life left appellant isolated and depressed at the same time. All of these circumstances led appellant to converse on the internet with evil characters who were members of the rainbow group. R. 1732, lines 4-25. Dr. Schwartz concluded that appellant's room itself contributed to his wretched condition because his basement room

(described by others as a dungeon) was cloaked in darkness and dreariness sans sunlight, and did not lend itself to a space for a positive mindset or outcome. R. 1616, lines 5-16.; R. 1641, l. 5 – p. 1642, l.2. Dr. Teichner stated that appellant's combined anger and depression spawned from his terrible homelife produced suicidal and homicidal ideations. R. 1525, lines 10-18. Dr. Teichner recalled that appellant was also anxious because he never knew when his father could come downstairs and attack him while he was being home schooled after leaving DJJ. R. 1527, lines 6-22.

Appellant's half-brother, Ryan Brock, (they shared the same mother) testified that he lived in the same house with appellant and appellant's father (Brock's stepfather) until he left to attend college in Texas during the year 2015. Brock stated that appellant begged to go to Texas with him, and that his departure left appellant without any support in the household. Brock explained that appellant's father drank multiple drinks of alcohol **every single day,** and that during that time appellant's father became physically abusive toward appellant. Brock stated that appellant's father would remove appellant's pants and beat appellant almost daily, and that he would hear appellant screaming during the beatings. Brock added that the father would withhold food from appellant. Brock admitted that he was the one who called DSS to report the domestic violence in their household. Also, Brock testified that the household was so violently abusive that his stepsister ended her visitations and they never heard from her again. R. 1501, l. l. 5 – p. 1513, l. 11; R. 1701, lines 20-21.

Appellant's grandfather Thomas Osborne, who was the father of appellant's father, testified that appellant's father was abusive to appellant and his wife (appellant's mother). Osborne admitted that appellant's father drank alcohol a lot. Osborne admitted further that appellant's bleak family life negatively impacted appellant. Osborne stated that appellant lived in

a room that was like a dungeon, and that appellant was very unhappy, anxious and depressed. Osborne added that appellant's father was so out of control that he (appellant's father) threatened him (Thomas Osborne) to the point where he (Thomas Osborne) had to carry a gun when he visited appellant's father's house. In addition, Thomas Osborne was aware of the fact that appellant was being bullied in school. Osborne added that appellant's father was angry at appellant because appellant was not athletic, and he was completely dismayed because appellant's nature was dissimilar to his (appellant's father's) nature. Osborne confirmed that appellant's stepsister visited until age 16 and never came back, and that appellant had no protection after his half-brother Ryan Brock went to college. Osborne added that once appellant was expelled from school and confined at home, then things changed for the worse due to the isolation and additional abuse that he (appellant) suffered at the hands (literally) of his father. R. 1590, l. 3 – p. 1617, l. 20.

Also, with respect to appellant's grandparents, note that appellant lost contact with them and missed their support during his period of home detention. Dr. Schwartz was told that appellant's grandparents would take appellant on trips with them, and that they were the only ones who would try to make sure appellant he received food because appellant's father would withhold food from him. R. 1677. l. 15 – p. 1678, l. 15. Note further that Dr. Shwartz voiced concern after learning that appellant at his young age was charged with the duty of killing sick chickens (sometimes in inappropriate ways) on his father's poultry farm, which was probably how he (appellant) was exposed to meningitis. R. 1712, l. 16 – p. 1713, l. 2; R. 211, lines 10-23. It was discovered further that one cause for the school bullying of appellant was because his half-brother Ryan came out as gay. R. 1670, l.15 – p. 1671, l. 15. Finally, Dr. Swartz learned that appellant's mother had preeclampsia during her pregnancy with appellant, which sometimes

causes ADHD, and that she also delivered appellant early (at 35 weeks), which made appellant easily susceptible to colic, meningitis (from exposure to chickens) and gastrointestinal issues. R. 1662, l. 24, - p. 1663, l. 12.

THE CIRCUMSTANCES OF THE HOMICIDE OFFENSE, INCLUDING THE EXTENT OF THE OFFENDER'S PARTICIPATION IN THE CONDUCT AND HOW FAMILIAL AND PEER PRESSURES MAY HAVE AFFECTED HIM.

Appellant's horrendous home life was filled with trauma. Appellant's school life was replete with bullying. Appellant's family life overflowed with incessant verbal and physical abuse (that included almost daily beatings of 30 licks per session which left marks on appellant), and the result was emotional, psychological, and physical damage to the point where appellant became a shell of a person. Appellant's added chore of killing sick chickens on the poultry farm was a component that made him a prime candidate to fall prey to the influences of his on-line rainbow group friends who encouraged him to shoot people for fun and as a remedy for life's ailments. The perpetual isolation appellant encountered as he hid out in his dungeon of a room in the basement (without food often as punishment) gave rise to the solace of the company of these on-line rainbow group friends, and their influence on appellant greatly affected his behavior and thoughts to the point where he entertained and acted on their suggestions to shoot people.

These on-line rainbow group members lauded school shooters and influenced appellant to follow suit. Appellant responded to this peer pressure because he was an entirely broken and abused individual. The on-line group members encouraged appellant and "egged" him on to shoot people, and went so far as to encourage appellant to drink mountain dew to strengthen his courage to carry out the shootings. R. 1207, l. 3 – p. 1209, l. 15; R. 1223, lines 3-25; R. 1238, lines 24-25; R. 944, l. 15 – p. 945, l. 7. But for this peer pressure, appellant's actions might not have been so extreme. Susannah, who was one member of the rainbow group, encouraged

appellant to shoot people per her rationale that it mattered not because humans were just pieces of s---- and to f---- people from "certain" groups of society. R. 1294, lines 5-21. Dr. Schwartz added that appellant's insufficient reasoning skills, his youth, and his near total isolation from society made him an easy target for exploitation by the members of the on-line rainbow group. R. 1678, l. 1 – p. 1680, l. 19; R. 1735, lines 5-8.

THE INCOMPETENCIES ASSOCIATED WITH YOUTH--FOR EXAMPLE [THE OFFENDER'S] INABILITY TO DEAL WITH POLICE OFFICERS OR PROSECUTORS (INCLUDING ON A PLEA AGRREEMENT) OR THE [OFFENDER'S] INCAPACITY TO ASSIST HIS OWN ATTORNEYS

Appellant's youth, immaturity, social deficiencies, lack of cognitive development, and his lack of mental capacity to function as a result of his trauma filled life meant that he was clearly unable to comprehend and waive his Miranda[6] warnings and give a voluntary and intelligent statement in the case. The incriminating statement and video should have been excluded from consideration as evidence in the case. See Question III.

REHABILITATION

Doctors Schwartz, Martin, Teichner, and Jones all testified that appellant was not irreparably corrupt or even incorrigible, and that appellant's rehabilitation was entirely possible with treatment inasmuch as he had already responded favorably to treatment thus far, and would likely continue that progress based on their medical observations. R. 1369, l. 25 – p. 1370, l.1; R. 1374, lines 10-14; R. 1382, l. 18 – p. 1383, l. 2; 1736, l. 23 – p. 1739, l.5; R. 1558, l. 8 – p. 1559, l. 10; R. 1566, lines 4-12; R. 1575, lines 3-5; R. 1559, lines 1-9. The optimal approach according to Dr. Swartz was for appellant to receive specific treatment designed for the trauma he experienced in order to achieve the best outcome for him. R. 1759, lines 10-21.

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

Note that Doctors Shwartz, Martin, and Teichner did not diagnose appellant with conduct disorder, but rather diagnosed him with depression. R. 1554, lines 12-23; R. 1682, lines 18-20; R. 1373, l. 20 – p. 1374, l. 5. Dr. Schwartz testified that appellant has behaved in prison, which meant there was no conduct disorder associated with his mental state. Dr. Teichner agreed that there was no conduct disorder associated with appellant because appellant has had no persistent bad behavior since his arrest. R. 1558, lines 1-9; R. 1715, l. 9 – p. 1717, l. 9. Dr. Martin diagnosed appellant with PTSD and depression with single episode of psychotic features, and stated that appellant responded well to treatment, and that the antipsychotic prescribed medicines held promise for him. R. 1368, l. 21 – p. 1370, l. 7. R. 1374, lines 1-19. Dr Schwartz testified that appellant was not schizoid, and that he wants to be with people, but that he "keeps getting picked on." R. 1718, lines 4-13. Dr. Schwartz testified that there was hope for appellant with respect to treatment (and boundaries) for his rehabilitation. R. 1715, lines 9-19; R. 1736, l. 23 – p. 1738, l. 22; R. 1714, lines 14-25. Note that appellant's family committed to pay for the specific and cognitive treatment appellant needed, and for the specialized therapy that appellant would need as well. R. 1719, l. 24 – p. 1721, l. 1. Dr. Schwartz reiterated that appellant's brain had still, not fully developed, which was a major reason why she opined that there was hope for appellant in that his story is not yet complete. R. 1715, l. 20 – p. 1716, l. 2.

Dr. Schwartz and Dr. Teichner stated that one's anti-social acting goes down at age 40-45 as the brain differs and gains wisdom with age. R. 1717, lines 2-16; R. 1557, lines 6-17. Dr. Schwartz noted that appellant is not beyond help as evidenced by the fact that on the day of the shooting, he put the gun down, stopped shooting, and called his grandparents. R. 1693, l. 16 – p. 1694, l. 14. Ballenger noted that appellant never fired the gun again after it jammed and after he unjammed the gun. R. 1484, lines 14-16. In addition, Dr. Teichner stated that appellant would

benefit from psychological therapy and that appellant is rehabilitatable. R. 1556, l. 4 – p. 1558, l. 12.; R. 1575, lines 3-5.

Chrissy Catoe, who is an educator at the Greenville County Detention Center, testified that in 2018 appellant started to listen to Christian music rather than heavy metal and rap, and that he started reading his Bible, discussing his beliefs, and writing book reports on Biblical texts. R. 1326, l. 19 – p. 1327, l. 6; R. 1328, l. 17 – p. 1330, l. 24. Appellant got saved in 2017. R. 340. Catoe added that appellant received his high school diploma (not GED), and that he has matured. Catoe has observed that appellant acts appropriately with other children, and that he wants to succeed and be a good citizen. R. 1331, l. 6 – p. 1334, l. 17. Jean Claycomb, who was a volunteer from the Epiphany group, stated that she met appellant in the summer of 2017 and that it was settled via her contact with appellant that he had taken responsibility for his prior behavior and was remorseful about it. Claycomb stated that appellant displayed a clear level of maturity at that time. R. 1356, l. 3 – p. 1360, l. 13.

SUMMARY

Note that the Kent hearing evidence was incorporated by reference into the Aiken v. Byars hearing held in the case. With respect to sentencing, for all practical purposes, appellant was 13 years old when the shootings occurred; although technically, appellant was 20 days into the 14th year of his young life when the shootings happened. It was clear that appellant was beaten almost daily by his perpetually drunk father during his entire young life, and appellant was bullied at school on a regular basis. Appellant wanted to end the abuse, and he wanted the bullying to stop, but at his young age his mind could not embrace the risks and consequences of his plan to eliminate the sources of his turmoil. Appellant was immature and suffered from the effects of a disastrous and unstable home life and school life. As a result, appellant sought solace

with unsavory on-line friends out of desperation to escape his isolation and admitted hellacious life. These on-line friends pushed him to shoot people. Appellant felt worthless and hated his life; and as a result, it was predictable that he would associate with such a lowly and sick minded group of peers who were able to convince him to submit to their violent ideas. The members of the rainbow group successfully overtook appellant's young, impetuous, underdeveloped, and mentally unsound mind. Now that appellant has been removed from the terror he experienced at home and school, there is rehabilitative help and hope for appellant.

QUESTION III

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.

Appellant was arrested at the crime scene on September 28, 2016, and taken immediately to the local police station. State's witnesses Aleta Bollinger and Trace Call testified that Miranda rights were read to appellant, and that appellant gave a statement thereafter. R. 64, l. 21 – p. 78, l. 17; R. 44 – p. 126, l. 11.

Trial counsel objected to the admission of appellant's statement (and video) into evidence on the ground that appellant was only 20 days into his 14th year of his life when interrogated, and could not have voluntarily waived his Miranda rights and given a voluntary statement to police. R. 145, l. 15 – p. 149, l. 7. The family court judge ruled that appellant's statement was voluntarily given and admissible as evidence in the case. R. 155, l. 1 – p. 157, l. 11.

At sentencing, Dr. Teichner addressed the Miranda issues below:

> Let me pull this together, I guess give a bottom line. So here is what we know. Here is what science says....adolescent brains are not like adult brains. They are underdeveloped. And even as adolescents, your brain is very different at age 13, 14 as compared to, say, age 17.

> I'll give you a quick example that relates to, like the legal issue....understanding your Miranda rights...so there is a hallmark study by psychologist named Tom Grisso, which is still relevant today dating back to 1980 where Dr. Grisso clearly demonstrated that a large majority, it's about 50 per cent of adolescents don't understand the Miranda rights. But age 15 and under, 90 percent fail the standard.
>
> Why is that? That's due to an underdeveloped, immature brain. and because of that, we see underdeveloped cognitive abilities. Children and adolescents, they all have an element of impulsivity, poor decision making, they don't plan very well or see ahead. They do things rashly, not thinking things through. This is normal adolescence....by the way, the older you get, some of that gets better...it is much different at 17 than it is at age 14. R. 1552, l. 5 – p. 1553, l. 7.

Defense counsel renewed the objection to the admissibility of appellant's statement (and video) and submitted an affidavit (court's exhibit X marked for identification) in response to Dr. Teichner's testimony given above. R. 1580, l. 4 – p. 1581, l. 14.

A statement cannot be admitted into evidence unless it was voluntarily given in a case. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996). The trial judge determines the admissibility of a statement upon proof of its voluntariness by the preponderance of the evidence. State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988). The voluntariness of a statement is based on the totality of the circumstances. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). The totality of the circumstances test applies in juvenile cases as well. State v. Smith, 259 S.C. 496, 192 S.E.2d 879 (1972); State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); In Re Williams, 265 S.C. 295, 217 S.E.2d 719 (1975). The factors to be considered under the totality of the circumstances include the age, background, experience, and conduct of the accused, and the length of the custodial interrogation, and also whether the juvenile was isolated or received any representations made by police in the case. In addition, a juvenile's maturity and

mental state can be assessed to determine whether a statement was voluntarily given to police. State v. Miller, 375 S.C. 320, 652 S.E.2d 444 (2007).

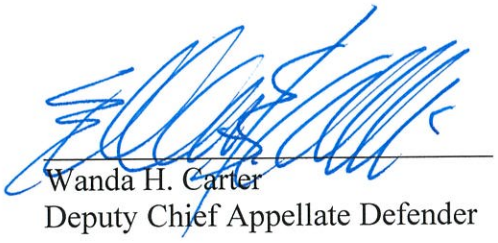
Again, for all practical purposes, appellant was really 13 years old at the time of the shootings, although the shootings occurred 20 days after appellant turned 14 years old. The uncontroverted evidence showed that appellant was clearly nowhere near being mature at age 13/14; and that appellant was without a doubt not only immature, but also impetuous, reckless, and unable to appreciate the risks and consequences of his actions. Furthermore, appellant was under the influence of evil peers who endorsed violent actions and behavior. Moreover, appellant was suffering from the mental illness of depression and diminished mental capacity brought about per the unrelenting physical, psychological, and mental abuse perpetrated upon him by his alcoholic father and the bullies at school before the shootings took place. Appellant was unwell mentally and physically at that time. It was error and beyond untenable to conclude that appellant understood his Miranda rights, and voluntarily and intelligently waived his Miranda rights, and then submitted a voluntary statement to police.

Furthermore, appellant's statement was given illegally in violation of S. C. Code Ann. 14-21-590 (1976), which speaks to the legality of taking children into custody sans parental notification, on the ground that appellant could not have made an intelligent Miranda waiver and given a voluntary statement in the absence of a parent or friendly adult. See In Re Williams, supra.

The lower court erred in allowing appellant's involuntarily given statement (and video) into evidence during the Kent hearing held in the case.

CONCLUSION

Based on the foregoing arguments, counsel for appellant would ask this Court to vacate appellant's sentences and reverse the Family Court judge's transfer of appellant's case to General Sessions Court, and order new hearings sans consideration of appellant's statement as evidence.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of May, 2025.

CERTIFICATE OF COUNSEL

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

May 14, 2025.

Wanda H. Carter
Deputy Chief Appellate Defender

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

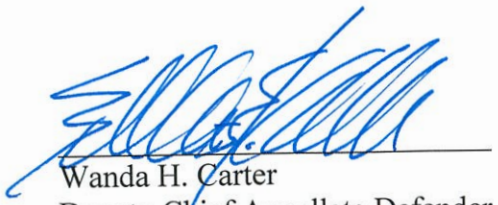
JESSE DEWITT OSBORNE,

APPELLANT

APPELLATE CASE NO. 2023-001596

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of May, 2025.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT