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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

The Honorable Michael G. Nettles

Appellate Case No. 2025-001023

The State of South Carolina,

Respondent,

v.

Rodolfo S. Moreno,

Appellant.

INITIAL BRIEF OF APPELLANT

Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

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STATEMENT OF THE CASE

On October 12, 2022, the Horry County Grand Jury indicted Rodolpho S. Moreno ("Appellant") for Criminal Sexual Conduct with a Minor ("CSCM"), Second Degree. (R. *). The Grand Jury also indicted Appellant for CSCM, Third Degree, on May 24, 2023. (R. *). The Grand Jury indicted Appellant for additional counts of CSCM, Second and Third Degree, on July 19, 2023. (R. *).

On May 12–16, 2025, Appellant proceeded to trial before the Honorable Michael G. Nettles ("Trial Court") and a jury. (Tr. p. 1 – 411). Brad Richardson ("Defense Counsel") represented Appellant, and Assistant Solicitors George Martin and Leigh Waller prosecuted the case on behalf of the State ("the State"). The jury returned guilty verdicts on all charges. (Tr. p. 389, line 23; p. 396, line 13 — p. 398, line 8; Tr. p. 400, line 8 – p. 401, line 12). The Trial Court then imposed concurrent sentences of fifteen (15) years imprisonment for each conviction. (Tr. p. 408, line 2 – p. 409, line 13).

On May 23, 2025, Appellant filed a Notice of Appeal. (R. *).

STATEMENT OF FACTS

State's Theory of the Case

The State argued that Appellant began sexually abusing his daughter ("Daughter") soon after her parents separated when she was approximately 12 years old. The State further argued that she kept the abuse a secret until she was 14 years old and confided in her best friend. During the separation, Appellant shared custody of his two biological children with his former spouse. Notably, his son ("Son") was about 13 months younger than Daughter. (Tr. p. 120, line 1 – p. 124, line 9; Tr. p. 139, line 17 – p. 140, line 5).

Background

By July of 2022, Appellant Rodolfo "Rudy" Moreno had been separated from his spouse for several years and living with his fiancé, Leyra Farinas ("Farinas"), at her home on Forestbrook Road since late October or early November of 2018. (Tr. p. 274, line 24 — p. 275, line 11). Farinas' daughter, Nicholle ("Nikki"), also lived at that residence after Appellant moved into Farinas' home. Nikki later moved out to attend college in September 2021. (Tr. p. 317, lines 22-25; Tr. p. 319, line 4 – p. 320, line 25).

In July 2022, Daughter accused Appellant of sexual abuse occurring between June 1, 2019 and March 19, 2021. (Tr. p. 124, lines 10-22; Tr. p. 133, lines 6-12; Tr. p. 136, line 12 – p. 138, line 24; R. * Indictments). Her mother contacted the police on July 10, 2022, and Daughter provided a written statement to a patrol officer at their home. (Tr. p. 145, line. 13 – p. 146, line 24; Tr. p. 158, lines 2-15; Tr. p. 179, line 5 – p. 180, line. 3).

On July 15, 2022, the police sent Daughter to the Children's Recovery Center ("CRC") for an examination, and the CRC found no evidence indicating sexual assault or activity. (Tr. p. 238; Tr. p. 157, line 19 — p. 158, line 15; Tr. p. 249, line 5 – p. 251, line 8). Notably, the police did not have

the CRC interview Daughter, and although her allegations indicated that Brother was present during some of the charged conduct, the police or CRC never interviewed Brother. (Tr. p. 178, lines 20-25; Tr. p. 182, lines 5-12; Tr. p. 238, lines 6-9; Tr. p. 256, lines 19-25).

On July 18, 2022, Detective Paul Johnson ("Det. Johnson") of the Horry County Police Department ("HCPD") called Appellant while he was at work and requested that Appellant come to HCPD. Upon his arrival, Det. Johnson led him into an interrogation room with two detectives where he was Mirandized[1] and questioned by police. (Tr. p. 49, lines 17-24; Tr. p. 186, lines 1-21; R.* State's Exhibit No. 10, Recording).

After about ten minutes of questioning, detectives finally told Appellant that Daughter made allegations that he inappropriately touched her. (Tr. p. 50, lines 11-20; Tr. p. 188, lines 4-16). During the nearly 1 hour and 45 minute interrogation, Det. Johnson repeatedly lied and deceived Appellant. (Tr. p. 51, lines 5-17; Tr. p. 223, lines 2-4). Det. Johnson also introduced factual allegations made by Daughter, interjected language intimating that Appellant merely made "mistake" and had a "weak moment," and leveraged Appellant's faith in suggesting that he should admit to the abuse. (Tr. p. 197, line 16 – p. 200, line 10; Tr. p. 207, line 2 — p. 208, line 1; Tr. p. 210, line 23 — p. 211, line 1; Tr. p. 220, line 18 – p. 221, line 3; Tr. p. 222, line 20 — p. 223, line 14).

Additionally, Det. Johnson posed untenable choices, such as alluding that Appellant was either a pedophile preying on children or merely a man who had a moment of weakness. (Tr. p. 195, lines 2-25; Tr. p. 219, lines 16-25). Det. Johnson told Appellant that Daughter was in therapy and would either end up addicted to drugs or in a mental institution unless Appellant apologized for what he did to her. (Tr. p. 201, line 23 — p. 203, line 14; Tr. p. 207, lines 2-1; Tr. p. 208, line 21 — p. 209, line 8).

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

To build rapport and elicit a confession, Det. Johnson assured Appellant that the conversation was confidential, stating "it's okay, it's just me, you, and [another detective] in this room" and that they were not going to tell anybody. (Tr. p. 44, line 20 – p. 45, line 7; Tr. p. 54, line 1 – p. 55, line 20; Tr. p. 209, lines 21-25; R.* State's Exhibit No. 10, Recording). In fact, Det. Johnson provided these assurances after Appellant indicated his initial belief that others were watching behind a two-way mirror in the room. (Tr. p. 44, lines 3-11; Tr. p. 55, lines 6-14; R.* State's Exhibit No. 10, Recording).

After approximately an hour of enduring and denying lies, pressure, and false promises, Appellant's will "broke", and he admitted to some of the alleged conduct. (Tr. p. 58, line 23 – p. 59, line 2; Tr. p. 168, lines 6-9; Tr. p. 223, lines 15-25; Tr. p. 226, line 16 – p. 227, line 7). Despite those assurances, the police arrested Appellant immediately after his induced statement. (Tr. p. 227, lines 8-10).

Pre-Trial: Motion to Suppress

Pre-trial, Defense Counsel moved to suppress Appellant's statement to police from July 18, 2022. (Tr. p. 29, lines 12-15; R.* State's Exhibit No. 10, Recording). Det. Johnson testified and admitted that the police had no intention of arresting Appellant that day because they did not have enough evidence to arrest him. Det. Johnson also conceded that it was important to obtain an admission from Appellant. (Tr. p. 42, lines 7-21; Tr. p. 49, lines 7-16).

Defense Counsel argued that the Court should suppress the involuntary statement based on law enforcement's false assurances of confidentiality to Appellant in violation of Due Process, *State v. Collins*,[2] and other supporting case law. (Tr. 59, line 8 — p. 61, line 3; Tr. p. 62, line 4 – p. 66, line 25; Tr. p. 70, line 17 – p. 71, line 17).

[2] *Collins*, 442 S.C. 444, 900 S.E.2d 426 (2024).

Despite acknowledging law enforcement made such false assurances to Appellant more than once, the Trial Court denied Appellant's motion to suppress. (Tr. p. 68, line 10 – p. 69, line 11; Tr. p. 73, line 2 — p. 74, line 15). Specifically, the Trial Court found that the statements by police were "*improper and it should not have been said*," but held that Appellant's will was not overborn because (1) Appellant continued to deny allegations before making admissions; and (2) the admissions did not amount to a full confession. (Tr. p. 73, lines 12-25) (emphasis added).

The Trial Court noted, "I think there's overwhelming circumstantial evidence that he had sex with his minor daughter." (Tr. p. 74, lines 1-6). The Trial Court also stated the facts presented here were distinguishable from *Collins* because there was no restriction on Appellant's ability to leave or threat of incarceration. (Tr. p. 74, lines 6-9). Consequently, the Trial Court found the statements by Det. Johnson, "*although improper, were not so convincing as to render the statement involuntary*." (Tr. p. 74, lines 12-14) (emphasis added).

Trial

At trial, the State presented no physical evidence or eye-witness testimony regarding any of the allegations against Appellant. (Tr. p. 182, line 5 – p. 184, line 14; Tr. p. 212, lines 23-24; Tr. p. 240, line 2; Tr. p. 242, lines 21-23; Tr. p. 249, lines 5-14; Tr. p. 249, line 25 — p. 251, line 8). Rather, the State's case relied upon the Daughter's testimony, and over Defense Counsel's objection, Appellant's statement to police. (Tr. P. 119, line 6 – p. 138, line 24; Tr. p. 162, line 14 – p. 175, line 17; R.* State's Exhibit No. 10, Recording).

Appellant presented a defense-in-chief. Although the State never provided specific dates or times for when the abuse occurred, Appellant produced two witnesses to provide testimony regarding his whereabouts and those with him during the broad time frames contained in the indictments. (Tr. p. 187, lines 16-25; R.* Indictments).

His fiancé, Farinas, testified that Appellant moved into her home in late October or early November of 2018, and that she and/or her daughter, Nikki, were with Appellant whenever Daughter and Son visited their home. Farinas also testified that she was with Appellant every night in their bedroom. (Tr. p. 274, line 21 — p. 275, line 4; Tr. p. 293, line 21 — p. 294, line 7). The only time when Appellant did not stay with her was during COVID because Appellant went back to his old house in Conway for three or four days.[3] (Tr. p. 286, lines 14-24; Tr. p. 310, lines 5-19).

His fiancé's daughter, Nikki, confirmed that Appellant moved into her mother's house on Forestbrook Road in late October or early November of 2018. (Tr. p. 323, lines 3-11). Nikki testified that she stayed home with Daughter and Son when they visited in the Summer while Farinas and Appellant worked during the day. Notably, Nikki testified that at no point did she observe anything improper or strange between Appellant and Daugther. (Tr. p. 326, line 20 — p. 327, line 23).

During closing arguments, the State acknowledged the lack of evidence and told the jury, "*I don't need physical evidence, I've got her statement and his statement*." (Tr. p. 344, lines 18-19) (emphasis added). The State then highlighted the importance of the only evidence implicating Appellant, Daughter's testimony and Appellant's statement: "*Of course, [Daughter] and the defendant are really the only two that really know what happened*." (Tr. p. 347, lines 22-24) (emphasis added).

The jury began deliberations at 10:00 AM, and the jury subsequently submitted several questions, asking (1) to see the transcript of the video recording of Appellant's statement to law enforcement,[4] and (2) for the Daughter's written statement. (Tr. p. 389, line 23 — p. 390, line 7).

[3] Appellant and Farinas kept his old house to use as a rental property. (Tr. p. 312, lines 2-23).

[4] The only video admitted into evidence was Appellant's statement to law enforcement. (Tr. P. 4, line 12 — p. 5, line 17).

The Trial Court ultimately issued an *Allen* charge from 12:24 to 12:27 PM, and the jury returned verdicts of guilty as charged at 2:41 PM.

This appeal follows.

STANDARD OF REVIEW

The voluntariness of a defendant's statement to police is a mixed question of fact and law. *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023). Accordingly, appellate courts "review the trial court's factual findings for any evidentiary support," while "the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review." *Id.*

ARGUMENT

I. THE TRIAL COURT ERRED BY ADMITTING APPELLANT'S STATEMENT TO POLICE BECAUSE THE POLICE PROVIDED FALSE ASSURANCES OF CONFIDENTIALITY, AND WHERE THE TRIAL COURT AGREED THE FALSE ASSURANCES WERE IMPROPER BUT FOUND THE STATEMENT VOLUNTARY DESPITE THE UNCONSTITUTIONAL INDUCEMENT AND LACK OF EVIDENCE AGAINST APPELLANT.

Law

There are two constitutional bases that require statements admitted into evidence to be voluntarily made by a criminal defendant: (1) the Due Process Clause of the Fourteenth Amendment, and (2) the Fifth Amendment right against self-incrimination. *Miller*, 441 S.C. at 120, 893 S.E.2d at 313 (citing *Dickerson v. United States*, 530 U.S. 428, 433, 120 S. Ct. 2326 (2000)). The United States Supreme Court has observed that the requirement of warnings regarding the Fifth Amendment in *Miranda* "does not, of course, dispense with the voluntariness inquiry." *Dickerson*, 530 U.S. at 444.

Pursuant to *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774 (1964), a defendant "is entitled to a reliable determination as to the voluntariness of his confession by a tribunal other than the jury charged with deciding his guilt or innocence." *State v. Fortner*, 266 S.C. 223, 226, 222 S.E.2d 508, 510 (1976). In South Carolina, the trial judge makes this initial determination of voluntariness required by *Jackson v. Denno*. *Id*. at 226-27, 222 S.E.2d at 510.

"The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); *see also State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010) ("In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances

surrounding the confession.").

"If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." *Saltz*, 346 S.C. at 136, 551 S.E.2d at 252 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 225, 93 S. Ct. 2041 (1973)). "Ultimately, the determination will depend 'upon a weighing of the circumstances of pressure against the power of resistance of the person confessing.'" *Miller*, 441 S.C. at 120, 893 S.E.2d at 314 (quoting *Dickerson*, 530 U.S. at 434).

Our Supreme Court has noted, "Courts may consider the impact of a number of factors" in assessing voluntariness, such as the accused's youth and maturity, lack of education, or low intelligence; the failure to advise the accused of his constitutional rights; the presence of a written waiver of rights; the physical condition and mental health of the accused; the circumstances of the interrogation, including its length, repeated nature, location, and continuity; the use of physical punishment; whether law enforcement offered specific promises of leniency (as opposed to general comments that cooperation would be beneficial); and whether law enforcement made intentional misrepresentations of the evidence against the accused. *See id.* at 120-21, 893 S.E.2d at 314 (enumerating a nonexclusive list of factors).

"It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect." *State v. Parker*, 381 S.C. 68, 89, 671 S.E.2d 619, 630 (Ct. App. 2008) (citation omitted). "These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." *Id*. (citation omitted).

However, "[c]ertain interrogation techniques, either in isolation, or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they

must be condemned under the Due Process Clause of the Fourteenth Amendment." *Miller*, 441 S.C. at 120, 893 S.E.2d at 313 (quoting *Miller v. Fenton*, 474 U.S. 104, 109, 106 S. Ct. 445 (1985)). "Coercion is determined from the perspective of the suspect." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (citation omitted).

In *State v. Collins*, the defendant was suspected of participating in an arson that resulted in the homicide of a 12-year-old boy. *Id*., 442 S.C. at 449-50, 900 S.E.2d at 428-29. When Collins came to the police station to retrieve his cell phone, two police officers interrogated him. *Id*. The Officers took Collins to a small, secluded room, mirandized him, and questioned him for approximately three hours. The Officers recorded the interrogation. *Id*. 442 S.C. at 450, 900 S.E.2d at 429.

After only about 21 minutes into questioning, Collins was concerned that he would "say the wrong thing." The Officers assured Collins, "Whatever you tell me, it ain't gonna leave this room, This, um, tape is going into my file, …." *Id*. 442 S.C. at 451, 900 S.E.2d at 430. The Officers indicated they were interested in a different suspect, and that he would be able to go home that day. The Officers also threatened Collins that he could be facing prison time if he did not tell them anything. *Id*. Eventually, Collins relented and confessed to aspects of the arson; however, he did not accept responsibility. Rather, Collins "maintained that he left the scene and was not the person who actually started the fire". Notably, Appellant wrote at the beginning of his written statement, "I DID NOT DO it." *Id*. 442 S.C. at 451-52, 900 S.E.2d at 430.

Our Supreme Court found Collins' post-Miranda statement involuntary due to the unconstitutional inducement of the false assurances of confidentiality. Specifically, the Court determined that "[a] false assurance of confidentiality from law enforcement is inherently coercive because it interferes with a layperson's ability to make a fully informed decision whether to engage

in an interview under such circumstances." *Collins*, 442 S.C. at 455, 900 S.E.2d at 432.

The *Collins* Court held,

> [T]he only reasonable interpretation of the officer's statements to Collins—that the door was closed and the blinds were drawn because nothing would ever leave that room or the 'file'—is that they constituted a false promise of confidentiality. Although Collins was assured that he would be going home that day regardless of what he said and that he was not the focus of the investigation, the unspoken truth was that law enforcement could—and did—later seek to use Collins's uncounseled, 'confidential' statements against him in a court of law, to his detriment, despite these assurances to the contrary. This misstatement of the law and false assurance by law enforcement regarding Collins's constitutional rights violated due process.
>
> . . .
>
> We modify [the Court of Appeals'] decision slightly to clarify that a false statement of confidentiality can be conclusive on the issue of voluntariness, regardless of the existence or negation of Miranda warnings (or the need to examine the totality of the circumstances). However, the erroneous admission of an involuntary statement is still subject to a harmless error analysis.

Collins, 442 S.C. at 459, 900 S.E.2d at 434.

Discussion

In this case, the Trial Court erred by admitting Appellant's statement to police because the police provided false assurances of confidentiality, and where the Trial Court agreed the false assurances were improper but found the statement voluntary despite the unconstitutional inducement and lack of evidence against Appellant. *See Collins*, 442 S.C. 444, 900 S.E.2d 426.

Same as in *Collins*, the police involuntarily obtained Appellant's statement through the false assurances of confidentiality and coercion. *Id.* After denying involvement, Det. Johnson unleashed a torrent of lies and relentless psychological pressure on Appellant, including false assurances of confidentiality, to unconstitutionally induce a confession. (Tr. p. 51, lines 5-17; Tr. p.

223, lines 2-4).

Specifically, Det. Johnson assured Appellant that the conversation was confidential, stating "it's okay, it's just me, you, and [another detective] in this room" and that they were not going to tell anybody. (Tr. p. 44, line 20 – p. 45, line 7; Tr. p. 54, line 1 – p. 55, line 20; Tr. p. 209, lines 21-25; R.* State's Exhibit No. 10, Recording). In fact, Det. Johnson provided these assurances after Appellant indicated his initial belief that others were watching behind a two-way mirror in the room. (Tr. p. 44, lines 3-11; Tr. p. 55, lines 6-14; R.* State's Exhibit No. 10, Recording).

Akin to *Collins*, Appellant subsequently admitted to some of the conduct but did not make a full confession. *See Collins*, 442 S.C. 444, 900 S.E.2d 426. (Tr. p. 58, line 23 – p. 59, line 2; Tr. p. 168, lines 6-9; Tr. p. 223, lines 15-25; Tr. p. 226, line 16 – p. 227, line 7). After approximately an hour of enduring and denying lies, pressure, and false promises, Appellant's will "broke", and he admitted to some of the alleged conduct. (Tr. p. 58, line 23 – p. 59, line 2; Tr. p. 168, lines 6-9; Tr. p. 223, lines 15-25; Tr. p. 226, line 16 – p. 227, line 7). Despite those assurances, the police arrested Appellant immediately after his coerced statement. (Tr. p. 227, lines 8-10).

The Trial Court found that the statements by police were "*improper and it should not have been said*," but erroneously held that Appellant's will was not overborn because (1) Appellant continued to deny allegations before making admissions; and (2) the admissions did not amount to a full confession. (Tr. p. 73, lines 12-25) (emphasis added). The defendant in *Collins* also did not make a full confession or provide all the admissions to police because the interview continued for more than two and half hours. *Id.*

"[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." *Denno*, 378 U.S. at 378, 84 S.Ct. at 1781. This fundamental principle applies "even

though there is ample evidence aside from the confession to support the conviction." *Id.* Thus, the Trial Court's erroneous belief as to whether Appellant's admissions were true based upon the strength of the State's evidence of guilt was misplaced in determining the voluntariness of Appellant's statement.

Finally, the Trial Court failed to distinguish *Collins* on the basis of Appellant's ability to leave and lack of threats. In *Collins*, the defendant came there of his own volition, was Mirandized, and not arrested until after his admissions. While police indeed wanted him to stay and talk, they simply did not tell him he could leave. *See Collins*, 442 S.C. 444, 900 S.E.2d 426.

Here, Appellant came to the police department on his own volition, was Mirandized, and was not arrested until after his admissions. Det. Johnson admitted the confession's importance to the case, and likewise did not tell Appellant he was free to leave. Although he did not directly threaten Appellant with incarceration, Det. Johnson nevertheless applied psychological coercive pressure. For example, he told Appellant that his daughter was in therapy and would either be a drug addict or in a mental institution if he did not apologize, and implied that Appellant was either a child predator or had a moment of weakness. (Tr. p. 195, lines 2-25; Tr. p, 197, line 16 – p. 200, line 10; Tr. p. 201, line 23 — p. 203, line 14; Tr. p. 207, line 2 — p. 208, line 1; Tr. p. 208, line 21 — p. 209, line. 8; Tr. p, 210, line 23 — p. 211, line 1; Tr. p. 219, lines 16-25; Tr. p. 220, line 18 – p. 221, line 3; Tr. p. 222, line 20 — p. 223, line 14).

Under these unconstitutional circumstances, Appellant's will was overborn, and his statement to police was involuntary. Our Supreme Court explained in *Collins*, "[b]ecause it is difficult to determine with certainty the effect that a false promise may have had on an individual defendant, the statements resulting from an unconstitutional inducement should be excluded if there is *any* degree of influence." *Collins*, 442 S.C. at 459, 900 S.E.2d at 434 (citing *Grades v. Boles*, 398 F.2d 409, 412

(4th Cir. 1968)). This is due to the reality that "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." *Id.* (quotation citations omitted)). Accordingly, the multiple misstatements of law and "false assurances by law enforcement regarding [Appellant's] constitutional rights violated due process." *Collins*, 442 S.C. at 459, 900 S.E.2d at 434.

The admission of his involuntary, incriminating statement to police prejudiced Appellant and contributed to the jury's verdict.[5] As our Supreme Court acknowledged, "A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." *Miller*, 441 S.C. at 130, 893 S.E.2d at 318–19 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S.Ct. 1246 (1991)).

Despite Farinas and Nikki testifying on Appellant's behalf to establish that he was not alone with Daughter during the time period contained in the indictments, the erroneous admission of Appellant's involuntary statements fatally undermined the credibility of the defense witnesses in the eyes of the jury. (Tr. p. 274, line 21 — p. 275, line 4; Tr. p. 293, line 21 — p. 294, line 7; Tr. p. 323, lines 3-11; Tr. p. 326, line 20 — p. 327, line 23.

Notably, the State presented no physical or forensic evidence to the jury or additional statements from any potential eyewitnesses. Despite Daughter's allegations, the police failed to interview Brother or have either of them questioned by personnel trained to interview juveniles at the CRC. (Tr. p. 182, line 5 – p. 184, line 14; Tr. p. 212, lines 23-24; Tr. p. 240, line 2; Tr. p. 242, lines 21-23; Tr. p. 249, lines 5-14; Tr. p. 249, line 25 — p. 251, line 8; Tr. p. 344, lines 18-19).

[5] "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (citing *Arnold v. State,* 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)).

Det. Johnson candidly admitted there was not enough evidence to seek an arrest warrant without Appellant's confession. (Tr. p. 42, lines 7-21; Tr. p. 49, lines 7-16). Thus, the entire case boiled down to the jury weighing the credibility of Daughter's testimony and Appellant's involuntary statement to police. The State conceded this fact in its closing argument: "[Daughter] and [Appellant] are really the only two that really know what happened." (Tr. p. 347, lines 22-24).

Finally, the jury specifically focused on the Appellant's statement during deliberations. The jury asked to see a transcript of Appellant's video recorded statement and Daughter's written statement, which took over four hours and included an *Allen*[6] charge. (Tr. p. 389, line 24 — p. 390, line 7; Tr. p. 396, line 13 – p. 398, line 8; Tr. p. 400, lines 5-6). Therefore, it is reasonable to believe that the jury placed critical attention on Appellant's statement and sought to juxtapose it against Daughter's statement. *See, e.g., State v. Blassingame*, 271 S.C. 44, 47, 244 S.E.2d 528, 530 (1978) (holding it was "reasonable to assume that the jury had, at this point, focused critical attention" on an issue which it inquired about during deliberations and the court provided instruction). In other words, the Trial Court's error could not have been harmless beyond a reasonable doubt, as it is likely the outcome of the trial would have been different if the Trial Court suppressed Appellant's involuntary statement.

Therefore, the Trial Court erred by admitting Appellant's statement to police because the police provided false assurances of confidentiality, and where the Trial Court agreed the false assurances were improper but found the statement voluntary despite the unconstitutional inducement and lack of evidence against Appellant. *See Collins*, 442 S.C. 444, 900 S.E.2d 426.

[6] *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

CONCLUSION

Based on the foregoing reasons, Appellant Rodolfo S. Moreno respectfully requests that this Court reverse his convictions and sentences and remand this case to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,

s/ Dayne Phillips

_____

Dayne Phillips
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072
803-272-4503 (office)
803-807-0234 (cell)
dayne@pricebenowitz.com

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ATTORNEY FOR APPELLANT