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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

NAZARETH N. SANCHEZ-PERALTA,

APPELLANT.

Appellate Case No. 2023-001588

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

COUNTERSTATEMENT OF ISSUE ON APPEAL 2

STATEMENT OF THE CASE 4

RESPONDENT'S STATEMENT OF FACTS 5

STANDARD OF REVIEW 13

ARGUMENT

I. The family court properly considered the Kent factors, as required by our supreme court, before transferring Appellant to general sessions. 14

II. The Confrontation Clause does not apply to juvenile transfer hearings, so the family court did not err in admitting Allon Adams' statement. 16

III. The trial court properly admitted Appellant's statements to investigators, because those statements were not obtained by overbearing her will or by a *Seibert* violation. 19

IV. The trial court properly admitted Appellant's audio messages to Treveon Nelson, because the messages were not meant to prove her propensity for murder and their probative value about the dynamics of Appellant's relationship with Nelson outweighed any unfairly prejudicial effect. 23

V. The trial court did not err in excluding hearsay testimony about an incident between Appellant and Treveon Nelson, because the statement did not meet the standard for the excited utterance exception 27

VI. The trial court did not err in sentencing Appellant to a lengthy term-of-years sentence, because South Carolina courts have not found that a de facto life sentence violates the state or federal constitution. 30

VII. The trial court held the proper review of Appellant's sentence under *Aiken v. Byars* and decided not to impose a life sentence. 32

CONCLUSION 36

DESIGNATION OF MATTER

PROOF OF SERVICE

TABLE OF AUTHORITIES

Page(s)

Cases

Application of Gault,
387 U.S. 1, 12, 87 S. Ct. 1428, 1436, 18 L. Ed. 2d 527 (1967) 18
Aiken v. Byars,
410 S.C. 534, 765 S.E.2d 572 (2014) ....passim
Bowman v. State,
422 S.C. 19, 40, 809 S.E.2d 232, 243 (2018) 26
Kent v. United States,
383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966) ....passim
Graham v. Florida,
560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) 15
In re Eduardo L.,
621 A.2d 923, 929 (N.H. 1993) 19
In re Sealed Case,
893 F.2d 363, 369 (D.C. Cir. 1990) 18
Interest of K. S.,
823 S.E.2d 536, 539 (Ga. Ct. App. 2019) 18
Jackson v. Denno,
378 U.S. 368, 376, 84 S.Ct. 1774, 1780, 12 L. Ed. 2d 908 (1964) 20
J.D.B. v. North Carolina,
564 U.S. 261, 271, 131 S. Ct. 2394, 2402, 180 L. Ed. 2d 310 (2011) 21, 22
Jones v. Mississippi,
593 U.S. 98, 105, 141 S. Ct. 1307, 1313, 209 L. Ed. 2d 390 (2021) 30
Miller v. Alabama,
567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) 15, 30, 35, 36
Miller v. Fenton,
474 U.S. 104, 109, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985) 19
Missouri v. Seibert,
542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004) 22
Montgomery v. Louisiana,
577 U.S. 190, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016) 15
Roper v. Simmons,
543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) 15
Stansbury v. California,
511 U.S. 318, 325, 114 S. Ct. 1526, 1530, 128 L. Ed. 2d 293 (1994) 21
State In Interest of B.T.,
367 A.2d 887, 889 (N.J. App. Div. 1976) 17, 19
State v. Benton,
338 S.C. 151, 156, 526 S.E.2d 228, 230 (2000) 24
State v. Collins,
409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) 24

State v. Douglas,
411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) 13
State v. Finley,
427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) 13
State v. Galloway,
443 S.C. 229, 243, 904 S.E.2d 866, 874 (2024)....................24
State v. Heath,
433 S.C. 506, 514, 860 S.E.2d 673, 677 (Ct. App. 2021) 24, 26, 28, 29
State v. Hendricks,
408 S.C. 525, 531–32, 759 S.E.2d 434, 437 (Ct. App. 2014)....................27
State v. Ladner,
373 S.C. 103, 119–20, 644 S.E.2d 684, 693 (2007)....................28
State v. Mack,
441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023)....................passim
State v. Miller,
441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023).................... 13, 19, 20, 32
State v. Miller,
433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021) 32
State v. Moorer,
439 S.C. 525, 888 S.E.2d 725 (Ct. App. 2023)....................25
State v. Navy,
386 S.C. 294, 688 S.E.2d 838 (2010) 22
State v. Pittman,
373 S.C. 527, 558–59, 647 S.E.2d 144, 160 (2007)....................14, 16
State v. Slocumb,
426 S.C. 297, 827 S.E.2d 148 (2019) 31
State v. Smith,
475 So. 2d 633, 635 (Ala. Crim. App. 1985)....................17
State v. Stahlnecker,
386 S.C. 609, 623, 690 S.E.2d 565, 573 (2010)....................29
State v. Washington,
379 S.C. 120, 124, 665 S.E.2d 602, 604....................27, 29
State v. Wiles,
383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009)....................26
State v. Williams,
430 S.C. 136, 149, 844 S.E.2d 57, 64 (2020) 25, 26
State v. Wright,
456 N.W.2d 661, 665 (Iowa 1990)....................18
Thompson v. Keohane,
516 U.S. 99, 112, 116 S. Ct. 457, 465, 133 L. Ed. 2d 383 (1995) 21
United States v. Andrus,
775 F.2d 825, 836 (7th Cir. 1985)....................18
United States v. Juv. Male,
554 F.3d 456, 467 (4th Cir. 2009)....................17, 18

Rules

Rule 404, SCRE 23
Rule 803, SCRE 27
Rule 1101, SCRE 17

Others

PROPENSITY, Black's Law Dictionary (12th ed. 2024) 24
S.C. CONST. art. V, § 9 14
U.S. CONST. amend. VI 17

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Did the family court err in failing to find S.C. Code Ann. § 63-19-1210 was unconstitutional due to its improper reliance on the eight factors set forth in *Kent v. United States* in violation of the due process protections of United States and South Carolina constitutions?

II.

Did the family court err in finding the right to confront witnesses did not apply in transfer hearings despite the fundamental impact of its ability to transfer a juvenile only after a full investigation in contravention to the Confrontation Clause contained in both the United States Constitution and the South Carolina Constitution, as well as fundamental procedural due process rights of the minor?

III.

Did the trial court err in admitting the statements of appellant made over the course of two days of interrogation by law enforcement in which appellant was visibly suffering from the impact of a physical assault, was isolated from her parents, not informed of her right to remain silent or right to have counsel, and subjected to coercive interrogation techniques in violation of the Due Process clause of the fourteenth amendment, the sixth amendment right to counsel, and the fifth amendment protection against self-incrimination?

IV.

Did the trial court commit an error of law by failing to conduct a Rule 404, SCRE, analysis on sexually explicit messages from appellant to her abusive domestic partner, Treveon Nelson, as the messages were improper character evidence and the probative value, if any, was outweighed by the danger of unfair prejudice under Rule 403, SCRE?

V.

Did the trial court err in finding the testimony that appellant was assaulted by Treveon Nelson and threatened with a handgun a month before the murder of SA did not fall within the excited utterance exception to the hearsay rule?

VI.

Does sentencing a sixteen-year-old juvenile in South Carolina to a functionally equivalent life without parole period of sixty-five years in prison violate Article I, Section 15, of the South Carolina Constitution prohibition against cruel or unusual or corporal punishment?

VII.

Did the trial court's sentence of appellant, which provided only a cursory reference to the factors outline in *Aiken v. Byars*, comply with the requirement that a sentencing court consider the impact of youth and its accompanying mitigating factors in reaching a sentence that exceeded the sentence of the older, more culpable defendants charged with the same crime?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the family court properly decide not to overrule South Carolina Supreme Court precedent to declare South Carolina's juvenile transfer process unconstitutional?

II.

Did the family court appropriately find that the Confrontation Clause does not apply to juvenile transfer hearings because it is not, strictly speaking, a criminal prosecution?

III.

Did the trial court properly find that Appellant's statements to police could be admitted at trial when those statements were voluntary and Appellant was read *Miranda* rights at the appropriate time?

IV.

Did the trial court correctly admit evidence that showed the relationship dynamics between Appellant and one of her codefendants after balancing the probative value of the evidence against the danger of the unfair prejudice?

V.

Did the trial court properly exclude hearsay testimony that did not fit under any of the exclusions for hearsay?

VI.

Does sentencing a juvenile to a term of years violate South Carolina's ban on cruel or unusual punishment, contrary to case law suggesting the opposite?

VII.

Did the trial court's careful consideration of the Aiken v. Byars factor show the required consideration of those factors before sentencing Appellant to a term of years.

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

In 2021, Nazareth Nicolle Sanchez-Peralta (Appellant) lured SA (the victim), someone Appellant called a friend, to her death. After misleading the victim's family and law enforcement for three weeks, she led investigators to the victim's body in late April 2021. After a transfer hearing, trial, and sentencing hearing, Appellant was sentenced to 65 years in prison for her role in the murder of SA.

The victim's younger sibling (Sister) last saw the victim when she was 13 years old. (Trial First, p. 306, l. 23–p. 307, l. 4).[1] The victim was 15 at the time. (Trial First p. 307, l. 21–23).[2] The victim and Sister were returning to their apartment complex from the store and were planning to hang out at the nearby swing when Appellant called. (Trial First, p. 311, l. 13–16).[3] When the victim and Sister reached the swing, Appellant was waiting for them. (Trial First, p. 313, l. 9–13).

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[1] The State counts at least seven transcripts related to this matter; as a result, counsel is abandoning the traditional citation of "Tr." for pages from the transcript in the initial brief. Instead, any reference to the May 2–6, 2022 hearing before the Family Court will be referenced as "Fam. Ct. Hrg." The May 31, 2022 hearing where the Family Court announced its ruling will be "Fam. Ct. Ruling." There should be no need to reference the April 10, 2023 transcript. The trial sessions held from May 15–19, 2023, will be designated "Trial First." The sessions held on May 22–23, 2023 will be "Trial Second." The August 28, 2023 sentencing hearing will be cited as "Sentencing." And the September 28, 2023 transcript related to the motion to reconsider the sentence of Appellant and one codefendant will be referenced as "Sent. Rec." These references will be changed as required in the final brief, and unless the Court objects, this footnote will be removed.

[2] The victim also had a younger sister who was about five when the victim disappeared. (Trial First p. 307, l. 24–p. 308, l. 5).

[3] Who initiated the call and for what purpose was subject to conflicting testimony at trial. Neither fact is relevant.

Appellant told the two that she had driven to the apartments with her boyfriend, Treveon Nelson, and another person, known as Smoove.[4]

According to Sister, Appellant began begging the victim to join her and the boys. Appellant apparently wanted another girl to come along. The victim decided to join them. (Trial First, p. 314, ll. 10–14). Sister, dejected by the fact that the victim was not going to hang out with her, returned home. (Trial First, p. 316, l. 17–p. 317, l. 2). The victim assured Sister that she would return. (Trial First, p. 316, ll. 21–25).

She did not.

Around 10:35 p.m.—a little more than half an hour later—Sister attempted to call the victim; the call went to voice mail. (Trial First, p. 317, ll. 11–18). Around midnight the victim's mother called police to file a missing persons report. (Trial First, p. 317, l. 22–p. 318, l. 5).

Local investigators were not just investigating the disappearance of the victim, Earlier on the last day the victim was seen, Christopher Morris—an investigator with the West Columbia Police Department—was dispatched to the scene of a vehicle theft. (Trial First, p. 254, l. 25–p. 255, l. 2; p. 255, ll. 19–22). The theft was reported at an Exxon station. (Trial First, p. 255, l. 23–p. 256, l. 1). Shortly before 1 p.m., Raylan Hemingway reported, a black Toyota Camry had been stolen. (Trial First, p. 262, l. 22 – p. 263, l. 3; p. 263, ll. 11–13).

Appellant, with help from Treveon Nelson, had arranged a meeting with Raylan Hemingway.[5] (Trial First, p. 294, ll. 15–22; p. 432, l. 17–p. 433, l. 3). Hemingway met Appellant

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[4] Smoove was a nickname. It is unclear whether Smoove was a juvenile or adult when the crime was committed; out of an abundance of caution, the State is referring to Smoove by his nickname rather than his given name.

[5] Hemingway had gotten Appellant's number about a week earlier. (Trial First, p. 292, ll. 11–25). He was around 22 years old. (Trial First, p. 303, ll. 5–7).

in his mother's car. (Trial First, p. 294, l. 25–p. 295, l. 1). Appellant asked Hemingway to go into the store to buy her something. (Trial First, p. 196, ll. 1–4). When he did, she jumped over the center console and drove the car away. (Trial First p. 271, ll. 13 – 15).[6] The Camry would be recovered 11 days later in Leesville. (Trial First p. 284, l. 24–p. 285, l. 8).

Meanwhile, Appellant was also communicating with Sister. On April 6, the day after the victim's disappearance, Sister asked Appellant through social media if the victim was with her. (Trial First, p. 328, l. 25–p. 329, l. 2). Appellant sent a message telling Sister that she and the victim had smoked in the parking lot, and then the victim had left to meet up with her boyfriend, who had called her. (Trial First, p. 329, ll. 7–21).[7] Appellant had also sent messages to one of the victim's social media accounts suggesting that the victim had gone with her boyfriend and, with apparently increasing alarm, asking where the victim was. (Trial First, p. 324, ll. 12 – 21; p. 325, ll. 2–22). When Sister got in touch with the victim's boyfriend, though, he said he had not seen her. (Trial First, p. 326, ll. 9–12). On April 9, Appellant sent Sister a message asking whether the victim had return home. Sister answered, "not yet." (Trial First, p. 334, ll. 1–9). Appellant would continue messaging with Sister until at least April 18. (Trial First, p. 335, ll. 9–13). Sister thought it was suspicious that Appellant had not been more involved in the search for the victim. (Trial First, p. 339, ll. 1–13).

On April 7, Molly Nations—an investigator with the Richland County Sheriff's Department—got in touch with Appellant on the phone. (Trial First, p. 358, ll. 8–12; p. 366, l. 23–p. 367, l. 8). Appellant also told Investigator Nations that the victim was going to see her boyfriend.

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[6] Asked at trial what he noticed when he was in the store, Hemingway said: "I noticed my car taking off." (Trial First, p. 296, ll. 8–10).

[7] The victim's boyfriend was apparently in his 20s. (Trial First, p. 354, ll. 9–12).

(Trial First, p. 368, ll. 21–25). More than two weeks later, on April 25, Appellant was reportedly assaulted and raped in Springdale by Treveon Nelson. (Trial First, p. 370, ll. 2–5; Trial First, p. 399, ll. 16–24). Investigator Nations was able to contact Appellant again and set up a meeting for April 27. (Trial First, p. 370, ll. 5–11).

Appellant's mother brought her to Investigator Nation's office as agreed to. (Trial First, p. 371, ll. 3–5). Nations said the purpose of the interview was to help locate the victim, and that Appellant was viewed as a witness. (Trial First, p. 371, l. 24–p. 372, l. 14).

Initially, Appellant told Investigator Nations that she, Treveon Nelson, and Smoove went to the victim's apartment complex that night in a car that belong to Smoove's mother. (Trial First, p. 373, ll. 14–17; p. 373, l. 24–p. 374, l. 4).[8] Again, Appellant said that the victim had left the group to see her boyfriend. (Trial First, p. 375, l. 23–p. 376, l. 8).

Investigator Nations then showed Appellant cell phone data that suggested the victim had left the apartment complex with the group. (Trial First, p. 376, l. 17–24). Appellant revised her story, saying that the victim had left with the group, and they had gone to Treveon Nelson's house. (Trial First, p. 377, ll. 2–5). But Appellant said she fell asleep around midnight and when she woke up shortly after that, she was alone. (Trial First, p. 377, l. 21–378, l. 5). She woke up again the next morning, when Treveon Nelson returned. (Trial First, p. 378, ll. 10–14). It would not be Appellant's last version of the story.

[8] Appellant initially refused to admit that the Camry was used in the abduction. (Trial First, p. 383, ll. 1–14, p. 392, ll. 5–20). She later admitted it was. (Trial First, p. 436, ll. 5–10). (While Detective Carvajal's testimony can be read as saying that she did not admit that Smoove's mother's car was not used, in context, he appears to say that she admitted it was not that car and was instead the Camry.)

Eventually, as indications that the victim was deceased mounted, homicide investigators were brought in to speak to Appellant. (Trial First, p. 384, ll. 1–7). At this point, Investigator Nations said, Appellant was still considered a witness. (Trial First, p. 385, ll. 11–13).

Appellant then told her first version of the story that included the victim's murder. She said that the victim was blamed for Treveon Nelson's house getting shot up in a potentially gang-related dispute involving Treveon Nelson and the victim's boyfriend. (Trial First, p. 387, l. 387, ll. 14–25). The victim was suspected of giving Treveon Nelson's address to her boyfriend, though Nations said no evidence was developed connecting the victim to the shooting. (Trial First, p. 388, ll. 1–9).[9] After the victim got into the car with Appellant, Treveon Nelson, and Smoove, guns were drawn on the victim and her phone was seized. (Trial First, p. 388, ll. 12–24). Appellant said the victim was driven to Leesville, where she was assaulted and killed. (Trial First, p. 389, ll. 5–10). Appellant did not say that she had played any role in the shooting of the victim. (Trial First, p. 389, ll. 11–14). Appellant told Detective Pablo Carvajal of the Lexington County Sheriff's Department that she was also held at gunpoint that night. (Trial First, p. 424, ll. 14–24). Appellant agreed to take investigators from Richland and Lexington counties to the victim's burial place, but after arriving in the general area where the victim was murdered, Appellant said she did not know the precise location. (Trial First, p. 389, ll. 15–21; p. 391, ll. 9–14).

The next day, Detective Carvajal spoke with Appellant's mother and asked if Appellant would meet with Lexington County investigators. (Trial First, p. 426, ll. 10–20). Detective Carvajal said there were no plans to force Appellant to take part in another interview. (Trial First, p. 426, l. 25–p. 427, l. 4). According to Kevin Baum, an investigator with the Lexington County

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[9] The victim had visited Treveon Nelson's home in the days leading up to the shooting. (Trial First, p. 433, l. 24–p. 434, l. 6).

Sheriff's Department, the interview with Appellant began around 4:15 p.m. (Trial First, p. 521 ll. 23–24; p. 523, ll. 10–16).

About 33 minutes into the interview, Appellant was read her *Miranda* rights. (Trial First, p. 428, ll. 2–18; p. 530, ll. 21–23; State's Ex. 18, 19). Appellant was told she was not under arrest. (State's Ex. 18, 19). Detective Carvajal said he still considered her a witness and a victim. (Trial First, p. 428, ll. 19–24).

That day, sitting in the parking lot, Detective Carvajal urged Appellant to provide some closure for the victim's family. (Trial First, p. 431, ll. 11–23). Appellant then admitted she knew where the victim's body was. (Trial First, p. 432, ll. 10–16).

Appellant then told Detective Carvajal that she knew that the victim was going to be assaulted that night. (Trial First, p. 436, ll. 13–14). Appellant said she was also held at gunpoint. (Trial First, p. 436, ll. 15–19). When they reached a wooded area in Lexington County, Appellant said, Treveon Nelson lined Appellant and the victim up and mused about which one of them he was going to kill; he told Appellant to walk forward, then shot the victim. (Trial First, p. 437, ll. 21–p. 438, l. 2). The victim tried to get up before Smoove shot her again. (Trial First, p. 438, ll. 3–8). In all, at least 14 gunshot wounds were found during the victim's autopsy. (Trial First, p. 771, ll. 9–12). Appellant told Carvajal that Treveon Nelson had used a .380 and that Smoove had used a black gun. (Trial First, p. 441, ll. 5–17). Appellant then took investigators to where the victim was buried. (Trial First, p. 446, ll. 17–19).

Authorities later arrested Allon Adams, who was with Treveon Nelson as Treveon Nelson attempted to elude arrest. (Trial First, p. 459, ll. 1–15). Appellant had been charged with kidnapping on April 29; after investigators spoke with Adams, she was charged with murder. (Trial First, p. 463, l. 23–p. 464, l. 2; p. 464, ll. 15–23).

Because of her age at the time of the crime, Appellant first appeared in front of the Family Court for a hearing on whether she should be transferred to be tried as an adult. The hearing was held May 2–6, 2022, presided over by the Honorable Greg Seigler. (Fam. Ct. Hrg. 1).

During the hearing, the family court heard testimony from—by that court's count—35 witnesses and considered more than 200 exhibits. (Family Court Order of Waiver 3–4). Among the exhibits that the family court heard was a videotaped statement that Allon Adams made to his grandmother while in police custody, and a portion of a statement he made to investigators. (State's Fam. Ct. Exh. 29, 30, 31). In those statements, Allon Adams directly implicated Appellant in the shooting. (Exh. 29, 31). Appellant moved pretrial to suppress those statements as a violation of her rights under the Confrontation Clause. (Fam. Ct. Hrg. 4). The court denied the motion. (Fam. Ct. Hrg. 4). Adams did not testify at the hearing.

Appellant also moved for the family court to declare section 63-19-1210(6)[10] of the South Carolina Code unconstitutional. (See Juv. Mtn. to Declare S.C. Code § 63-19-1210(6) Unconstitutional). Among the criticisms of the code section was that state courts have relied on the so-called *Kent* factors[11] to determine whether to transfer juveniles. (*Id.* at 3). Appellant argued

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[10] *See* S.C. Code Ann. § 63-19-1210(6) (West) ("Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.").

[11] From *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

those factors "have not withstood the test of time." (*Id.*). The court ruled the provision was constitutional. (See Family Court Order of Waiver 2).

Appellant then proceeded to trial. At the trial, the State presented testimony from Amanda Metz, a forensic investigator from the Richland County Sheriff's Department suggesting that three weapons were fired at the time of the victim's murder. (Trial First p. 724, ll. 13–15; p. 725, l. 1; p. 474, l. 7–p. 748, l. 2). Also at trial, Allon Adams testified, saying that Appellant told him that she had also shot the victim. (Trial First, p. 924, l. 24–p. 925, l. 6; p. 929, ll. 20–25).

Later, the State offered into evidence a few sexually explicit audio messages that Appellant sent to Treveon Nelson. (State's Exh. 241, 242, 243, 252). Appellant objected, arguing that they were evidence of prior bad acts and that the exhibits were more prejudicial than probative. (Trial Second 51, ll. 15 – 25). The State responded that because Appellant had portrayed herself as a victim of Treveon Nelson, the relationship dynamics between the two of them was probative. (Trial Second, p. 52, l. 6–p. 53, l. 6). The trial court overruled the objections. (Trial Second 53).

During her case in chief, Appellant attempted to introduce evidence that she had told Officer Sean Sinnott about an incident in which Treveon Nelson had assaulted her and waved a gun at her. (Trial Second, p. 89, l. 18–p. 90, l. 8). Appellant argued that the hearsay evidence could be admitted under the excited utterance exception. (Trial Second, p. 93, ll. 6 – 20). The trial court ruled the evidence inadmissible. (Trial Second, p. 95, l. 14–p. 96, l. 16).

The jury found Appellant guilty of murder and kidnapping. (Trial Second, p. 165, ll. 8–14). After an extensive sentencing hearing, the trial court sentenced Appellant to 65 years in prison. (Sentencing p. 355, ll. 8–10). At a motion to reconsider the sentence, the trial court reiterated her ruling. (Sent. Rec. p. 37, l. 25–p. 38, l. 4). This appeal follows.

STANDARD OF REVIEW

This court reviews evidentiary questions under an abuse of discretion standard. *See State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) ("The admission or exclusion of evidence is also subject to an abuse of discretion standard of review."). In regards to due process, issues, "we 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). On issue where the Eight Amendment is impolicated, "the appellate court's standard of review extends only to the correction of errors of law. *State v. Mack*, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023) (quoting *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (citations omitted)).

ARGUMENT

I. The family court properly considered the Kent factors, as required by our supreme court, before transferring Appellant to general sessions.

Appellant invites this Court to find a duly enacted state law unconstitutional, and in the process overrule precedent of our supreme court. This Court should decline the invitation.

Appellant appears to be trying to get two holdings with one argument. She suggests that it is unconstitutional for courts interpreting the transfer statute to rely on the *Kent* factors; as a result, because of the reliance on those factors, the statute is unconstitutional. *See* App. Initial Br. 7 ("The South Carolina transfer statute, as interpreted by our Supreme Court, should no longer be applied to any child, no matter how serious his or her alleged offense, because the transfer process violates the due process protections of the South Carolina and United States Constitutions."). One does not follow from the other, and Appellant appears to concede as much in her argument that the state should replace the *Kent* factors with the factors outlined by our supreme court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Even that argument falls short.

First, this Court is not in a position to overturn our supreme court's requirement that the *Kent* factors are the guideline for courts to consider when deciding whether a juvenile should be transferred to general sessions to be tried as an adult. *See State v. Pittman*, 373 S.C. 527, 558–59, 647 S.E.2d 144, 160 (2007) ("The family court must consider eight factors, as approved by the United States Supreme Court in *Kent v. United States*, in making this determination." (citation omitted)); S.C. CONST. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."). Appellant might fervently hope for our supreme court to overturn its own ruling and is free to argue that at the next stop (assuming an appeal); but in the meantime, this Court should not disregard the South Carolina Constitution and make that decision for the supreme court.

Set that aside for a moment. The Appellant still has not shown any authority for the idea that the *Kent* factors violate due process under either the state or federal constitutions. She instead infers that due process violation from a series of decision that the United States Supreme Court has made regarding juvenile sentencing: *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); and *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016). Appellant cannot cite to any provision of those opinions overturning the *Kent* factors, because they do not even hint at doing so.

For one thing, the cases that Appellant cites are largely focused on the United States Constitution's prohibition of cruel and unusual punishment, not due process. To the extent they cite the Fourteenth Amendment, it is primarily as a device to incorporate the right to be free of those punishments against the states. *See Roper*, 543 U.S. at 560, 125 S. Ct. at 1190 ("The Eighth Amendment provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' The provision is applicable to the States through the Fourteenth Amendment."); *Graham*, 560 U.S. at 53, 130 S. Ct. at 2018 ("Petitioner challenges the sentence under the Eighth Amendment's Cruel and Unusual Punishments Clause, made applicable to the States by the Due Process Clause of the Fourteenth Amendment."); *Miller*, 567 U.S. at 460, 132 S. Ct. at 2469 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders."); *Montgomery*, 577 U.S. at 212, 136 S. Ct. at 736 (outlining possible procedures states could under take to make sure that certain juveniles "will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment").

Appellant instead argues that the due process clause invalidates the state's transfer process because it could *expose* juveniles to an improper sentence under the United States Supreme Court's precedents. But the due process for transfers under South Carolina law was laid out in decisions like *Pittman*, and that process takes the form of consideration of the *Kent* factors. *See Pittman*, 373 S.C. at 558–60, 647 S.E.2d at 160–161. Appellant simply argues that the *Kent* factors are insufficient because other states' legislatures have made different choices than South Carolina's and too many juveniles are transferred to general sessions. But nothing that Appellant cites in her brief stands for the proposition that the *Kent* factors violate the Due Process Clause of the Fourteenth Amendment.

Finally, there is nothing in *Aiken* that would suggest the court intended to invalidate the transfer statute or *Kent*. In fact, the *Aiken* court specifically noted that there was no categorical bar on juveniles receiving severe punishments. *See Aiken*, 410 S.C. at 545, 765 S.E.2d at 578 ("Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances.").

This Court should not countermand our supreme court's decisions and rule that the *Kent* factors are inapplicable. Instead, it should find that Appellant was properly transferred and affirm her conviction.

II. The Confrontation Clause does not apply to juvenile transfer hearings, so the family court did not err in admitting Allon Adams' statement.

Appellant argues that the trial court erred by finding that the Confrontation Clause of the United States Constitution did not apply to her transfer hearing, and that Allon Adams' videotaped statement should not have been admitted. Appellant is wrong; the trial court was simply following the lead of several courts that have held the same.

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. CONST. amend. VI. Because Appellant's guilt was not determined at her transfer hearing, she is not entitled to the confrontation of witnesses under either the Confrontation Clause or due process.

As an initial matter, Rule 1101 of the South Carolina Rules of Evidence suggests that the rules of evidence do not apply to hearings like the transfer hearing in this case. Rule 1101(d)(3), SCRE (listing "preliminary hearings in criminal cases" and "dispositional hearings in juvenile delinquency matters" among cases exempt from rules not dealing with privilege). This is, of course, not the final word on a constitutional claim, but it follows the majority understanding that the rules of evidence do not strictly apply in transfer hearings. *See e.g., State v. Smith*, 475 So. 2d 633, 635 (Ala. Crim. App. 1985) ("The strict rules of evidence do not apply in a juvenile transfer hearing."); *State In Interest of B. T.*, 367 A.2d 887, 889 (N.J. App. Div. 1976) ("Since the result of a preliminary judicial proceeding as involved herein does not adjudicate the guilt of the accused, the type of permissible evidential material used by the court in reaching its conclusion is not circumscribed by the limited evidential rules applied at trial.").

Even Appellant concedes that finding Confrontation Clause rights apply to a transfer hearing would constitute the adoption of a minority view. And for a relatively self-explanatory reason: It is not, strictly speaking, a "criminal prosecution" as contemplated by the Sixth Amendment.

"[T]he right of confrontation does not apply to waiver hearings because such hearings are not criminal prosecutions." *State v. Wright*, 456 N.W.2d 661, 665 (Iowa 1990). In considering a federal transfer, the Fourth Circuit Court of Appeals found much the same.

> [I]ts purpose is not to *incriminate,* but to select the proper forum for trial. In this situation, [the juvenile's] inability to challenge those

> allegations by cross-examining the agent does not contravene the Constitution because "the trial itself functions as a corrective for any reliance on inaccurate allegations made at the transfer stage."

United States v. Juv. Male, 554 F.3d 456, 467 (4th Cir. 2009) (citations omitted) (quoting *In re Sealed Case,* 893 F.2d 363, 369 (D.C. Cir. 1990)). *Cf. Interest of K. S.*, 823 S.E.2d 536, 539 (Ga. Ct. App. 2019) ("In a transfer hearing, hearsay evidence is admissible to establish probable cause.").

Compare it to a preliminary hearing for adults. Federal and state courts have found that Confrontation Clause rights do not necessarily apply at a preliminary hearing. *See United States v. Andrus*, 775 F.2d 825, 836 (7th Cir. 1985). And *Andrus* tells us why: "The right to confrontation applies when the ability to confront witnesses is most important—when the trier of fact determines the ultimate issue of fact." *Id.* This is precisely what happened with Appellant. Allon Adams did testify at her trial and was subject to cross-examination there. And Appellant was able to ask Allon Adams about his feelings regarding death at the trial, for the jury's consideration.

Appellant's broader due process claim also does not work out. She cites to *Kent* for the proposition that requirements of due process apply to juvenile transfer hearings—and she is right about that. But the *Kent* court also made it clear that its ruling only went so far. The court there stressed that it was not indicating "that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." *Kent*, 383 U.S. at 562, 86 S. Ct. at 1057; *see also Application of Gault*, 387 U.S. 1, 12, 87 S. Ct. 1428, 1436, 18 L. Ed. 2d 527 (1967) ("Although our decision" in *Kent* "turned upon the language of the statute, we emphasized the necessity that 'the basic requirements of due process and fairness' he satisfied in such proceedings."). Other state courts have rejected the argument that due process in juvenile

hearings requires confrontation. *See In re Eduardo L.*, 621 A.2d 923, 929 (N.H. 1993) ("[A] defendant does not have a general due process right to meaningful cross-examination in a juvenile certification hearing, and that such cross-examination is warranted only when necessary to ensure the trustworthiness of evidence presented during the hearing."); *State In Interest of B. T.*, 367 A.2d at 889–90 ("The demands of due process at such a preliminary stage of the proceedings are no more extensive than to afford the accused a fair hearing where he is represented by counsel and has an opportunity to be heard and present evidence." (citing *Kent, supra*)).

Appellant presents cases deciding certain due process issues in distinct situations in South Carolina. She presents a case from West Virginia finding that Confrontation Clause rights apply to a juvenile transfer hearing. What she does not present is case law from this state showing that South Carolina courts have recognized her theory. Her transfer and conviction should be affirmed.

III. The trial court properly admitted Appellant's statements to investigators, because those statements were not obtained by overbearing her will or by a *Seibert* violation.

Appellant begins her challenge to her trial by arguing that the trial court erred in admitting her statements to investigators into evidence. But her statements were not inadmissible under either the Due Process Clause or the Fifth Amendment, so the trial court properly admitted them.

Start with Due Process. The test for whether a statement is inadmissible under the Due Process Clause is tough to meet. What the courts are looking for is interrogation methods that "are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." *State v. Miller*, 441 S.C. 106, 120, 893 S.E.2d 306, 313 (2023) (quoting *Miller v. Fenton*, 474 U.S. 104, 109, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985)). The test is designed to make sure the defendant's will is not "overborne." *Id.* Courts look at the age of the defendant, her intelligence level, her physical condition, the circumstances of the interrogation

in terms of length, location, and repetition, and whether law enforcement promises or threatens the interviewee. And when a young suspect is involved, courts understandably consider additional factors, like whether the child has access to her parents, the extent of her previous encounters with law enforcement, and whether the defendant has constructed an alibi. *See id.* at 120–122, 893 S.E.2d at 314. The factors, though, still point the ultimate test: "None of these factors are dispositive in and of themselves; rather, they must be considered in their totality to determine whether the defendant's will was overborne." *Id.* at 122, 893 S.E.2d at 314.

There is little evidence of that here, particularly in the first meeting. Appellant's mother was present—not necessarily in the same room, but in the same building—when Appellant was meeting with the officers. Officers did not use physical force, threats, or promises of leniency with Appellant, in part because they were still trying to determine whether Appellant was a victim, a witness, or something else. While it was unlikely that the victim was still alive, officers also had to consider whether they could find her, or at least her body.

But there is another wrinkle here when it comes to the first day. It's not clear that Appellant confessed at all. *See id.* at 120, 893 S.E.2d at 313 (looking to precedent holding 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" (quoting *Jackson v. Denno*, 378 U.S. 368, 376, 84 S.Ct. 1774, 1780, 12 L. Ed. 2d 908 (1964)) (emphasis added)). All of the versions of the story that Appellant shared on the first day were self-serving and meant to obscure whether she was involved in the victim's murder and to what extent. She even feigned an inability to remember precisely where the victim's body was buried. *See id.* at 122, 893 S.E.2d at 314 (listing "the minor's development of an alibi to conceal his involvement in the crime" as a factor to consider when juveniles are involved).

There is almost as little on the second day that would lead a court to conclude that Appellant's will was overborne. In her argument about whether *Miranda* warnings were properly given on the second day, she complains about Detective Carvajal's soft affect in his meetings with her. Was Detective Carvajal supposed to be meaner to keep her will from being overborne? Otherwise, Appellant comes up short for a list of factors that would have overborne her will.

Moving to the *Miranda* argument, Appellant states (correctly) that the test is an objective one. "Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S. Ct. 457, 465, 133 L. Ed. 2d 383 (1995) (footnote omitted).

Appellant was not in custody for *Miranda* purposes on April 27. Whether officers were skeptical of parts of her story is not relevant to the question. The standard for whether a person is in custody does not rely on the belief of the authorities, but on the objectively reasonable belief of the person being interviewed. *See Stansbury v. California*, 511 U.S. 318, 325, 114 S. Ct. 1526, 1530, 128 L. Ed. 2d 293 (1994) ("[A]n officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave."); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 271, 131 S. Ct. 2394, 2402, 180 L. Ed. 2d 310 (2011) ("By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test avoids burdening police with the task of

anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind.").

On April 28, 2021, Appellant was given Miranda warnings. She makes much of the fact that she was given *Miranda* warnings "late in the day," App. Br. 28, but that was because Appellant's interview *began* late in the day. According to one of the investigators, he administered *Miranda* warnings to Appellant a little more than a half-hour after the interview began. The giving of *Miranda* warnings does not become constitutionally suspect based on the time of day, but based on the totality of circumstances surrounding the statements—of which *elapsed* time (not the point in time) is but one.

Appellant's main argument here relies on the plurality opinion in *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004), and our supreme court's opinion in *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). Essentially, Appellant argues that the investigators did the same thing here that they did in *Seibert* and *Navy*: slow-walk her into a confession, then give a *Miranda* warning. But that's not quite what happened.

There is no doubt that investigators wanted to speak with Appellant. She was the last person to see the victim alive. And her first drafts of the story painted her not as a suspect, but as a witness or a victim. *See Seibert*, 542 U.S. at 620, 124 S. Ct. at 2615 (2004) (Kennedy, J., concurring) ("An officer may not realize that a suspect is in custody and warnings are required.").

Appellant argues that Detective Carvajal was one of the investigators who spoke to Appellant on both days that she met with officers. But he was never the first interrogator, and the portions of the interviews where he was present were broken up by the presence of other investigators.

There was a clean break between the first day's questioning and the second. Appellant was given the option of whether to come back; she was not held until she confessed, then Mirandized and forced to repeat her confession in successive statements, as was the case in *Seibert* and *Navy*. Officers dealing with a developing situation eventually determined that Appellant could be a suspect—not just as a bystander to the victim's murder, but as participant. As that was becoming clearer, they gave Appellant the appropriate warnings.

Neither Appellant's Due Process rights nor her Fifth Amendment rights were violated by the way that investigators questioned her. Appellant's conviction should be affirmed.

IV. The trial court properly admitted Appellant's audio messages to Treveon Nelson, because the messages were not meant to prove her propensity for murder and their probative value about the dynamics of Appellant's relationship with Nelson outweighed any unfairly prejudicial effect.

Appellant contends that the trial court erred by allowing the State to play recordings of sexually explicit messages she sent to Treveon Nelson. But the trial court did commit prejudicial error. The messages were admissible, and even if they were not, any error was harmless.

Under South Carolina law, "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion" outside of certain exceptions. Rule 404(a), SCRE. One of those exceptions occurs when the defendant offers evidence of her own character, or the State moves to counter that evidence. Rule 404(a)(1). Further, the rules prohibit introduction of "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. Again, there are exceptions, including where the evidence is admitted "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.*

In making sure that these rules are followed, our courts are on guard for "propensity" evidence—evidence that points to "[a] natural tendency to behave in a particular way; esp., the fact that a person is *prone to a specific type of bad behavior*." PROPENSITY, Black's Law Dictionary (12th ed. 2024). "[E]vidence of other crimes, wrongs, or acts is not admissible for the purpose of proving the defendant has a propensity to commit the charged crime." *State v. Galloway*, 443 S.C. 229, 243, 904 S.E.2d 866, 874 (2024). Not all evidence that an individual has done something distasteful, or something that might conflict with the values of segments of society, is prohibited propensity evidence. "Propensity evidence is admissible if offered for some purpose other than to show the accused is a bad person or he acted in conformity with his prior convictions." *Id.* (quoting *State v. Benton*, 338 S.C. 151, 156, 526 S.E.2d 228, 230 (2000)); *see also State v. Heath*, 433 S.C. 506, 514, 860 S.E.2d 673, 677 (Ct. App. 2021) ("Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder." (quoting *State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014))).

Galloway is an example. There, the court held that evidence that a defendant charged with sexually assaulting his girlfriend's daughter had been violent toward his girlfriend was not improperly admitted by the trial court. *Id.* at 244, 526 S.E.2d at 874.[12] For example, the victim testified that during one fight, the defendant had threatened to kill his girlfriend if her daughter called the police. *Id.* at 243, 526 S.E.2d at 873. Our supreme court explained that the testimony was admissible "because it is clear the State did not elicit the testimony for the purpose of demonstrating Galloway's propensity to be *sexually* violent." *Id.* at 244, 904 S.E.2d at 874. Instead,

[12] The *Galloway* court did find that the trial court should have required the State to explain why the evidence was admissible. *Id.*

the violent episodes were intended to show why it took more than twenty years for the victim to come forward with her allegations.

Or consider *State v. Moorer*, 439 S.C. 525, 888 S.E.2d 725 (Ct. App. 2023). There, this Court found that the trial court properly allowed evidence of the defendant's drug-related text messages, her internet searches for "Cougar Life," and her sexually explicit text messages to a younger man. *Id.* at 541–43, 888 S.E.2d at 733–734. The defendant was charged of kidnapping and conspiracy to kidnap after the disappearance of her husband's mistress. *Id.* at 532, 888 S.E.2d at 728. This Court reasoned that the drug-related messages showed that the defendant was not attempting to get pregnant, which made it more likely the pregnancy test she and her husband purchased was for the husband's mistress. *Id.* at 542, 888 S.E.2d at 733–34. And while the sexual evidence was character evidence, this Court found it relevant because, in part, it showed the defendant's motive for taking part in the crime and her anger at her husband. *Id.* at 543, 888 S.E.2d at 734.

In Appellant's case, the evidence was not intended to show that she had a propensity to kill the victim; it could not do that. Rather, it was used to prove something else logical to the crime with which Appellant was charged—that her relationship with Treveon Nelson was more complicated that simple story of abuse that Appellant was trying to use in her defense. It undermined her claims that she was acting as Treveon Nelson's victim and her efforts to distance herself from a more active role in the murder—much as the sexually explicit evidence in *Moorer* was relevant because it showed the relationship dynamics between the defendant and her husband and made clear the reasons for her involvement in the kidnapping. *Id; see also State v. Williams*, 430 S.C. 136, 149, 844 S.E.2d 57, 64 (2020) ("It is firmly established that otherwise inadmissible

evidence may be properly admitted when opposing counsel opens the door to that evidence." (quoting *Bowman v. State*, 422 S.C. 19, 40, 809 S.E.2d 232, 243 (2018))).

And Appellant is wrong when she argues that the court did not make any findings on Rule 404. Admittedly, the ruling was brisk, but it identified why the evidence was relevant—because the dynamics of the relationship between Appellant and Treveon Nelson had become an important issue in the trial. As the trial court found, Appellant "has been portrayed as being abused, being a hostage." (Trial Second, p. 53, ll. 22–23).

Appellant spends less time discussing her challenge under Rule 403, SCRE, but she fares no better with it. Under Rule 403, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" The unfair prejudice is key. *See State v. Heath*, 433 S.C. at 514, 860 S.E.2d at 677 ("[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence." (alterations in original) (quoting *Collins*, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014))). "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Id.* at 514, 860 S.E.2d at 677 (quoting *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009)).

Here, as the trial court found, the probative value of the evidence in illuminating the relationship between Appellant and Treveon Nelson exceeded whatever danger of unfair prejudice might have been present based on the sexually explicit language used in the messages.

In any event, any error that the trial court made is without a doubt harmless. Jurors heard six days of testimony and arguments. The longest of the exhibits Appellant challenges was 30 seconds long. The total combined runtime of the four exhibits is 45 seconds. Especially in light of

the other evidence introduced against Appellant, the notion that 45 seconds of audio messages swayed the jury during a six-day trial is implausible.

The trial court did not err by admitting the audio messages, and Appellant conviction should be affirmed.

V. The trial court did not err in excluding hearsay testimony about an incident between Appellant and Treveon Nelson, because the statement did not meet the standard for the excited utterance exception.

Appellant concludes her arguments about the trial itself by contending that the trial court should not have excluded hearsay testimony from a police officer about a previous time that Appellant reported physical violence by Treveon Nelson. Even if this were error—and it is not—it is beyond a doubt harmless.

Officer Sinnott's testimony, according to Appellant, should have been admitted under the excited utterance exception to the rule against hearsay. *See* Rule 803(2) (excepting from the rule "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition"). But the trial court did not abuse its discretion in excluding the testimony.

To fall under the excited utterance exception, a hearsay statement has to meet three requirements. First, it "must relate to a startling event or condition[.]" *State v. Washington*, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). Second, "the statement must have been made while the declarant was under the stress of excitement." *Id.* And finally, there has to be a connection between the first two elements—in other words, "the stress of the excitement must be caused by the startling event or condition." *Id.* The statement is viewed as trustworthy because, the thinking goes, a witness is far less able to make up an elaborate story when they are acting spontaneously.

See State v. Hendricks, 408 S.C. 525, 531–32, 759 S.E.2d 434, 437 (Ct. App. 2014) ("As our supreme court has explained, 'the intrinsic reliability of an excited utterance derives from the statement's spontaneity[,] which is determined by the totality of the circumstances surrounding the statement when it was uttered.'" (alterations in original) (quoting *State v. Ladner,* 373 S.C. 103, 119–20, 644 S.E.2d 684, 693 (2007))).

Hendricks is a good example. There, this Court confronted an issue of double hearsay. One level was the victim's statement to her mother that she had been raped. The other level was the victim's mother repeating that allegation to a 911 operator. *See id.* at 531, 532, 759 S.E.2d at 437, 438. This Court ruled that the first level—the victim's statement to her mother—clearly satisfied the excited utterance exception, because the victim and her mother both described her devastated emotional state. *See id.* at 532, 759 S.E.2d at 438. But the *Hendricks* Court found the second level of hearsay—where the mother told a 911 operator about her allegations while driving her daughter to the hospital—did not qualify for the exception. *See id.* at 533, 759 S.E.2d at 438.

The reason? "[T]he State has not shown the nature of her reaction"—the mother's—"was such that it generated the spontaneity that gives an excited utterance its inherent reliability." *Id.* And that was not all; the court also found the state had not demonstrated that the mother "was still under the required stress of the excitement when she actually made her statement." *Id.* After all, the mother had helped her daughter put her children to bed, then called 911, and was calm enough to drive her daughter to the hospital. *See id.* at 533–34, 759 S.E.2d at 438–39. Instead of spontaneously reacting to what was happening, the victim's mother seemed to be motivated by begin the process of prosecuting her daughter's alleged rapist. *See id.* at 534, 759 S.E.2d at 439.

The State does not deny that South Carolina's Supreme Court "has generally allowed as excited utterances statements made by the victim to the police *immediately* following a physical

attack." *State v. Heath*, 433 S.C. at 516, 860 S.E.2d at 678 (emphasis added). But here, Appellant had some opportunity to calm down from the immediate stress of her encounter with Treveon Nelson. Officer Sinnott estimated it had been about 20 minutes since the encounter when he spoke to her, and she had removed herself from the immediate danger by relocating to the hotel where she called police. *See id.* ("The passage of time between the startling event and the statement is one factor to consider, but it is not the dispositive factor." (quoting *State v. Stahlnecker*, 386 S.C. 609, 623, 690 S.E.2d 565, 573 (2010))). And despite Appellant's groundless innuendo about Officer Sinnott's memory, he testified under oath that he could not recall whether Appellant was visibly upset.

Even if the trial court erred, though, that error was without a doubt harmless. *See Washington*, 379 S.C. at 125–26, 665 S.E.2d at 604–05 (subjecting the errant decision to admit a statement under the excited utterance exception to harmless error analysis). First, there was plenty of evidence in the record about the dynamics of the relationship between Appellant and Treveon Nelson. It is hard to see how a jury that had been exposed to allegations that Treveon Nelson raped Appellant would somehow be more convinced that he was abusive and controlling by hearing that Appellant once said he hit her and waved a gun in front of her. And jurors heard before the State's objection that Appellant had reported a domestic violence incident of some kind.

And, again, the State's case against Appellant was overwhelming. She set up her friend to be murdered, was likely the third shooter when the victim was executed, and repeatedly mislead investigators about her knowledge of and involvement in the killing. Whether she was abused by Treveon Nelson two months earlier was not a convincing evidentiary blow. Appellant's conviction should be affirmed.

VI. The trial court did not err in sentencing Appellant to a lengthy term-of-years sentence, because South Carolina courts have not found that a de facto life sentence violates the state or federal constitution.

Appellant next argues that her term-of-years sentence was a violation of her constitutional rights because it is, essentially, a life without parole sentence in all but name. South Carolina courts have explicitly declined to rule this way, and there is no reason to change that now.

The United States Supreme Court has found that a mandatory life without parole sentence for juveniles violates the United States Constitution's prohibition on cruel and unusual punishment. The high court has made that clear. "We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller v. Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 2460, 183 L. Ed. 2d 407 (2012). But it has made it just as clear that the mandatory part of the sentencing schemes considered in *Miller* was key to its holding. "In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Jones v. Mississippi*, 593 U.S. 98, 105, 141 S. Ct. 1307, 1313, 209 L. Ed. 2d 390 (2021).

There is also some support for the idea that the South Carolina Constitution has a requirement that a sentencing court must take into account the *Aiken* factors when determining whether to sentence a juvenile to life without parole. *See Aiken*, 410 S.C. at 545–46, 765 S.E.2d at 578 (2014) (Pleicones, J., concurring) ("While I agree with the dissent that *Miller* does not require that we grant relief to juveniles who received discretionary life without the possibility of parole (LWOP) sentences, and that the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller,* I would reach the same result under S.C. Const. art. I, § 15.").

However, Appellant has shown no support for the expansion of these precedents for which she asks this Court. And Appellant's arguments would require this Court to take not one step forward, but two.

First, this Court would have to find that life without parole sentences for juveniles are a violation of the South Carolina Constitution regardless of whether the *Aiken* factors have been considered. Then, the Court would have to determine that lengthier term-of-years sentences are equivalent, for constitutional purposes, to a sentence of life without parole. Neither step is warranted. In fact, case law weighs against both of them.

Appellant does not cite a decision from either United States Supreme Court precedent or South Carolina precedent to support finding that a life without parole sentence is a constitutional violation. In fact, the plurality opinion in *Aiken v. Byars* explicitly stated that "a court may still sentence a juvenile to life without parole after an individualized hearing." 410 S.C. 534, 539, 765 S.E.2d 572, 575 (2014).

And appellant plays down the significance of *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019), in which our supreme court declined to take the second step. It is true that the *Slocumb* court warned against taking its decision as the last word. *See id.* at 313, 827 S.E.2d at 156. But it then explained that the further word would best come from others.

> Respect for separation of powers compels us to recognize that the General Assembly is the author of our state's public policy for the sentencing of criminal offenders, juveniles and adults. Pending further pronouncement from the Supreme Court, we take no position in the matter, nor should our holding be construed *to limit or define the parameters of the legislative discussions and response to this challenge*.

Id. at 314, 827 S.E.2d at 157 (emphasis added). This Court has noted and followed the court's decision in *Slocumb*.

> Based on the aforementioned precedent, we find the trial court's term-of-years sentence does not violate the Eighth Amendment. As the court noted in *Slocumb*, we are bound by the constitutional protections implemented by the Supreme Court, which has thus far declined to extend the holding of *Graham* and its progeny to term-of-year sentences.

State v. Miller, 433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021), *aff'd,* 441 S.C. 106, 893 S.E.2d 306 (2023).

The trial court did not sentence Appellant to life in prison without parole; it sentenced her to a lengthy term, but that is constitutionally permissible. Appellant's conviction and sentence should be affirmed.

VII. The trial court held the proper review of Appellant's sentence under *Aiken v. Byars* and decided not to impose a life sentence.

Finally, Appellant argues that her sentence was disproportionate because the court did not hold a thorough review of Appellant's sentence under *Aiken v. Byars* or its progeny. Appellant is incorrect.

The trial court here was required to consider the *Aiken v. Byars* factors in developing Appellant's sentence, because sentencing Appellant to life without parole was an option. But the circuit court decided not to sentence Appellant to life without parole, largely because of the *Aiken* factors. For both of these reasons, the trial court acted appropriately.

To argue the opposite, Appellant relies largely on this court's decision in *State v. Mack*, 441 S.C. 526, 894 S.E.2d 820 (2023). But Appellant misreads *Mack*.

In *Mack*, this court found that a juvenile could not be resentenced to life without parole without a meaningful consideration of the *Aiken* factors. *See Mack*, 441 S.C. at 542–44, 894 S.E.2d

at 828–30. If anything, though, the decision in *Mack* demonstrates that the trial court in Appellant's case considered the *Aiken* factors appropriately.

The difference shows up in how the resentencing court in *Mack* and the trial court here treated the question of youth. For the sake of comparison, the resentencing court in *Mack* focused not on how youth could have affected Mack's crimes, but instead appeared to explain why that age should not affect his sentence.

> In regards to the age of the offender, [Mack] was 17 years old at the time of the murder, and was 18 years old when he was convicted. The court considered that at the time of the murder, [Mack] was within one year of being able to serve in the military to possibly fight and die for this country and had a driver's license. [Mack] was within one year of an age whereby he would have immense responsibilities and be considered an adult by law.

Mack, 441 S.C. at 540, 894 S.E.2d at 827–28 (Ct. App. 2023) (alterations in original). But in this case, the trial court clearly displayed a knowledge that Appellant's age should be considered, and demonstrated an understanding of why courts must weigh how that age could have factored into a juvenile's criminal activity.

> I've listened to your lawyer, Ms. Peralta. I have listened to [the mitigation specialist]. And I can tell you, I have considered your age. And I recognize that you were 15 at the time of this murder, and that most 15[-]year[-]olds are immature and they do not appreciate the consequences of their actions. I have listened to her explain that she believes that you are in the mid-adolescent stage where risk taking is at its peak. And during this stage most adolescents can't avoid risk, where you would avoid risk. And that this due to adolescents' brains not being fully developed.

(Sentencing, p. 351, ll. 10–21).

In other words, the trial court here did precisely what *Mack*, and the cases supporting it, called for the trial court to do. The court did not discount Appellant's age; it discussed that age in the context of Appellant's life and why it was important. *See Mack*, 441 S.C. at 542, 894 S.E.2d

at 829 ("Simply finding that Mack was almost eighteen—as emphasized by the resentencing court—does not account for the careful and thoughtful consideration the U.S. Supreme Court considers vital."). Here, the trial court "adequately consider[ed] whether [Appellant's] crimes were affected by his chronological age and the hallmark features of youth." *Id.* at 543, 894 S.E.2d at 829.

The difference shows up again in how the resentencing court in *Mack* addressed the issue of a juvenile's home and environmental factors and how the court weighed the same issue here. Again, the resentencing court in *Mack* was explaining why Mack's upbringing should not have mattered—because people who were not Mack had overcome similar burdens.

> [Mack] grew up in a bad home environment, whereby he witnessed several traumatic events in his childhood[ ] and was affected by these events as well as many other things in his life. However, the court recognizes that many successful people grew up in chaotic and violent environments[ ] and were able to adhere to the law and become productive members of society. Additionally, the State highlighted the childhoods of Elie Wiesel, Oprah Winfrey, and Tyler Perry[ ] and how they all were able to overcome traumatic experiences in their childhoods and home life and become good, law-abiding[ ] citizens in the community.

Mack, 441 S.C. at 544, 894 S.E.2d at 829 (alterations in original). And again, the trial court here did not do that.

> I listened also about your family and home environment, and I recognize that your childhood was unfortunate. You were abused at a young age. You did not have the opportunity to bond or attach with your parents, which is really important. And you lived with relatives at a young age. You suffered bullying at school. And you witnessed violence in the neighborhood that you lived in.
>
> And you also had issues with your parents over not taking you with them and leaving you when you were really young. . . .

(Sentencing, p. 351, l. 22 – p. 352, l. 8).

Once more, this was the kind of individualized consideration of a home environment that the law requires—not an argument that the factor should not be considered, but a showing that it was. Notably, the trial court here did not seem to consider whether other individuals in similar circumstances had thrived. *See Mack*, 441 S.C. at 544, 894 S.E.2d at 830 ("The inquiry requires the court to consider the impact of *the defendant's* family and home environment *on his crimes.* It is a specific and individualized inquiry.").

While the *Mack* court did not specifically address other factors, the throughline of that decision—that the *Aiken* factors matter and should be addressed thoughtfully—repeats itself throughout the trial court's ruling here. *See Mack*, 441 S.C. at 544, 894 S.E.2d at 830 ("Applying the *Aiken* factors involves more than repeating the words; it requires applying the substantive content of those factors.").

But the most telling difference between the resentencing court in Mack and the trial court here is what the court here decided on the question of a sentence of life—it declined to impose one. We know that the court below considered those factors because it consciously decided not to do something based on those very considerations. The court said: "But after *considering all of those factors and listening to your lawyer*, I'm going to decline to impose a life sentence." (Sentencing, p. 353, ll. 2–4).

The trial court's ruling also kept faith with the reason that the United States Supreme Court—and, in turn, our state courts—have specifically applied the restrictions only to mandatory life-without-parole sentences. In fact, going back to *Miller*, the United States Supreme Court has clarified that is purpose is to ensure that life sentences without parole are "uncommon" for juveniles. *Miller v. Alabama*, 567 U.S. 460, 480, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012); *see also id.* at 480, 132 S. Ct. at 2469 ("Although we do not foreclose a sentencer's ability to make

that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."); *Aiken v. Byars*, 410 S.C. 534, 539, 765 S.E.2d 572, 575 (2014) ("Although a court may still sentence a juvenile to life without parole after an individualized hearing, the [*Miller*] Court cautioned that given 'children's diminished culpability and heightened capacity for change' the 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'" (quoting *Miller*, 567 U.S. at 479, 132 S. Ct. at 2469)).

Appellant has not demonstrated any errors in the trial court's consideration of the *Aiken* factors. Appellant's sentence should be confirmed.

CONCLUSION

For all the above reasons, Appellant's transfer to general sessions court, conviction, and sentence should be affirmed.

Respectfully Submitted,

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