RECEIVED
Jun 01 2026
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.

BRANDON LEE CORDER,

Appellant.

Appellate Case No. 2023-001543

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
State ID #100851

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

S. R. HUBBARD, III
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

APPELLANT'S ISSUES PRESENTED

I.

Whether re-trial was barred by the Double Jeopardy Clause when Appellant's first trial ended in a mistrial that Appellant was goaded into moving for by the solicitor?

II.

Whether the trial court erred by refusing to exclude Appellant's statements to Officer Creech when those statements were gathered as a result of a custodial interrogation, in violation of *Miranda v. Arizona*?

III.

Whether the trial court erred by refusing to exclude Appellant's statements to Special Agent Beeler when Secret Service policy prohibiting Appellant from having his attorney present during questioning negated the *Miranda* warnings read to Appellant?

STATEMENT OF THE CASE

At approximately, 3:09pm on December 27, 2019, Brandon Lee Corder (hereinafter "Appellant") shot and killed Joanie Youmans (hereinafter "Victim") via a gunshot to the head with his .357 magnum revolver. Appellant was indicted by a Lexington County grand jury for murder during its September 2020 term. (Tr. Sept 25, p. 5). Appellant was represented by attorneys Benjamin Stitely and Anna Yonge. Assistant Solicitors Sutania Fuller and Robert E. McNair, III prosecuted the case. Appellant first proceeded to a jury trial before the Honorable Debra McCaslin between February 27 and March 2, 2023. However, the proceedings ended in a mistrial. The case was called for retrial on September 25, 2023, again before Judge McCaslin, and with the same counsel representing the parties. At the conclusion of the trial on September 27, 2023, the jury found Appellant guilty as charged. (Tr. p. 382). Judge McCaslin then sentenced Appellant to forty-five years imprisonment. (Tr. p. 395).

STATEMENT OF FACTS

Facts preceding the crime

Frederick Wine met Victim as a result of being next door neighbors. They began to date, and from the beginning Victim was upfront with him about also dating Appellant at that time. The circumstances led to Mr. Wine hearing angry calls from Appellant to Victim. (Tr. p. 125-126). One such phone call, Appellant threatened to blow Victim's head off and "all kinds of threats." Mr. Wine testified that Appellant was serious at the time and he thoroughly believed the threats he heard from Appellant. The last such call was about a month prior to Victim's death. (Tr. p. 126).

The last time Mr. Wine saw Victim was two days before her death. They had already ended their relationship, but she was at his house at the time. Before she left that day Mr. Wine told her: "not to go back over to Brandon's house because he meant what he said." (Tr. p. 127).

Ms. Mariah Erickson offered similar testimony. She was engaged to Victim's son, Corey Youmans, and Victim lived with them. She had met Appellant in person in June of 2019, and had on multiple occasions been around Appellant. She knew his voice and how he spoke, and likewise knew Victim's voice. (Tr. p. 130-131). Ms. Erickson testified that Victim would often confide in her, and this included playing a recording of a conversation that took place between Victim and Appellant in late June. Both Ms. Erickson and Corey made copies of the recording on their own phones at the time. The recording was then admitted and published to the jury. (Tr. p. 131-134; 159).

Ms. Erickson testified that the voice on the recording was Appellant. She then testified as follows:

> He told her to walk home and she didn't because it was 3:30 in the morning and he said that if she didn't he'd pick her up by the back of the hair and throw her out the window and then got mad and proceeded to tell her – while she was trying to deescalate the problem and crying and he proceeded to tell her that I'll murder your stupid ass, bitch.

(Tr. p. 160).

The Crime

The Chief of Communications for Lexington County 911, Sharmel Miller[1], testified as to the 911 calls and CAD report for December 27, 2019. (Tr. p. 232). The first 911 call was from Lee Bowerman to report a suicide at 3:09pm. The second 911 call was from a phone number ending in ***-6404.[2] In this call, Appellant reported: "I don't know where the bullet came from." The third 911 call from another neighbor at 3:15pm. (Tr. p. 239-240).

Neighbor Billy Dowd testified as to his observations as Appellant's next-door neighbor.

---

[1] Miller was called to testify as part of the defense's case-in-chief.
[2] It was not disputed that Appellant made this second 911 call.

He saw Victim minutes before her death as he was walking over to his daughter's home. He almost spoke to her, but Appellant called her away before they could greet each other. Once at his daughter's home a few minutes later, he heard a single gunshot. He left the home and ran to the fence at Appellant's home to ask if everything was ok. (Tr. Sept 25, p. 108-110). Appellant responded, "No, Billy, nothing's all right," and then walked back into the house. (Tr. Sept 25, p. 110). Mr. Dowd then ran up to Appellant's yard and saw Victim lying on the ground by the trailer. Appellant walked back outside. He asked Appellant if Victim had killed herself "or if he accidentally. . ." but before he could finish the question Appellant told him that someone had shot through the woods. (Tr. Sept 25, p. 110). Soon after the police arrived. He later heard Appellant telling the officer "there's no gun, somebody shot through the woods." Mr. Dowd testified that he was familiar with the sound of Appellant's gun. Appellant had been shooting it nearly every day for a couple of weeks, and he saw Appellant purchase the gun while standing in his yard. Mr. Dowd knew the gun to be a .357 revolver. (Tr. Sept 25, p. 111-112)

At 3:09pm, Officer John Gietz received the dispatch call for a gunshot wound, self-inflicted by a female victim at *** Valley Lane in Lexington County. He responded and arrived as the first officer on the scene at 3:15pm. (Tr. Sept 25, p. 87-88). Officer Gietz arrived in an unmarked vehicle and was not in uniform.[3] Appellant was alerted that the police had arrived and Officer Gietz was able to observe Appellant as he exited the home. Before Appellant saw Officer Gietz, Gietz described him as appearing "calm, not upset at all." After Appellant saw Officer Gietz, Geitz testified: "he began – I don't know a better way to say it, but putting on a show, acting upset, like he was crying." (Tr. Sept 25, p. 94-95).

[3] Testimony indicated that he was wearing plain clothes, but that such clearly identified him as law enforcement. (Tr. Sept 25, p. 90).

Officer Gietz testified that without asking Appellant questions, Appellant indicated that Victim had shot herself and directed him to where her body had fallen. (Tr. Sept 25, p. 95). Officer Gietz proceeded to check Victim for a pulse but found none. He then began to look for a gun near the body. Appellant told him that he did not know where the gun was. (Tr. Sept 25, p. 97). Officer Gietz testified that Appellant had informed him that he was throwing wood on the pile in the yard when he heard the shot and then heard her fall. He then went to try and help her. In this subsequent explanation he did not give any details about where the gunshot came from. (Tr. Sept 25, p. 97-98).

Officer Brenda Snelgrove arrived at the scene as well. While on the scene she heard Appellant saying to Officer Sherban that he and Victim had broken up a week earlier, but that she had called to work things out. Victim was his on and off girlfriend. She also heard him give some details of the moments before the shooting, which included Victim going to get a pack of cigarettes out of the car, and when she turned toward him, she was struck by a bullet and fell. He went to her but could not help her, he then banged on the window for his mother to call 911. Appellant also stated that there was not a gun in the car and that Victim did not have a gun on her. Appellant surmised that the gunshot was neither close, nor far away, and maybe came from down the road. (Tr. Sept 25, p. 125-126).

Officer Snelgrove continued her investigations. She could not locate any cigarettes from inside the car, despite Appellant's statement, nor could she locate a firearm at the crime scene. Instead, a gun was ultimately found in the bedroom closet inside Appellant's home. It was underneath a brown blanket in the closet and was not immediately visible. (Tr. Sept 25, p. 138-139; p. 142-143). The gun was .357 magnum revolver. It had six unfired cartridge casings in the cylinder, along with one fired casing. The gun had not been cleaned, indicating that it had been

fired. (Tr. Sept 25, p. 144-145; p. 148).

Victim's gunshot wound was to the left front side of her head and the exit wound was at the back right side of her head. (Tr. Sept 26-27, p. 53). The wound did not contain any soot or stippling, and forensic pathologist, Dr. Presnell, classified the shooting as a homicide in light of these facts. (Tr. p. 54-56). Dr. Presnell was able to collect a bullet fragment from Victim's autopsy, but ultimately it was not suitable for comparison. (Tr. p. 59; p. 110). DNA swabs taken from the gun provided very strong likelihood ratios of including Victim's DNA. (Tr. p. 80-85). Suzann Cromer, SLED forensic lab expert, testified as to the specifics of the recovered gun. She testified that if the hammer is cocked back the gun can only fire *if the trigger is pulled,* due to the hammer block safety. The revolver was in proper working order, therefore accidental discharge for this firearm from a drop or from an impact to the hammer was not possible; the trigger must have been pulled. (Tr. p. 105-108; 112). She further testified that the trigger required 4.5lbs of pressure to fire for a single action discharge (where the hammer is already pulled back) and 10.25lbs of pressure to fire for a double action discharge (where the hammer is not already pulled back). (Tr. p. 104).

Special Agent Brad Beeler testified to the interview he conducted with Appellant on December 17, 2021. He testified that he read Appellant his *Miranda* rights before beginning. (Tr. p. 165-166). Thereafter, Appellant indicated that his most recent account of how Victim was shot was not true. Appellant told Agent Beeler that he was upset that Victim had been seeing an individual named Fred. This revelation was given without Agent Beeler even mentioning Fred Wine. (Tr. p. 171). Appellant went on to describe how he grabbed the holstered gun from his car, walked back around the vehicle, unholstered it and pointed it at Victim. He then pulled the hammer back on the revolver. Appellant then described that he was "flexing" or posturing in such a way as

to flare out his shoulders and chest. He did this in order to scare Victim and warn her not to mess with him. (Tr. p. 172). Agent Beeler further testified that Appellant admitting putting his finger on the trigger. (Tr. p. 174).

Appellant's case-in-chief included primarily his and his mother's testimony.[4] Appellant's mother, Sandra Cooper, testified that while Appellant was putting debris into the burn pile in their yard, she was woken by the sound of a gunshot. She then heard her son yelling "Oh, my God, Momma" and banging on the bedroom window. She jumped up to let him in the back door. (Tr. p. 206-210). They plugged in her landline telephone because they were not certain where the cell phone(s) were. The phone took a few minutes to boot up, and thereafter, at her instruction, Appellant dialed 911. (Tr. p. 211; 218). She described Appellant as being "very upset" and could not remember if Appellant had a gun with him when she let him in the house. (Tr. p. 213-217).

Appellant testified in his own defense. He testified that Victim was a friend who he became romantically involved with from time to time. They had left for work together on December 27th and returned around 2:15pm that afternoon to offload trimmings into Appellant's burn pile. However, they first went into the house to use the restroom and get something to drink. (Tr. p. 253-256).

Appellant testified that he owned a Smith and Wesson .357 Magnum revolver, and that he had not purchased this gun from the store due to concern that he would not be permitted to purchase or own a firearm.[5] (Tr. p. 257). That afternoon he went to his vehicle to look for cigarettes and in

---

[4] Appellant also called Investigator Cameron Sherban. Investigator Sherban reviewed body camera footage from the scene, wherein the Investigator agreed that Appellant appeared upset and was crying at times. (Tr. p. 228-229). On cross, however, Investigator Sherban testified that Appellant's demeanor often changed. These changes included when he spoke about Fred Wine and when he was speaking with officers. (Tr. p. 230).

[5] He agreed that he had fired the gun several times in his yard. (Tr. p. 257).

the process of doing so he realized that he had left the gun and holster underneath the seat of his vehicle the day before. He testified that he retrieved both the holster and gun with the intention of putting them inside the home. As he was walking away from the car and attempting to holster the gun, it discharged and struck Victim. He testified that he did not intend to fire the weapon that day. (Tr. p. 257-258). Appellant testified that he recalled that the hammer was already pulled back on the gun from the day before. (Tr. p. 258; 281). Appellant explained that he was with someone the prior day and was going to shoot the gun recreationally, but that the friend begged off out of worry that the gunfire might draw police attention. Appellant claimed he did not know how to release the hammer on the weapon, so he left it cocked. (Tr. p. 281).

Appellant claimed that he was disoriented after the gun went off, but when he saw Victim on the ground he ran to her and was screaming "Oh, God, Momma, Please" or something to that effect. (Tr. p. 259). Appellant testified that in his state of mind at the time he could not locate any phone other than his mother's landline. (Tr. p. 262). Appellant admitted to putting the gun in the closet and likewise stated that he "didn't know what [he] was doing at the time. I was not in a statement of mind where I can even say I was competent." (Tr. p. 262).

On cross, Appellant denied ever making threatening comments toward Victim, and denied the audio recording was his voice. (Tr. p. 270-271). He denied telling Agent Beeler that he pulled the hammer back, pointed the gun at Victim, and placed his finger on the trigger. (Tr. p. 272). He denied telling Officer Gietz that Victim shot herself. (Tr. p. 273). He admitted to lying to law enforcement multiple times about how the shooting took place; this included lies about not knowing from where the gun was fired. (Tr. p. 273). He also admitted telling Officer Creech that he was "pulling it out to take it off me and it went off in my hand." (Tr. p. 274-275). He also admitted to carrying and owning a firearm unlawfully. (tr. p. 279).

In regard to his testimony about his mental state, when confronted about being cognizant enough to hide the gun afterward, Appellant replied: "I'm not an expert. I can't speculate on that." (Tr. p. 285). He also testified that he was "certain" that he put the holster with the gun in the closet. (Tr. p. 286). This statement was later contradicted by rebuttal testimony from Officer Creech, wherein after conducting an exhaustive search for the holster, he went back to Appellant to get clarification on where the holster was placed. Appellant told him that the holster was in a piece of furniture in the foyer area of the home, just inside the front door. Appellant's alleged holster was never found by law enforcement. (Tr. p. 311-312).

Concerning his relationship with Victim, Appellant agreed that he would tell Victim every time: "please, don't go back to Fred. Why are you leaving me to go back to him?" He also agreed that he wanted Victim to love him, and not Fred. (Tr. p. 287-288). He then denied that Victim broke up with him, and instead said that they "came to a mutual understanding." (Tr. p. 288). He further denied being angry that Victim went back to Fred and instead characterized it as an annoyance. (Tr. p. 290).

The State also offered in Reply additional testimony from Agent Beeler. His indication that the holster story was not truthful, and that he purposefully cocked and aimed the gun at Victim was made known to Officer Creech as well, and that such was done in Appellant's presence. Appellant did not contest such, except to clarify his meaning of the word "flex." (Tr. p. 323-324). Agent Beeler also testified to Appellant's repeated assertion that "there was no malice either of forethought or malice or forethought," noting that such struck him as legal denials. (Tr. p. 325)

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only" and it is bound by the trial court's findings of fact, unless they are clearly erroneous. *State v. Collins*, 409 S.C. 524,

529–30, 763 S.E.2d 22, 25 (2014) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Collins*, 409 S.C. at 529–30, 763 S.E.2d at 25 (2014) (citing *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *State v. Lopez*, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002).

Appellant court's do not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." *State v. Parker*, 391 S.C. 606, 612, 707 S.E.2d 799, 801 (2011). The standard of review for determining the voluntariness of a defendant's statement is a mixed question of law and fact. Appellate court's "will review the trial court's factual findings regarding voluntariness for any evidentiary support," but "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). Appellate courts "will not disturb the trial court's admissibility determinations absent a prejudicial abuse of discretion." *State v. Barksdale*, 433 S.C. 324, 331, 857 S.E.2d 557, 560 (Ct. App. 2021) (citing *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record." *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003).

ARGUMENT

I. Double jeopardy did not attach to Appellant's first trial because, as found by the trial court, Appellant failed to present any evidence of intent or goading.

Issue as it was presented at trial

Over the course of Appellant's first trial, the parties engaged in discussions of the "defense of accident." The State noted that the defense would not be available because it involved Appellant illegally owning a firearm and therefore failing the second element necessary to permit the defense. See *State v. Commander*, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011). Appellant conceded that it was not seeking a defense of accident, despite referencing the shooting as an accident multiple times during the trial. (Tr. Feb, p. 49-50; p. 170-176; p. 90; p. 103). Additionally, the question of accidental discharge was addressed by the State's expert witness as relating to mechanical malfunction of either the gun or the ammunition. Following such testimony and evidence, the State began its closing arguments wherein the solicitor made the following statements:

> He said he got the gun from underneath the seat in his car and walked around the rear of his vehicle and trailer. He removed the gun from the holster, point[ed] it at Joanie and pulled the hammer back then he says the gun fired. Still not taking responsibility because he still says I'm not a shooter. Make it make sense. make it make sense. In Lexington County, that you can come in, you can tell the police that I pointed the gun at her and pulled back the hammer, make it make sense, but I'm not a shooter, that's what he said, and you have it, he said he was just trying to scare her. . ." (Tr. Mar 2, p. 62).
>
> . . .
>
> [Y]ou heard on some of the audios he says it was an accident, it was an accident. It wasn't an accident, not possible. You heard the SLED expert say the gun was working just fine, there was no manufacturer malfunction on that gun, so it's not legally an accident, it's not a defense, and you'll know that because the Judge is not going to charge you on that. (Tr. Mar 2, p. 63).
>
> . . .
>
> So why not involuntary manslaughter? You've heard that thrown around. And the judge is going to charge you on the law of that. But this is why it's not involuntary. This is a unique situation for the jury

> where he admits to doing something and you all have to decipher the law. Involuntary is a lesser included of murder, so in South Carolina, there's murder, and then there's a statute for manslaughter that includes two different levels, and this is the lesser one. It is defined as the unintentional killing of another without malice. That's what distinguishes in South Carolina murder and manslaughter, malice. And that's while engaged in either commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm or the doing of a lawful act with a reckless disregard for the safety of others. (Tr. Mar 2, p. 64-65).

Following the State's closing argument, Appellant raised a motion for mistrial on three separate grounds. The first challenged the solicitor's argument to the jury to "make it make sense" arguing that such was obligating the jury to make a finding and shifting the State's burden of proof. (Tr. Mar 2, p. 68). The second ground challenged the solicitor's reference to legal accident, because the judge would not be charging accident as a defense. Appellant argued that such was a mischaracterization of the law and that it was a statement forbidding the jury to decide something within their purview. (Tr. Mar 2, p. 68-69). The third challenged the solicitor's arguments to the jury to decipher the law, arguing that "it is improper to tell the jury that they have anything to do with the law aside from determine the facts." (Tr. Mar 2, p. 69).

The solicitor argued in response that "make it make sense" was in reference to their duty to determine the facts (presumably in a logical way) for the case and that such was not inappropriate. It was simply a colloquialism to the jury's duty to determine the facts in this case. (Tr. Mar 2, p. 69). Regarding the judge not charging accident, the solicitor argued that he believed it appropriate given Appellant's repeated claims in the audio to this being an accident, and that the concept of accident was also addressed in relation to whether the gun malfunctioned. The solicitor had never seen a case where mentioning the absence of a defense and charge was inappropriate, and that the argument she was raising was distinct from the question of involuntary manslaughter. (Tr. Mar 2, p. 70-71). Lastly, regarding the phrase "decipher the law," the solicitor argued that at

the outset of this case the parties have juxtaposed two separate theories of the case: murder versus involuntary manslaughter. As a result, the jury is left to determine the facts in a unique case and then apply those facts between those two sets of laws. She could identify nothing improper with using the term as she did. The solicitor concluded her arguments by requesting the motions for mistrial be denied for lack of any error of law in her argument. (Tr. Mar 2, p. 73).

In response, Appellant added that the discussion of accident blurred the distinction between the defense of accident, accidental discharge, and the factual explanation of the crime as an accident. An indication of the absence of a charge from the court has the effect of suggesting the court holds a certain position or opinion as to the facts of the case.

Though the court did not offer an opinion as to whether there was actual error on the part of the solicitor as to the first and third arguments, it noted that concerns raised by the appellant could be easily addressed through instructions.[6] However, the Court ultimately concluded that the "accident" issue warranted the grant of a mistrial, noting that the solicitor's comment "brings the judge right into the jury's deliberations, and it gives them the impression that I made some ruling that I haven't made." (Tr. Mar 2, p. 76). The court goes on to say:

> And, you know, it's easy for us lawyers to sit here and talk about accident, but we're talking about the legal sense of accident as to whether he is entitled to a defense or not. They don't know that, they think accident as something totally different, and in this case, particularly, I've heard the word accident several times in the defendant's own statement, and I feel like he would be absolutely prejudiced.
>
> . . .
>
> I know nothing was done intentionally, this Court does not believe it was done intentionally, it just happened. And you know, sometimes it does happen. So I'm declaring a mistrial, thank you.

(Tr. Mar 2, p. 76-77).

---

[6] The court did not go so far as to make explicit findings that the Solicitor's actions were in error. She merely indicates that that concerns raised could be fixed by instruction.

In pre-trial motions before Appellant's retrial, counsel moved to dismiss the case, arguing that double jeopardy attached to the prior trial because the State "goaded" Appellant into a mistrial motion. Appellant cited to *State v. Parker*, 391 S.C. 606, 707 S.E.2d 799 (2011) and *Oregon v. Kennedy*, 456 U.S. 667, 102 S. Ct. 2083, 72 L. Ed. 2d 416 (1982). (Tr. Sept 25, p. 34-39). The State responded by noting that *Parker* is indeed the applicable case, but highlights the fact that *Parker* requires a showing of *intent* to subvert the protections of the double jeopardy clause. As the Appellant has not and cannot demonstrate that there was any intent to goad a mistrial motion, double jeopardy cannot attach. (Tr. Sept 25, p. 39-41). In response, Appellant attempted to argue that "[a]ny action by the government that forces my hand and forces me to make a mistrial motion on a direct action. . ." is "an action by the State that goads."

The court curtly disagreed. The court noted that it recalled this case and the parties' efforts to avoid the mistrial, reviewed its notes from the first trial, and found that the issue causing the mistrial was not "goading" and was not intentional. The court then went on to note that the particular issue was one that was intertwined with the law of accident and the law of involuntary manslaughter, and that the manner in which it came out simply placed the court in a position where it could not provide an instruction that could extract itself from the fact finding. The motion was therefore denied under the controlling authority. (Tr. Sept 25, p. 43).

Discussion

Appellant's argument that his case should have been dismissed on the basis of double jeopardy is both factually and legally incorrect. The trial court correctly found that there was no basis for dismissal on double jeopardy grounds as the prior mistrial was not the result of a goading or intentional misconduct by the solicitor, just as it had previously found when it ruled on the motion for mistrial. (Tr. Sept 25, p. 43; Tr. Mar 2, p. 76). And, under the standard of review, there

most certainly is no basis for clear error supporting reversal. Factual findings are left to the discretion of the trial court and Appellant has failed to prove an abuse of discretion in this case.

The law, established by both the United States Supreme Court and the South Carolina Supreme Court, sets forth that "[p]rosecutorial conduct that might be viewed as harassment or overreaching, even if sufficient to justify a mistrial on defendant's motion . . . does not bar retrial absent intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause. . . Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." *State v. Parker*, 391 S.C. 606, 612, 707 S.E.2d 799, 802 (2011) (quoting *Oregon v. Kennedy*, 456 U.S. 667, 675–76, 102 S.Ct. 2083, 2089, 72 L.Ed.2d 416 (1982)). "The trial court's findings concerning the prosecutor's intent is a factual one and will not be disturbed on appeal unless clearly erroneous." *Id.*, (quoting *State v. Coleman*, 365 S.C. 258, 263, 616 S.E.2d 444, 447 (Ct. App. 2005). Under the law, and under the standard of review, Appellant's argument fails.

The record demonstrates that the concept of "accident" was addressed in multiple ways during the course of the trial, including the legal defense of accident. This is very clearly what the solicitor was referring to when he referenced such not being "legally an accident[,] it's not a defense, and you'll know that because the Judge is not going to charge you on that." The problem with the argument is that jurors are not lawyers and they are not necessarily able to distinguish between the legal defense of accident and lay person factual findings that equate to "an accident." That was not an intended consequence of the solicitor, and that difficulty was explicitly identified by the trial court as to how this issue arose. The awarding of a mistrial was appropriate, but Appellant cannot use his mistrial to now claim himself immune from retrial.

The record from the first trial demonstrates that the Court, without prompting from either party and without notice of future arguments for double jeopardy, ruled *sua sponte* that the error was not intentional. It is clear, given her explanation of the issue and the reasoning for her ruling that this finding was based upon the context of the trial and the nature of the error. These are matters Appellant omits in his claim for double jeopardy protection, claiming instead that only an express confession from the solicitor could ever amount to evidence of intent under *Parker*. Appellant's argument for double jeopardy is further *weakened* by the defense counsel's repetitious efforts to obtain a mistrial. Appellant's other arguments for mistrial were wholly insufficient for such a motion. Contrary to the arguments of "intent" made by Appellant, it more so appears that Appellant was *probing* for a mistrial motion, given that he made four total motions for such, three of which being meritless, and then sought to evade prosecution of his client entirely by claiming double jeopardy. (See Tr. Feb, p. 222; p. 226). The failure of the defense's arguments at trial are accentuated by the stark misunderstanding of the law, wherein defense counsel even denied the need for showing intent and rested on the assertion that simply *any* mistrial motion that a defense attorney feels "forced" into making, is sufficient to constitute a goaded mistrial that forbids retrial. (Tr. Sept 25, p. 42-43).

The arguments raised on appeal do little more and the record thoroughly supports the court's ruling. First, Ms. Fuller did not articulate any denial of intent coupled with a concession of error. She stood by the arguments raised in the first trial closing as simply not being erroneous and not being a basis for mistrial. It is not until the pre-trial double jeopardy motion that the question of intent is addressed, and therein, it is Mr. McNair that argues a lack of intent because that is the legal standard required. Moreover, the facts surrounding the issue do not support the Appellant's theory of "goading," given that the state participated in extensive efforts with the court to try and

construct a curative instruction that would fix the issue; a result the State desired given the confidence in their case.[7] Moreover, this was not an issue where the State had been given prior warnings on the issue that were then disregarded. Appellant also attempts to claim that the error in question was obvious, and therefore goading, because there are no circumstances wherein a court's opinion of the facts can be made known to the jury. This argument is misleading as to the nature of the error, as it is clear from Ms. Fuller's argument that she was speaking *to the law of accident*, and not to supposed factual opinions of the court. The error had the unintended consequence of potentially being misinterpreted, but it was not a flagrant assertion of the court's opinion as to the facts of the case.

Appellant attempts to rely upon *Cone v. State*, 443 S.C. 487, 905 S.E.2d 368 (2024) for support of his argument. Appellant's reliance is entirely misplaced, however, considering the fact that *Cone* did not address a mistrial double jeopardy matter. It was a matter of first impression that reversed the Court of Appeals, *in 2024,* on a matter specific to the idiosyncrasies of Section 16-3-652. The case is not just distinguishable, it is both factually and legally irrelevant. *Parker* is the best comparison here, and *Parker* demonstrates the propriety of the court's ruling.

In the alternative to his argument that the trial court actually erred, Petitioner pivots to an argument that the standard established by *Oregon v. Kennedy* and adopted by our Supreme Court is inappropriate because the subjective intent of the prosecutor could never be established, absent a confession by the prosecutor. Such is simply not true. The circumstances of how an error originates can be quite revealing as to the question of intent, as the circumstances prove here, but here they demonstrate *the lack of intent* on the part of the solicitor. The absence of prior warnings,

[7] Objectively, such an argument is compelling when the amount of evidence against Appellant is considered.

the multifaceted nature of "accident" in this case, the efforts by the State to avoid a mistrial, and the overwhelming evidence against Appellant all demonstrate the propriety of the ruling and the standard. What Appellant's alternative argument demonstrates is simply his inability *to meet that standard.*

In any case, the proposed standard from Arizona and Michigan favored by Appellant still requires a finding that the prosecutorial misconduct "'amounts to intentional conduct' which the prosecutor knows or should know to be improper, and which he pursues for 'any improper purpose with indifference to significant resulting danger of mistrial or reversal.'" Appellant falls woefully short of satisfying this standard too, and this standard in application is almost indistinguishable from the standard currently used. Appellant urges this new standard on the basis of the South Carolina Constitution's protections against double jeopardy – but such are almost identical to the U.S. Constitution, and there is therefore no state law distinction that justifies the abandonment of the standard set forth in *Kennedy*.

Appellant was rightfully retried, he was rightfully convicted, and the law is rightfully established. This Court should affirm.

II. The trial court correctly found that the pre-*Miranda* statements made by Appellant were admissible, but regardless, the disputed pre-*Miranda* statements were never offered into evidence.

Issue as it was presented at trial

A *Jackson v. Denno* hearing was conducted during Appellant's first trial. Thereafter, Appellant moved to suppress Officer Creech's interview of Appellant. The motion was denied. At his retrial, Appellant moved for suppression, again arguing custody was established, and added the testimony of Appellant on the matter. Additional testimony from Sergeant Creech was also offered in the motion hearing. The trial court again denied the motion. After review, Respondent cannot

find any instance where the recordings or the testimony of Officer Creech for pre-*Miranda* statements were ever offered into the record by the State.[8]

Discussion

Appellant argues that the trial court erred in ruling his pre-*Miranda* statements to Sergeant Creech were admissible as part of a noncustodial interrogation. Appellant is mistaken. However, Appellant concedes in footnotes 6 and 10 that the recording in question was never admitted and that Appellant did not pursue a *Seibert* argument in the second trial. Moreover, Respondent can find no portion of the record where the pre-*Miranda* statements were offered into evidence by the State. Appellant is challenging a ruling on the admissibility of evidence never admitted, and as such, he cannot satisfy the necessity that prejudice arise from the trial court's ruling. This plainly defeats any merit to the claim as a basis for reversal. If error exists at all, it is harmless by default. Moreover, the ruling of the trial court was appropriate. Appellant was not in a custodial interrogation at any time prior to the officer's reading of *Miranda* warnings, therefore no portion of Appellant's statements could be deemed inadmissible. There is no error of law for which reversal can be based.

Respondent does not concede that there was any error of law by the trial court in this matter. However, because the disputed evidence was never admitted at trial, the strongest and most straightforward argument against Appellant's claim is that he has unquestionably failed to demonstrate prejudice. *State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014) ("The

---

[8] The Exhibit in question is State's 43. Appellant has included it as "State's Exhibit 7 from the Reconstruction Hearing (Audio of Creech BWC)." See Appellant's Designation of Matter. That exhibit does not appear in the listed exhibits in the transcript, Sergeant Creech did not testify in the State's case-in-chief, and his testimony in Reply was limited to statements made by Appellant after he was read his *Miranda* rights. Appellant, on direct examination, testified that he eventually told officers where the gun was located (the last comment before Creech endeavored to give *Miranda* rights). The "holster story" was given entirely post-*Miranda*.

harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained."). As the contested evidence was never introduced by the State, it cannot be said to have contributed to the verdict. Appellant's argument for reversal *must* therefore fail.

Turning to the question of custody, the record supports the court's ruling and Appellant has failed to demonstrate an abuse of discretion. Whether a defendant was in "custody" is based upon the totality of the circumstances of the interrogation conducted, including "the location, purpose, and length of interrogation, and whether the suspect was free to leave the place of questioning." *Barksdale*, 433 S.C. at 332, 857 S.E.2d at 561 (citing *State v. Medley*, 417 S.C. 18, 25, 787 S.E.2d 847, 851 (Ct. App. 2016). "The initial determination of whether an individual was in custody depends on the objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned." *State v. Sprouse*, 325 S.C. 275, 282, 478 S.E.2d 871, 875 (Ct. App. 1996). "The relevant inquiry is whether a reasonable man in the suspect's position would have understood himself to be in custody." *State v. Easler*, 327 S.C. 121, 128, 489 S.E.2d 617, 621 (1997), overruled on other grounds by *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018).

Here, Appellant was approximately fifty feet from his own front door (Tr. Feb, p. 71-72), and sitting in the *front seat* of Sergeant Creech's vehicle so as to permit a conversation away from the other offices and bystanders that were at the scene. (Tr. Feb, p. 83-85). He was not in handcuffs (Tr. Feb, p. 89) and he was even told that he was not under arrest. (Tr. Feb, p. 92). Appellant was free to leave, and any reasonable individual would have felt so upon being so informed. Additionally, the conversation prior to *Miranda* warnings being given was markedly short (approximately 5 minutes). At that juncture Sergeant Creech did not have any evidence tending

to establish criminal acts by Appellant, only that certain facts were not adding up to the original nature of the dispatched call; Sergeant Creech was trying to determine what happened. It was not until Appellant admitted that the shooting had been an accident that he took the precaution of ensuring Appellant knew his *Miranda* rights. There was no significant deprivation of Appellant's freedom of action at any point prior to being read his *Miranda* rights, and he was not subsequently detained or arrested until after this conversation with Sergeant Creech ended and well after his rights had been read and explained. (Tr. Feb, p. 120-121; 243).

It is clear from the record that the totality of the circumstances supports the trial court's ruling and there is no basis for demonstrating an abuse of discretion. This court should affirm the ruling of the trial court.

III. The interview testimony of Agent Beeler was properly admitted because Miranda rights was properly given and because Appellant freely and voluntarily provided the statement after consenting to polygraph procedures.

Issue as it was presented at trial

At Appellant's first trial,[9] the *Jackson v. Denno* hearing addressed the statements made by Appellant to Special Agent Beeler's following the conclusion of his polygraph. Agent Beeler testified that he is a special agent with the United State Secret Service, and that in addition to his extensive polygraph training, his duties also include assisting other agencies with interviews of suspects. He was contacted to assist in this case by conducting a polygraph examination. (Tr. Feb, p. 136-137). The examination was performed on December 17, 2021, at the Lexington County Sheriff's Office. Appellant was in custody at this time.

Agent Beeler explained that they conducted a pre-test explanation which included giving

[9] The issue was revisited during retrial, but no new evidence or arguments were presented and the trial court maintained its prior ruling.

Miranda warnings, obtaining consent for the polygraph, and obtaining a voluntary waiver of rights to answer questions. (Tr. Feb, p. 139; 140-14; 142-143). He then published his standard *Miranda* warnings:

> Before I ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court or other proceedings. You have the right to talk to a lawyer for advice before I question you and have them with you during questioning. If you cannot afford a lawyer and want one, one will be appointed to you by the court. If you decide to answer questions now without a lawyer present, you will still have the right to stop questioning at any time.

(Tr. Feb, p. 140). Appellant then initialed and signed the waiver. At no time did Appellant indicate that he did not wish to speak with Agent Beeler. (Tr. Feb, p. 145). Agent Beeler then conducted the polygraph and performed an evaluation of the examination. Thereafter he generated a summary report of his encounter with Appellant. (Tr. Feb, p. 140).

Appellant acknowledged his existing statements to law enforcement explaining the unintentional firing of the gun while attempting to holster the weapon. (Tr. Feb, p. 145-146). The polygraph test was then conducted and Appellant's results indicated deception. (Tr. Feb, p. 146). Agent Beeler then moved into the standard "post-test phase" of the examination. He discussed with Appellant his failure of the polygraph, and over the course of the next hour Appellant proceeded to change his story a couple of times. Ultimately, the changes indicated that he retrieved the gun, pointed it at Victim, pulling the hammer back, and then placed his finger on the trigger. Appellant did not say that he pulled the trigger, only that the gun went off following these actions. Appellant also indicated that he was frustrated about a relationship Victim had with another man named Fred and admitted that his previous story to law enforcement was not true. Appellant explained that he was only trying to flex his posture (as in puffing out his chest) and scare victim. (Tr. Feb, p. 147-149). These statements were then conveyed to Sergeant Creech while in

Appellant's presence, and Appellant did not dispute them when discussed. (Tr. Feb, p. 149).

On cross examination, Agent Beeler noted that audio and video recording is not permitted as a matter of Secret Service policy and that no one else is permitted in the room while the Appellant is being polygraphed. (Tr. Feb, p. 152). Agent Beeler testified that he has had attorneys come into the room before, "but not during the polygraph process." (Tr. Feb, p. 152). Agent Beeler agreed that the post-test phase includes questions to the subject as to why deception was indicated. (Tr. Feb, p. 154).

On redirect, Agent Beeler testified that the three-part testing system is a universal standard for all polygraph examinations. At no time did Appellant ever ask Agent Beeler to end the conversation, nor did he ever indicate that he wanted to invoke his rights. (Tr. Feb, p. 154-155). Per the state's motion, the court found the post-test phase interview admissible. *Miranda* rights were clearly given and this custodial interview should be treated as any other. Moreover, Appellant was the one who sought to be polygraphed and there was no evidence of coercion. (Tr. Feb, p. 180).

Discussion

Appellant's argument fails on both factual and legal grounds. In short, Appellant was appropriately mirandized. He understood his rights and then effectively waived his rights in order to participate in the polygraph evaluation that he asked to have performed. At no time did Appellant invoke any of his *Miranda* rights, nor were any of his rights denied to him upon request. The trial court was correct in ruling the post-test phase interview admissible.

A defendant who is subjected to custodial interrogation must first be read his *Miranda* rights in order for his statements to be admissible at trial. "The main purpose of *Miranda* is to ensure that an accused is advised of and understands the right to remain silent and the right to

counsel." *State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 383, 130 S. Ct. 2250, 2261, 176 L. Ed. 2d 1098 (2010). "Both of these *Miranda* rights protect the privilege against compulsory self-incrimination" *Id.* "As such, a suspect must 'invoke' these rights 'unambiguously.'" *Id.* "'A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that avoid[s] difficulties of proof and ... provide[s] guidance to officers on how to proceed in the face of ambiguity.'" *Id.*

The facts are clear here. Appellant was brought in for a custodial interrogation and properly Mirandized. He then effectively waived those rights. There are then *no facts or circumstances* that indicate Appellant invoked his right to counsel or his right to remain silent, and only Appellant can invoke such rights – not counsel. Therefore, in the absence of any assertion of rights, the argument that counsel was not permitted to be in the room during the examination is irrelevant to the question of whether Appellant was made aware of his rights, waived them, and voluntarily provided a statement.

Appellant relies up *State v. Collins*, 442 S.C. 444, 459, 900 S.E.2d 426, 434 (2024), a case where officers assured the defendant that his statement would be confidential and would not "leave this room." He attempts to use this case as support for the premise that Appellant was not appropriately advised of his right to counsel because, unbeknownst to Appellant, the polygraph examination protocols were potentially contradictory to the right to have counsel present during questioning. Such is inapposite. In *Collins*, the contradiction of the *Miranda* right *was used to obtain the statement*. Here the right was made known to Appellant, was not used to elicit his statements, and ultimately left unasserted entirely. It cannot be said to have "influenced" his decision to waive the right and answer questions.

Agent Beeler stated that defense attorneys have been present in the examination room

before, just not during the examination itself.[10] (Tr. Feb, p. 152). Defense counsel's questioning does not make perfectly clear whether Agent Beeler included the post-test phases as part of the prohibited portion of the "examination." However, his mention of prior attorneys coming into the room in other cases and his testimony that Sergeant Creech came into the room and received the newly provided information from Agent Beeler during the post-test phase would indicate that Appellant's argument is improperly construing the supposed procedural limitations against counsel. In any case, had Appellant unambiguously requested the presence of counsel, it either would have 1) resulted in counsel's presence for further questioning, or 2) ended the post-test interview phase outright, regardless of the procedural limitations. *State v. Kennedy*, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998) (quoting *Edwards v. Arizona*, 451 U.S. 477, 485, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981) ("Once an accused requests counsel, police interrogation must cease unless the accused himself 'initiates further communication, exchanges, or conversations with the police.'"). Appellant did not invoke his rights, so Appellant's hypothesized impact of supposed procedural inconsistencies does not impact the voluntariness of the statements Appellant provided.

The trial court was correct in treating the matter like any other custodial interview and in deeming the statements admissible. This Court should affirm the trial court's ruling.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

---

[10] Sometimes the presence of counsel is undesirable or even inhibitive to the purpose of the conducted examination. Cf *State v. Hardy*, 283 S.C. 590, 592, 325 S.E.2d 320, 322 (1985).

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

S. R. HUBBARD, III
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072

BY: *s/ W. Joseph Maye*
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

June 1, 2026