STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Marion County
Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT

Opinion No. 2025-UP-174 (S.C. Ct. App. filed May 28, 2025)

APPELLATE CASE NO. 2022-000921

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on June 25, 2025.

QUESTION PRESENTED

Did the Court of Appeals err by affirming the trial court's decision to admit coerced statements obtained by threatening to arrest Petitioner's pregnant girlfriend for the alleged murder when it based its decision on a credibility determination not made by the trial court?

STATEMENT OF THE CASE

Petitioner Zachir McCall was indicted by the Marion County Grand Jury on April 8, 2021, for murder, armed robbery, and possession of a weapon during the commission of a violent offense. R. 480-85. The case proceeded to a jury trial before the Honorable G.D. Morgan, Jr. and Michael G. Nettles from July 19 through 22, 2021. R. 1. The State was represented by Ryan White and Todd Tucker, while Appellant represented himself *pro se*.[1] R. 1. The jury found Appellant guilty on all counts, and the trial court imposed concurrent sentences as follows: thirty-five years for murder, ten years for armed robbery, and five years for possession of a weapon during the commission of a violent offense. R. 472:11-25, 478:1-14.

Petitioner appealed, arguing the trial court erred by overruling Petitioner's objection at trial that a recorded interrogation was involuntary. App. 5. The court of appeals affirmed in an unpublished opinion. *State v. McCall*, No. 2025-UP-174 (S.C. Ct. App. filed May 28, 2025). McCall filed a petition for rehearing, which was denied by order dated June 25, 2025. App. 54, 69.

Petitioner now respectfully requests this Court issue a writ of certiorari to review the decision of the court of appeals.

[1] The trial court also granted Petitioner's request to allow Franklin Chandler to sit as standby counsel. R. 13:8-13, 16:7-8.

STATEMENT OF FACTS

On the night of April 5, 2020, O'Neal Gerald, Jr. secretly arranged to meet with Petitioner Zachir McCall. R. 168:15-25, 354:1-21. Gerald took his shotgun and left his wife at home for what he believed was an encounter for sex as he drove his blue Chevrolet Trailblazer to the Scotchman gas station in Mullins, South Carolina. R. 128:3-6, 166:2-17, 169:5-170:8, 362:14-23. Although Petitioner knew Gerald and had communicated with him for some time beforehand, he was admittedly leading Gerald on for money to help pay his bills. R. 356:18-358:3. The two met at the Scotchman sometime between 9:45 p.m. and 10:00 p.m., and then Gerald's SUV was seen leaving the area. R. 170:2-17, 260:18-261:12, 360:6-22.

Between 10:30 p.m. and 11:00 p.m., two gunshots were heard in a rural area near property owned by Gerald where he kept his hunting dogs. R. 146:2-147:20. The next day a search party found Gerald deceased from a gunshot wound to the head. R. 78:5-79:24. Based on cellphone records showing communication with Petitioner, law enforcement officers interviewed him as a person of interest. R. 164:3-22. Petitioner was first interviewed on April 21, 2020. R. 165:2-16. In the interview he admitted to planning to meet with Gerald that night but did not confess to the murder. R. 168:15-25; State's Ex. 29.

Early in the morning on May 8, 2020, the Marion County Sheriff's Office arrested Petitioner for Gerald's murder. R. 173:3-9, 205:6-15. When they arrived at the sheriff's office, Petitioner told Detective Greg Pike he would not speak to the officers without an attorney present. R. 31:2-32:15, 38:24-39:4. Pike and another officer then walked him to the booking area. R. 39:3-5. Petitioner testified at the later *Jackson v. Denno* hearing that on the walk, Pike asked him where officers could find Jasmine Blackwell, the mother of Petitioner's infant daughter who was also pregnant at the time with his son. R. 39:3-12. Petitioner asked why Pike

wanted the information, and Pike said it was so other officers could find Blackwell and arrest her for murder. R. 39:12-16. At the *Denno* hearing, Pike could not recall the exchange. R. 31:11-16. There is no recording of this walk or exchange.

Several hours after Petitioner was arrested, once he received and submitted a grievance form asking to speak to officers without an attorney, Petitioner was interrogated by Pike, Captain Parker, and later Sheriff Brian Wallace. R. 27:4-15; State's Ex. 30. Approximately two hours into the interrogation, he confessed to the murder after Wallace threatened to arrest Blackwell. State's Ex. 30, at 2:01:30-2:18:00.

The trial court admitted the recording of the second interrogation. R. 61:18:20, 177:17-178:5. It ruled there "was no threat of violence or promise of leniency by law enforcement or anyone *in the statement*," considering only the recording itself. R. 60:2-61:15 (emphasis added). The trial court made no credibility findings and did not rule on the impact of Pike's comments on the way to booking that Petitioner described. Petitioner testified before the jury that he did not kill Gerald and the confession was a fabrication to protect Blackwell. R. 355:5-356:6, 360:6-22. Petitioner was ultimately convicted and appealed arguing the trial court erred by admitting the recorded interrogation as it was rendered involuntary due to the officers' threats. R. 472:11-25; App. Br. 5, 14-22.

The court of appeals affirmed in an unpublished opinion, holding Petitioner lacked credibility concerning Pike's comments on the way to booking and that Sheriff Wallace's comments made during the recorded interrogation about Petitioner's pregnant girlfriend were in fact not threats. *McCall*, No. 2025-UP-174, at 3-4.

ARGUMENT

I. Sheriff Wallace clearly threatened Blackwell and conditioned her freedom on Petitioner confessing; the trial court and court of appeals erred by ruling Petitioner's continued interrogation was not involuntary.

The court of appeals held the following comments were not threats, even when made by the Sheriff of Marion County over two hours into Petitioner's interrogation[2]:

- 2:18:20 - Sheriff: "Well, here's the other thing. **You bring the thing up about your baby's momma**. Your baby's momma—she's the one to the eight-month-old? [*Petitioner nods*] Here's what we—**I don't want to see happen, and that's why we want to get it from you. I don't want to—you see where I'm going?"**

  Petitioner: "Right, **you don't want to have to lock her up for it–**"

  Sheriff: "–Right."

- 2:20:00 - Sheriff: "If she don't know nothin' about it, **we don't want to drag her into it, but I need to hear that from you**: 'You didn't tell her nothing about it.'"

- 2:22:15 - Sheriff: "Just to be clear, **make sure, that the baby momma don't know anything**. She still don't know that now that you've told her that you shot and killed—she don't know that?"

- 2:24:25 - Sheriff: "What we may do is they may put you in the car and run out there, and try to see about where [the gun] was and go look for it. So we can clear everything up, **clear her up, get her cleared**. You know what I'm saying? **That's your baby's mama. She's got an eighth month old to take care of.**"

State's Ex. 30 (emphasis added). These comments are thinly veiled threats on Blackwell's freedom and therefore on the safety and security of Petitioner's infant daughter and unborn son. What else could they possibly be? They are communicated expectations of behavior with adverse consequences for noncompliance, *i.e.* a threat. *See State v. Register*, 323 S.C. 471, 479,

[2] There is no official transcript of the recording. All emphasis was added and does not necessarily reflect the speaker's emphasis. Petitioner includes these transcribed excerpts of the recording based on his own review; if the Court believes different language was used based upon the recording, then Petitioner will defer to the Court's interpretation.

476 S.E.2d 153, 158 (1996) (explaining "a confession induced by fear of extraneous adverse consequences" is involuntary); *State v. Johnson*, 422 S.C. 439, 457, 812 S.E.2d 739, 748 (Ct. App. 2018) (stating threats involve "specific tangible consequences to the defendant"). Wallace wanted Petitioner to confess, and if he did not, Wallace would "drag [Blackwell] into" the murder investigation—exactly like Petitioner feared after talking with Pike on the way to booking. Petitioner's confession under these circumstances was plainly not "uninfluenced by the operation of external causes." *State v. Kirby*, 32 S.C.L. (1 Strob.) 155, 156 (1846). Rather, it was obtained "by means of veiled threats against his family." *State v. Corns*, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992). The remainder of the interrogation was therefore involuntary and should have been suppressed.

The court of appeals erred because in its opinion it addressed only Wallace's first threat without considering the multiple other references to Blackwell. That court wrote: "It is questionable whether Wallace's statement was a threat because this was the *only* statement Wallace made that concerned Blackwell *and he did not mention her by name*." *McCall*, No. 2025-UP-174, at 4 (emphasis added). As demonstrated, this is factually incorrect. Just two minutes later Wallace again threatened Blackwell: "we don't want to drag her into it, but I need to hear that from you." Two more minutes later he clearly referred to "the baby momma" seeking to confirm she "don't know anything." These are repeated threats, and he was certainly referring to Blackwell. As noted in the court of appeals' opinion, Wallace confirmed with Petitioner: "[Y]our baby mama is the one with the eight-month-old? That's the baby you're talking about?" *Id.* Everyone in that room knew who would be arrested if Petitioner did not continue talking and more clearly confess, and it is outrageous for the court's holding to

emphasize some ambiguity or uncertainty because the sheriff did not use her name *after* clarifying they were discussing their daughter.

These threats rendered Petitioner's following statements involuntary because they are why he continued to speak.[3] Sheriff Wallace kept referring to Blackwell—Petitioner needed to "get her cleared" because "she's got an eighth month old to take care of"—because assuring Petitioner they would not "lock her up" was the carrot to keep him talking; threatening to arrest her was the stick.[4] At a bare minimum, the portions of the recording following Wallace's first, on-camera threat should have been excluded, yet the court of appeals failed to consider this possibility.

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[3] Just fifteen minutes earlier, McCall first stated, "I think I'm done talking," although the interrogation continued. State's Ex. 30, at 1:59:15.

[4] In this way the statement could be interpreted as a promise because the distinction between threats and promises is one more of style than substance, but it is a distinction without particular significance in the legal analysis. *See Bram v. United States*, 168 U.S. 532, 543 (1897). The confession should be excluded just the same if Wallace's comments are considered promises:

> If the inducements held out to the prisoner be made by one having authority over him or over the prosecution, as by the prosecutor, . . . or by the officer having him in custody, or the magistrate, or even by a private person in the presence of one in authority—confessions under such circumstances, it would seem from the authority of decided cases, should be rejected. The power of such persons may well be supposed to animate the prisoner's hopes of favor on the one hand, and to inspire him with awe on the other, and in some degree to overcome the powers of his mind.

Kirby, 32 S.C.L. at 156-57.

II. The trial court and court of appeals failed view the coercive conduct from Petitioner's perspective and impermissibly made a credibility determination to discount Pike's early threat on the walk to booking.

Petitioner testified at the *Jackson v. Denno* hearing that while walking to booking—after he invoked his rights to counsel and to remain silent, R. 31:2-32:15, 38:24-39:4—Detective Pike asked him where Blackwell could be found. R. 39:3-7. When Petitioner asked why Pike needed this information, Pike informed him it was so officers could arrest Blackwell, the pregnant mother of his infant daughter. R. 39:8-15. Petitioner interpreted this as a threat because, from his perspective, "the only reason you would inform me that you will be arresting the mother of my children is if you wanted me to talk to you." R. 50:5-7. That is reasonable under the circumstances. Moreover, "[c]oercion is determined from the perspective of the suspect." *Collins*, 442 S.C. at 456, 900 S.E.2d at 432 (quoting *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009)).

This is the essence of the lower courts' error: both the trial court and court of appeals failed to consider the statements and circumstances from Petitioner's perspective, and they failed to give due weight to the effect Pike's statements had on Petitioner. They appeared to believe that Pike's statement is not a threat, as if their later objective evaluation of the tone of the interrogation resolves the issue. But that is not the question. Petitioner readily testified Pike did not ask about Blackwell "in a violent nature." R. 50:1-4. Nonetheless, *to him*, Pike had threatened the pregnant mother of his infant daughter, that his son would "be put in a box at birth." R. 42:19-22. And that is the critical question: Did Petitioner speak with the officers due to threats he perceived against his family? His testimony and conduct on the recording thoroughly demonstrate the statement was an involuntary product of the threats in his attempt to protect Blackwell and his children. It therefore should have been suppressed.

a. The voluntariness of a confession is a subjective test, and the court of appeals erred by discounting Pike's comments.

"[T]he test for determining whether a defendant's confession was given freely, knowingly, and voluntarily *focuses upon whether the defendant's will was overborne* by the totality of the circumstances surrounding the confession." *State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010) (emphasis added). Thus, it is a subjective test: the only points that ultimately matter are whether Petitioner felt that Sheriff Wallace and Detective Pike threatened Blackwell and whether his will was overborne as a result. *State v. Ledford*, 351 S.C. 83, 88, 567 S.E.2d 904, 907 (Ct. App. 2002) (noting "the subjective nature of a voluntariness inquiry"); *see Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) ("[T]he question in each case is whether the defendant's will was overborne . . . ."); *Ziang Sung Wan v. United States*, 266 U.S. 1, 14 (1924) ("A confession is voluntary in law if, and only if, it was, in fact, voluntarily made."). Of course, the totality of the circumstances can greatly influence the credibility of a defendant and whether it is likely his will was in fact overborne. But the ultimate test is a subjective one because "the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted." *Bram v. United States*, 168 U.S. 532, 543 (1897) (citation omitted).

Under the proper analysis, it should not be "questionable," *McCall*, No. 2025-UP-174, at 4, whether Petitioner understood Pike's and Wallace's statements as threats from his perspective. As he testified at the *Denno* hearing, "I did what I had to do to make sure the mother of my kids was not arrested, and my son was not going to be put in a box at birth." R. 42:19-22. He "was just supposed to be clearing her name." R. 40:1-3. Further, as will be addressed below, he repeatedly expressed Blackwell's innocence throughout the recorded interrogation in an attempt to protect her from the threats he perceived. Petitioner expressly and implicitly interpreted

Wallace's and Pike's statements as threats, and the trial court erred by denying his motion to suppress the interrogation.

Petitioner clearly explained at the *Denno* hearing why he thought Pike's question was a threat. Immediately upon arrival at the sheriff's office, he refused to speak to the officers without an attorney present. R. 32:3-11, 38:24-39:5. But as he put it when questioning Pike, "something had to change [his] mind" when he later asked to speak to the officers, specifying he would do so without a lawyer. R. 32:6-19. What changed his mind was being told law enforcement officers were out looking for Blackwell to arrest her for murder. Petitioner's thought process was clearly expressed in his testimony. He testified Pike did not ask about Blackwell "in a violent nature," but nonetheless, to Petitioner, there was no other reason to tell him that except to pressure him into confessing. That coercion renders the waiver of his rights and his entire confession involuntary.

The court of appeals and trial court concluded the conduct in the recorded interrogation was legally insufficient to render the confession involuntary. But *State v. Corns*, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992), explains that is wrong. In *Corns* the defendant was arrested and refused to give a statement. 310 S.C. at 549, 426 S.E.2d at 325. Several days later, a detective and police captain visited him in jail. *Id.* The captain then "informed Corns he had a warrant for Corns's wife, that his wife could be arrested, and that the Department of Social Services could take his children." *Id.* The police captain insisted this was not a threat and he did not intimidate Corns. *Id.* Nonetheless, the court of appeals saw through that assertion and concluded that, "at the very least, the officers coerced Corns's confession . . . by means of veiled threats against his family." 310 S.C. at 552, 426 S.E.2d at 327; *see also State v. Johnson*, 422 S.C. 439, 457, 812 S.E.2d 739, 749 (Ct. App. 2018) (affirming admission of confession because

officer's statement that defendant's "Daughter would think he was a cold-blooded killer . . . are not the type of tangible threat[s] related to children or family members generally considered to render a confession involuntary").

The only meaningful difference between this case and *Corns* is that there the officers admitted to the statements in question while here Pike could not recall them. Thus, if Pike made the statements as Petitioner testified and the recording indicates, *Corns* should control and the statement should have been excluded as involuntarily coerced by these veiled threats.

b. Petitioner repeatedly brought up Blackwell's innocence in the interrogation, clearly indicating a prior threat and his intent to protect her.

To Petitioner, this entire interrogation was about Blackwell. He testified clearly: "The only reason I was in the room . . . is because they looked to arrest the mother of my children." R. 44:2-12. Petitioner agreed to speak because Pike informed him officers were looking for Blackwell to arrest her for murder and he "knew [he] wasn't going to have time to have an attorney present to speak with them if [he were] to wait." R. 40:17-21. He also explained why he was so nervous about Blackwell being arrested: "I'm arrested for text messages. That puts no doubt in my mind that they would have arrested the mother of my kids for suspicion, because I was at her house, or because she owns a firearm . . . ." R. 40:22-25. From Petitioner's perspective, "the only reason you would inform me that you will be arresting the mother of my children is if you wanted me to talk to you." R. 50:5-7. Even if Pike did not intend to coerce him, Petitioner felt like Blackwell and his children were under threat, and so he waived his right to counsel and right to remain silent because of that pressure.

Critically, the court of appeals made a credibility determination that the comments on the way to booking did not occur, but that was not part of the trial court's ruling. The circumstances shown in the interrogation strongly corroborate Petitioner's testimony about Pike's earlier threat.

Early in the interrogation Petitioner denied meeting with Gerald for very long and disagreed with Captain Parker about what happened that night. Then, in exasperation, he said, "Y'all got my baby mama's ass and me. What the fuck going on because she tied up in some shit she don't know nothin' about." State's Ex. 30, at 31:30. Detective Pike then chimed in, "You tied her up in it." State's Ex. 30, at 31:45. This comment by Pike strongly corroborates Petitioner's testimony because it demonstrates Pike's contemporary knowledge and beliefs about Blackwell.

Still, in the interrogation, Petitioner insisted on her innocence: "I really didn't. I never told her about the mans." State's Ex. 30, at 31:50. At no prior point in the recording had anyone expressed any suspicion of Blackwell, and no one had mentioned her for approximately twenty minutes. There was no reason for Petitioner to randomly bring her up—to complain that the officers "got [her] ass" and then to try to exculpate her—unless he felt she had previously been threatened. The only reasonable explanation for Petitioner to mention her in this way is because Pike threatened her off-camera.

Later in the interrogation Sheriff Wallace accused Petitioner of shooting Gerald and asked about a handgun he accused Petitioner of using. State's Ex. 30, at 1:18:00. Petitioner denied the shooting but said, "I know which one y'all gonna try and use." State's Ex 30, at 1:18:15. He then explained that gun could not implicate Blackwell: "Let me tell you about that one. She ain't got it . . . ." State's Ex. 30, at 1:18:25. Again, they had not been discussing Blackwell at that time, and she had not yet been accused during the interrogation. Two hours into the interrogation still no one had accused Blackwell, and no threats had been made against her on the recording. Yet, Petitioner again tried to exculpate her: "My baby mama really didn't know nothing about this shit man, she really didn't." State's Ex. 30, at 2:12:30. This consistent

protection of Blackwell strongly corroborates his testimony about the earlier threat and that he spoke with the officers out of fear of retribution.[5]

These consistent attempts to protect Blackwell demonstrate Petitioner's motivation and the officers' coercion. The trial court and court of appeals erred by failing to recognize this. Petitioner interpreted Pike's statement as a threat against Blackwell with the implication that if he spoke to them, he might be able to keep her out of trouble. Even if that interpretation was not reasonable—which Petitioner does not concede—the statement was still involuntary as the product of "any sort of threat[] . . . however slight, or by the exertion of improper influence." *Corns*, 310 S.C. at 552, 426 S.E.2d at 327 (citing *Rochester*, 301 S.C. at 200, 391 S.E.2d at 246); *see also State v. Collins*, 442 S.C. 444, 459, 900 S.E.2d 426, 434 (2024) ("[S]tatements resulting from an unconstitutional inducement should be excluded if there is *any* degree of influence . . . ." (emphasis original) (citation omitted)); 16 Corpus Juris, *Criminal Law* § 1468, at 717 (1918) ("A confession of guilt by accused is admissible against him when, and only when, it was freely and voluntarily made without having been induced by . . . the fear of any threatened injury.").[6]

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[5] In addition, if McCall had fabricated the exchange with Pike, then he very likely would have described clearer and stronger threats. But he did not. He testified Pike "politely" asked where Blackwell was. R. 39:3-7. However, whether Pike was polite is only marginally important because the key is whether McCall *felt* coerced such that his will was overborne.

[6] This has long been the law in South Carolina:

> [I]t is essential to the admission of such confessions, as evidence against the accused, that they should be *freely* and *voluntarily* made. If they are made under the influence of hope or the torture of fear, they are wanting in the great essential of being free and voluntary, and come in too questionable a shape to be considered evidences of guilt.

State v. Kirby, 32 S.C.L. (1 Strob.) 155, 156 (1846) (emphasis original).

Given Petitioner's testimony about Pike's statements, Petitioner's clearly corroborating conduct in the recording, and Pike's testimony he did not recall, the state failed to meet its burden of proving Petitioner voluntarily waived his *Miranda* rights and voluntarily confessed. *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978)). The entire statement was involuntary, and the trial court erred by admitting it. In denying Petitioner's motion, the trial court ruled,

> I also analyzed the statements to determine whether there . . . was any threat of arresting Mr. McCall's -- the mother of his child. Mr. McCall testified yesterday that there were threats of arresting Mr. -- the mother of his child. So I looked at that. I wanted to make sure that there was no such evidence. I did look at it, and I did not find any threats to arrest the mother of Mr. McCall's child. Even if there was any potential evidence of that -- which I did not find -- I find the defendant's will was not overborn as a result of any alleged threat.

R. 61:5-15. There are two errors with this analysis. First, as explained, the recording clearly demonstrates there were threats to arrest Blackwell both during and prior to the interrogation. Sheriff Wallace did not "want to have to lock her up for it," and he told Petitioner, "We don't want to drag her into it, but I need to hear that from you: 'You didn't tell her nothing about it.'" State's Ex. 30, at 2:20:00. These are threats. For the trial court to conclude otherwise was error, and its decision was therefore entirely unsupported by the record or controlled by an error of law.

Second, the trial court apparently ignored Pike's statements on the walk to booking. Its statement, "I looked at that . . . to make sure that there was no such evidence of threats" misses the point, as it seems to refer solely to the recorded interrogation without considering Pike. The trial court could not have seen Pike's threat on the recording because it was made prior to the interrogation. By failing to consider Pike's threats, the trial court disregarded the most important part of Petitioner's argument. Those threats rendered his *Miranda* waiver invalid and required

the suppression of the entire recording, yet the court apparently paid it no mind. That was error because "[t]he trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances . . . ." *Collins*, 442 S.C. at 455, 900 S.E.2d at 432.

c. Appellate courts cannot resolve the credibility question against Petitioner and conclude Pike did not make these statements.

In its opinion the court of appeals wrote:

> [T]here is no evidence of any discussion of Blackwell during booking except McCall's own testimony that Pike informed him during the walk to the booking area that Blackwell would be arrested for accessory after the fact to murder. However, McCall admitted to lying in his first statement, and he initially gave several versions of his story in the second interview, undermining his credibility. Ultimately, we find no evidence of coercion.

McCall, No. 2025-UP-174, at 4. This analysis is erroneous because credibility determinations must be left to the trial court. *State v. Tutton*, 354 S.C. 319, 325-26, 580 S.E.2d 186, 190 (Ct. App. 2003) (citing *State v. Rosier*, 312 S.C. 145, 149, 439 S.E.2d 307, 310 (Ct. App. 1993)) ("The determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity."). Although the court of appeals and this Court can review the recorded interrogation, the initial and primary threat occurred off-camera when Pike walked Petitioner to booking. The trial court was in the best position to evaluate Petitioner's and Pike's testimony about that exchange—and it did not find Petitioner lacked credibility. While the court of appeals apparently believed it was important Petitioner's story changed over the course of a two-and-a-half-hour police interrogation, the trial court made no reference to this fact. It made no credibility finding at all. The court of appeals erred by making its own credibility determination and then basing its decision on its belief Petitioner lacks credibility.

Also, that Petitioner's story changed during the interrogation is not evidence he lied about Pike at trial. As he testified at the *Denno* hearing,

> Obviously, the story [in the interrogation] wasn't true either. But I did what I had to do to make sure the mother of my kids was not arrested, and my son was not going to be put in a box at birth. My kids mean everything to me and if that meant putting my life at risk for them, so be it.

R. 42:19-24. Petitioner admitted to lying in the interrogation and testified he did so because he feared for the wellbeing of his family. It is no mark on Petitioner's credibility that he "gave several different versions" of his story throughout the course of a lengthy interrogation while constantly worrying about his child's pregnant mother being arrested for murder.[7] One of the concerns with involuntary statements is precisely the possibility of innocent people giving false confessions under pressure. As Petitioner ultimately testified, "I took the route I felt like was being offered to me. First it seemed like, you know, maybe it was a self-defense, or whatever. I don't know the facts of the situation. I didn't know the facts of the situation." R. 355:12-17. An adverse conclusion about his credibility should not be drawn—and was not drawn below—from the fact Petitioner ultimately broke under that pressure.

In summary, the court of appeals incorrectly discounted Petitioner's testimony about his conversation with Pike on the way to booking based on a credibility determination it is without authority to make.

Further, the court of appeals pointed to three specific facts that should not have been given weight in evaluating whether Petitioner's will was overborne. First, the Court noted Petitioner "initialed that he understood each right [on the *Miranda* form] and wished to speak to

[7] It is also circular to conclude that the statement McCall alleges was involuntary is itself a valid basis for finding McCall's allegation lacks credibility.

law enforcement." *McCall*, No. 2025-UP-174, at 4. He did, but that is of no moment because the primary threat—Pike's inquiry about Blackwell—occurred prior to the waiver. The fact that Petitioner signed the waiver *after* he felt threatened into speaking can in no way demonstrate he voluntarily waived those rights. Even though he was advised of his rights, "the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978)). Petitioner testified he "wished to speak to law enforcement" because that was his method to try and protect Blackwell from arrest. He described how he "begged" for the form to request to speak with Pike. R. 40:4-11. This fact does not demonstrate he did so voluntarily. To the contrary, it demonstrates the effectiveness of Pike's threat.

Second, the Court stated, "officers interviewed Petitioner for over two hours before he confessed." *McCall*, No. 2025-UP-174, at 4. That fact sheds little light on the issue because it should not be surprising that Petitioner did not immediately confess. Petitioner spoke with the officers in order to protect Blackwell and his children. It is abundantly reasonable he would rather do that without confessing to murder. Importantly, as soon as Wallace began overtly threatening Blackwell, he succumbed to the pressure and confessed to protect her. That he resisted the pressure for an hour or two while insisting on her innocence does not tend to prove the voluntariness of the statement. The court of appeals is almost saying it does not believe Petitioner's testimony because he was not noble enough to immediately confess in order to protect Blackwell.

Third, the Court stated, "Wallace then proceeded to question McCall about Blackwell's involvement in the murder" only after Petitioner indicated he was carrying her firearm. *McCall*,

No. 2025-UP-174, at 4. The court of appeals suggested that because it was, perhaps, a reasonable path of inquiry from Wallace's perspective that it therefore was not a threat. Again, this misses the point that only Petitioner's perspective matters. Regardless of how reasonable an inquiry it may have been under the circumstances in Wallace's eyes, to Petitioner it was another threat on the pregnant mother of his infant child.

The issue in this case is not whether a reasonable person's will would have been overborne by Pike's and Wallace's statements. It is also not whether Pike and Wallace set out to force Petitioner to confess. The question is whether Petitioner understood Pike's and Wallace's statements and other conduct to be a threat against the pregnant mother of his infant child, and then whether that threat pushed him into giving the second recorded statement. If their conduct pressured him into speaking with the officers in any way, then they must be suppressed. *See Collins*, 442 S.C. at 459, 900 S.E.2d at 434 (2024) (alterations original) (quoting *Grades v. Boles*, 398 F.2d 409, 412 (4th Cir. 1968)); *Bram v. United States*, 168 U.S. 532, 548 (1897) (quoting *Wilson v. United States*, 162 U.S. 613, 623 (1896)) ("In short, the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion or inducement of any sort.").

CONCLUSION

Certiorari is appropriate in this case for two primary reasons. First, an injustice has been done—Petitioner was convicted because of threats made against his family and the steps he took to protect them. That is a violation of his constitutional rights. Second, the trial court and court of appeals failed to apply the law correctly. Neither court considered the totality of the circumstances seen in the recording and which clearly demonstrate he was threatened off-camera. Instead, the court of appeals based its decision on a credibility determination it was without authority to make.

Petitioner respectfully requests this Court grant certiorari to review that decision.

Respectfully Submitted,

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This 23rd day of July 2025.

ATTORNEYS FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Marion County
Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

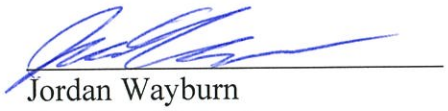
APPELLANT

Opinion No. 2025-UP-174 (S.C. Ct. App. filed May 28, 2025)

APPELLATE CASE NO. 2022-000921

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals and Appendix in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Zachir Devaugnte Shyhiim McCall, #364936, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 23rd day of July, 2025.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER