

RECEIVED

Aug 21 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable David P. Caraker, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VANDER ANTONIO MINGLEDOLPH,

APPELLANT

APPELLATE CASE NO. 2025-002247

INITIAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENT	
The court erred in admitting Appellant’s statements, where Appellant invoked his <i>Miranda v. Arizona</i> , 384 U.S. 436 (1966), rights but the investigator immediately interrogated Appellant anyway, since the State did not establish the statements were voluntary and taken in compliance with <i>Miranda</i>	4
Introduction.....	4
Relevant facts.....	6
Discussion	12
CONCLUSION.....	25

TABLE OF AUTHORITIES

United States cases

<i>Berghuis v. Thompson</i> , 560 U.S. 370 (2010)	17
<i>Colorado v. Connelly</i> , 479 U.S. 157 (1986)	13
<i>Davis v. United States</i> , 512 U.S. 452 (1994)	16, 17
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000)	12, 13
<i>Edwards v. Arizona</i> , 451 U.S. 477 (1981)	passim
<i>Jackson v. Denno</i> , 378 U.S. 368 (1964)	passim
<i>Maryland v. Shatzer</i> , 559 U.S. 98 (2010)	5, 14, 15, 19
<i>McNeil v. Wisconsin</i> , 501 U.S. 171 (1991)	15
<i>Michigan v. Harvey</i> , 494 U.S. 344 (1990)	15
<i>Michigan v. Mosley</i> , 423 U.S. 96 (1975)	passim
<i>Minnick v. Mississippi</i> , 498 U.S. 146 (1990)	15, 19
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	passim
<i>Montejo v. Louisiana</i> , 556 U.S. 778, 787 (2009)	15, 22
<i>Moran v. Burbine</i> , 475 U.S. 412 (1986)	14, 22
<i>Rhode Island v. Innis</i> , 446 U.S. 291 (1980)	passim
<i>Rogers v. Richmond</i> , 365 U.S. 534 (1961)	12
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973)	4, 12

South Carolina cases

<i>In re Tracy B.</i> , 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010).....	19
<i>State v. Blassingame</i> , 271 S.C. 44, 244 S.E.2d 528 (1978)	24
<i>State v. Collins</i> , 442 S.C. 444, 900 S.E.2d 426 (2024)	13, 20, 22, 24
<i>State v. Ellefson</i> , 266 S.C. 494, 224 S.E.2d 666 (1976)	20
<i>State v. Goodwin</i> , 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009)	13
<i>State v. Henderson</i> , 286 S.C. 465, 334 S.E.2d 519 (Ct. App. 1985)	17
<i>State v. Kennedy</i> , 333 S.C. 426, 510 S.E.2d 714 (1998).....	18
<i>State v. McCray</i> , 332 S.C. 536, 506 S.E.2d 301 (1998)	15
<i>State v. Middleton</i> , 288 S.C. 21, 339 S.E.2d 692 (1986)	17
<i>State v. Miller</i> , 441 S.C. 106, 893 S.E.2d 306 (2023).....	3, 12, 13
<i>State v. Miller</i> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007).....	13, 21, 22
<i>State v. Pagan</i> , 369 S.C. 201, 631 S.E.2d 262 (2006)	22
<i>State v. Reeves</i> , 301 S.C. 191, 391 S.E.2d 241 (1990)	22
<i>State v. Rochester</i> , 301 S.C. 196, 391 S.E.2d 244 (1990).....	13, 21
<i>State v. Stewart</i> , 433 S.C. 382, 858 S.E.2d 808 (2021)	22

Constitutional provisions

U.S. Const. amend. V.....	12, 22
U.S. Const. amend XIV	12, 22

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in admitting Appellant's statements, where Appellant invoked his *Miranda v. Arizona*, 384 U.S. 436 (1966), rights but the investigator immediately interrogated Appellant anyway, since the State did not establish the statements were voluntary and taken in compliance with *Miranda*?

STATEMENT OF THE CASE

During the February term of 2025, a Lexington County Grand Jury indicted Vander Mingledolph, Appellant, for trafficking in cocaine, 100 grams or more but less than 200 grams; trafficking in fentanyl, 28 grams or more; and trafficking in methamphetamine, 100 grams or more but less than 200 grams. R. *(Indictment nos. 2025-GS-32-00236, -00235, -00234, all pages). Appellant was tried before the Honorable David P. Caraker, Jr., and a jury, from October 27 – 29, 2025. Appellant was represented by Robert T. “Theo” Williams, Sr. Jordan A. Cox and Bruce H. Norton, II, prosecuted the case. Tr. 1. Appellant was convicted as indicted. Tr. 354, l. 13 – 355, l. 1. He was sentenced to serve concurrent terms of twenty-five years’ imprisonment on each offense and pay a \$50,000 fine for each offense. Tr. 370, ll. 17-22.

This appeal follows.

STANDARD OF REVIEW

“[V]oluntariness presents a mixed question of law and fact.” *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023). The appellate courts “will review the trial court’s factual findings regarding voluntariness for any evidentiary support. However, the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review.” *Id.*

ARGUMENT

The court erred in admitting Appellant's statements, where Appellant invoked his *Miranda v. Arizona*, 384 U.S. 436 (1966), rights but the investigator immediately interrogated Appellant anyway, since the State did not establish the statements were voluntary and taken in compliance with *Miranda*.

Introduction

The provision of *Miranda v. Arizona*, 384 U.S. 436 (1966), warnings was not recorded. However, the recorded interrogation, which came upon the heels of the warnings, captured the investigator stating: "I know you said you didn't want to talk." Nevertheless, the investigator interrogated Appellant and repeatedly badgered him to try to get him to waive his *Miranda* rights. Court's Exhibit #1; Tr. 56, l. 11 – 57, l. 23; Tr. 75, l. 21 – 77, l. 17. At the pretrial *Jackson v. Denno*, 378 U.S. 368 (1964), hearing, the investigator claimed that Appellant had not invoked his rights. This cannot be squared with the recording. Tr. 67, ll. 2-16. The court surprisingly found admissible the three snippets of the recording offered by the State. Tr. 90, l. 20 – 95, l. 18.

A defendant is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession. *Jackson v. Denno*, 378 U.S. at 385. Courts consider the totality of the circumstances in evaluating voluntariness. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Evidence which is obtained as a result of custodial interrogation is inadmissible unless the prosecution demonstrates the defendant was provided with *Miranda* warnings and waived those rights. *Miranda v. Arizona*, 384 U.S. at 479; *Edwards v. Arizona*, 451 U.S. 477, 487 (1981). Interrogation is express questioning or words or actions by the police other than those normally attendant to arrest and custody that the police should know are

reasonably likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980). Upon invocation of *Miranda* rights, interrogation must cease until counsel has been made available or until a significant period of time has passed and fresh warnings have been provided. *Edwards*, 451 U.S. at 484-85; *Michigan v. Mosely*, 423 U.S. 96, 105-06 (1975); *Maryland v. Shatzer*, 559 U.S. 98, 110 (2010).

Appellant’s invocation, which was unambiguous, was simply disregarded. No counsel was provided, virtually no time passed before the investigator initiated the interrogation, and no fresh warnings were provided. Tr. 74, l. 22 – 77, l. 3; Tr. 231, ll. 16-20. This was impermissible. *Edwards*, 451 U.S. at 484-85; *Michigan v. Mosely*, 423 U.S. at 105-06. The investigator knew or should have known the tactic of unnecessarily and improperly getting in the car with Appellant to interrogate him, in disregard of Appellant’s invocation, was likely to elicit an incriminating response. The investigator knew or should have known the tactic of unnecessarily allowing Appellant to call his child’s mother at the conclusion of the interrogation, after Appellant had already confessed, was likely to elicit an incriminating response. That these were tactics is further evidenced by the surreptitious recording and the misrepresentation to Appellant that he was not being recorded. Appellant’s statements were in response to interrogation and were obtained as a result of interrogation. *Rhode Island v. Innis*, 446 U.S. at 300–01.

The statements were involuntary under the totality of the circumstances and obtained in violation of the Fifth and Fourteenth Amendments. *Miranda v. Arizona*, 384 U.S. at 479; *Edwards v. Arizona*, 451 U.S. at 487; *Michigan v. Mosely*, 423 U.S. at 105-06; *Jackson v. Denno*, 378 U.S. at 385. The admission of the statements was not harmless in this trafficking

case, where the prosecution relied on them heavily and used them to show knowledge and control for constructive possession. Tr. 306, ll. 7-14; Tr. 311, ll. 4 – 312, l. 25; Tr. 314, ll. 9-24.

Relevant facts

Appellant was wanted by authorities in Georgia. Tr. 35, ll. 7-17; Tr. 52, ll. 7-8; Tr. 54, l. 25 – 55, l. 8. Narcotics officers from Richland County and Lexington County, South Carolina knew where Appellant was and on April 25, 2024, they were conducting surveillance at the Rodeway Inn on Piney Grove Road in the Irmo area, purportedly to arrest Appellant on the out-of-state warrant. Tr. 51, l. 16 – 53, l. 24; Tr. 123, l. 1 – 124, l. 23; Tr. 136, ll. 10-15; Tr. 142, ll. 9-22; Tr. 182, l. 9 – 183, l. 15. However, the narcotics officers would not attempt to apprehend Appellant until the next day, when they saw him carrying a bag. Tr. 143, ll. 7-25; Tr. 315, l. 19 – 317, l. 4.

Thus, on April 26, 2024, officers alleged they saw Appellant come out of the hotel room with a bookbag, place the bookbag in a car, get in the driver's seat, and begin to drive away. Tr. 52, l. 1 – 54, l. 21. Officers blocked the car in to prevent Appellant from leaving and they arrested him. The car had an “overwhelming” odor of marijuana. Investigator Sanner walked over to where Appellant was being detained by two other officers. Tr. 54, l. 22 – 57, l. 9; Tr. 74, ll. 15-17; Tr. 162, ll. 12-15. Investigator Sanner provided Appellant warnings pursuant to *Miranda*, and placed him in Officer Woods's car. Neither the *Miranda* warnings nor Appellant's response to the warnings was recorded. However, Sanner went back to his own car, got his recorder, came back and got into the car with Appellant. Tr. 56, l. 6 – 58, l. 1; Tr. 75, l. 16 – 77, l. 6; Tr. 89, ll. 3-15. According to Sanner, “not much” time elapsed before he interviewed Appellant: “it was rather quick.” Tr. 74, l. 22 – 75, l. 1. Notably, this was not Sanner's car and he was a narcotics officer, not a transport officer. Tr. 67, ll. 15-16; Tr. 56, ll. 1-3. The

investigator began to audio-record his interrogation of Appellant. The audio recording of Sanner's interrogation of Appellant, Court's Exhibit # 1, is on file with this Court. Tr. 57, l. 21 – 61, l. 18. The interview was approximately one and a half hours long. Court's Exhibit #1. The recording was surreptitious. Near the end of the interrogation, the investigator misrepresents to Appellant that the interrogation and ensuing telephone call is not being recorded. It is clear from the exchange that Appellant did not know he was previously being recorded either. Court's Exhibit #1 at 0:49:45 – 0:49:52.

The recording begins with the sound of the investigator entering the car and saying, "All right." Appellant states, "You got me man," and, "I'm f***ed." Court's Exhibit #1 at 0:00:00 – 0:00:17; Tr. 58, ll. 15-19. This initial portion of the recording would be admitted into evidence as State's Exhibit #13 and is also on file with this Court. Tr. 194, l. 21 – 195, l. 25; Tr. 196, l. 14 – 198, l. 20.

The recording reflects Investigator Sanner introduced himself, saying he is a narcotics officer with Lexington County and is on the "DEA task force." "We know a lot." At approximately 34 seconds into the recording, the investigator states: "*I know you said you didn't want to talk. If you want to reconsider that or you wanna wait and have an attorney that's fine.*" Court's Exhibit #1 at 0:00:18 – 0:00:41; *see* Tr. 75, l. 21 – 76, l. 1.

The investigator interrogates Appellant, urging him to take this "opportunity" to "save" himself. He exhorts Appellant to speak with him in return for "consideration." He reiterates his DEA task force role and states that if Appellant provides him anything "of value" to any law enforcement agency, he can "make stuff shake" for Appellant. Court's Exhibit #1 at 0:01:00 – 0:07:15; *see* Tr. 78, l. 3 – 79, l. 1. Approximately 7 minutes into the recording, the investigator states: "There's two types of people: there's those that cooperate and those that wish they did."

Court's Exhibit #1 at 0:07:16 – 0:07:22; *see* Tr. 80, ll. 3-5. At approximately 8 minutes into the recording, the following exchange takes place.

Investigator Sanner: Whaddya got in the car?

Appellant: S**t. Some dope. I'm f***ed. I'm f***ed.

Investigator Sanner: How much?

Appellant: S**t. Some coke, man, I'm f***ed.

Investigator Sanner: How much is it?

Appellant: Enough I'm f***ed, man. I'm f***ed, bro.

Investigator Sanner: You got some ice?

Appellant: . . . yeah, I got some ice too.

Investigator Sanner: How much?

Appellant: About 5 ounces, I'm f***ed, man.

Investigator Sanner: How much down?

Appellant: I don't know, about three ounces. I'm f***ed, bro. I'm gone, bro . . . I can't see the streets no more. I'm f***ed.

Court's Exhibit #1 at 0:07:53 – 0:08:23. This portion of the interview would be admitted into evidence as State's Exhibit #14 and is on file with this Court. Tr. 194, l. 21 – 195, l. 25; Tr. 198, l. 22 – 200, l. 15.

The investigator's inducements got more blatant as the interrogation continued. He told Appellant that as to whether Appellant would get the mandatory minimum sentence of twenty-five years, or only ten or twelve or fifteen years, or even none: "I have the choice." Court's Exhibit #1 at 0:09:10 – 0:09:25; 0:12:36 – 0:13:35; *see* Tr. 78, ll. 10-15.

At the conclusion of the interview, he permits Appellant to call his child's mother. During the call, Appellant tells the woman he is being arrested: "Bae, man they got me man." He asks the woman to put some money on his books and states he needs a lawyer. "I'm f***ed up." She asks him, "You in Calhoun, you got stuff on you?", and he answers: "Hell, yeah." Court's Exhibit #1 at 1:21:12 – 1:23:27; *see* Tr. 59, ll. 4-18; Tr. 80, l. 20 – 82, l. 1; State's Exhibit #15 at 0:00:00 – 0:00:22. This portion of the recording would be admitted as State's Exhibit #15, and is on file with this Court. Tr. 194, l. 21 – 195, l. 25; Tr. 200, l. 16 – 202, l. 7.

Inside the bookbag, law enforcement found drug paraphernalia, possible marijuana, and a metal tin containing methamphetamines, cocaine, and fentanyl. Tr. 158, l. 8 – 163, l. 21; Tr. 170, l. 17 – 171, l. 12; Tr. 207, l. 18 – 209, l. 1; Tr. 217, l. 18 – 218, l. 15. Drug analysis confirmed the substances were approximately 118 grams of cocaine and 196 grams of methamphetamine. There was also fentanyl, which was contained in a mixture of several substances; the total weight of those mixtures was approximately 219 grams. Tr. 244, l. 6 – 245, l. 11; Tr. 257, l. 11 – 269, l. 20.

At the pretrial *Jackson v. Denno*, 378 U.S. 368, hearing, Investigator Sanner claimed that Appellant did not ask for an attorney or unequivocally invoke his right to silence after being provided with *Miranda* warnings. Tr. 58, ll. 7-14; Tr. 82, l. 18 – 83, l. 8. However, this claim was incompatible with his recorded remark at the beginning of the interrogation: "I know you said you didn't want to talk. If you want to reconsider that or you wanna wait and have an attorney that's fine." Court's Exhibit #1 at 0:00:18 – 0:00:41.

The investigator also testified he "confirmed" with Appellant multiple times during the interview that Appellant wanted to "have this conversation without an attorney present." Tr. 77, ll. 7-17. However, the recording reflects that the investigator repeatedly attempted to obtain a

waiver from Appellant but did not obtain one. For instance, at approximately one minute and 25 seconds into the interview, he asks Appellant: “Do you want to talk without an attorney or do you not?” Court’s Exhibit #1 at 0:01:25 – 0:01:28. At approximately 20 minutes and 55 seconds into the recording, he asks Appellant: “We having this conversation without you having an attorney?” Court’s Exhibit #1 at 0:20:54 – 0:21:00. Notably, these instances came both before and after Appellant gave the incriminating responses to the investigator’s questions which were admitted as State’s Exhibit #14. The investigator also asked, prior to eliciting the remarks admitted as State’s Exhibit #14, whether Appellant wanted to answer questions. Court’s Exhibit #1 at 0:02:30 – 0:02:42. This is by no means an exhaustive list. Court’s Exhibit #1 reflects the investigator repeatedly badgered Appellant to try to obtain a waiver of *Miranda* rights from Appellant; all this was after the investigator was recorded stating: “I know you said you didn’t want to talk.”

During the interrogation, Appellant expresses worry that being held to talk to the investigator is “gonna get me killed.” Court’s Exhibit #1 at 0:07:05 – 0:07:10. “I’m dead, man.” “I’m a dead man.” “They know.” Court’s Exhibit #1 at 0:10:00 – 0:10:19.

Defense counsel argued that the statements were involuntary and inadmissible, and that the officer’s comments about leniency were inducements. Defense counsel argued that the recording reflected Appellant initially refused to talk, and that the investigator continually tried to obtain a waiver. Defense counsel noted there was no “re-*Miranda*[]” after Appellant invoked. The defense argued Appellant’s statements were inadmissible as the State did not establish a voluntary and intelligent waiver of *Miranda* rights. Tr. 87, ll. 13-21; Tr. 90, ll. 4-19.

The solicitor stated he intended to introduce only three portions of the statement. He argued Appellant’s initial cursing and remarks, as well as Appellant’s phone call with the

woman, were not in response to interrogation. He further argued Appellant's responses to the investigator's questions about the drugs and their amounts were admissible as Appellant did not "unequivocally" invoke his rights. The solicitor seemed to concede the investigator's remarks about his influence on the number of years Appellant faced were improper but argued they happened after the questioning (contained in State's Exhibit #14) occurred. Tr. 84, l. 10 – 86, l. 22; Tr. 88, ll. 7-20.

The court found the statements were admissible. Tr. 90, l. 21 – 96, l. 5. The court found that the investigator stated he had provided *Miranda* warnings and testified that Appellant never asked for a lawyer or invoked his right to remain silent. The court noted there was testimony Appellant's that initial outburst was not responsive, and there was a telephone call made in the investigator's presence. The court noted that Appellant was approximately forty years old, appeared to be reasonably intelligent, and nothing indicated Appellant was under the influence of substances. The court noted there was no written waiver of rights. The court ruled that whether there were "promises of leniency or not," "that can certainly go either way." The court stated that Appellant appeared to have experience with the justice system, appeared to understand his rights, and that the investigator did not threaten Appellant. Tr. 92, l. 5 – 94, l. 12. The court ruled that Appellant did not affirmatively invoke his rights to silence or counsel, so no "second *Miranda* [wa]s called for." The court ruled the statements were voluntary; and it ruled the "talk of the dope" was a "properly warned response." The court also found Appellant's initial exclamations and his telephone conversation with the woman were not in response to interrogation. Tr. 94, l. 13 – 95, l. 18.

The solicitor relied upon the statements in his closing argument. He quoted the statements as soon as he stood up to argue, and he continued to refer to them during his

argument. Tr. 306, ll. 7-14; Tr. 311, l. 4 – 312, l. 25. He again returned to the recordings at the conclusion of his argument. Tr. 314, ll. 9-24. During deliberations, the jury asked if it could hear the entire recorded interrogation. Tr. 351, l. 15 – 353, l. 8.

Discussion

“There are two constitutional bases requiring any confessions admitted into evidence to be voluntary: the Due Process Clause of the Fourteenth Amendment and the Fifth Amendment right against self-incrimination.” *State v. Miller*, 441 S.C. 106, 120, 893 S.E.2d 306, 313 (2023) (citing *Dickerson v. United States*, 530 U.S. 428, 433 (2000)). U.S. Const. amend. V; U.S. Const. amend XIV. As to due process, it is “axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.” *Jackson v. Denno*, 378 U.S. at 385 (citing *Rogers v. Richmond*, 365 U.S. 534 (1961)).

The standard for determining the voluntariness of a confession is whether, under the totality of the circumstances, the confession is the product of an essentially free and unconstrained choice by its maker or whether his free will has been overborne and his capacity for self-determination critically impaired. *Schneckloth v. Bustamonte*, 412 U.S. at 225-26. “In analyzing whether a defendant’s will was overborne and the resulting confession was offensive to due process, courts must consider the totality of the circumstances, including the details of the interrogation and the characteristics of the defendant.” *Miller*, 441 S.C. at 120, 893 S.E.2d at 313–14 (citing *Schneckloth v. Bustamonte*, *supra*).

“[A]ppropriate factors to consider in the totality-of-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises

of leniency.” *State v. Miller*, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007). A “confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence.” *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (cleaned up). “A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise.” *Id.*

Coercive police activity is necessary predicate to finding a confession is not voluntary within the meaning of the Due Process Clause. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). “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). *See also State v. Collins*, 442 S.C. 444, 900 S.E.2d 426 (2024) (false assurance of confidentiality from law enforcement is inherently coercive because it interferes with layperson’s ability to make fully informed decision about whether to engage in interview).

“The second constitutional basis which requires confessions to be voluntarily given is the Fifth Amendment’s prohibition of compelled self-incrimination.” *State v. Miller*, 441 S.C. at 127, 893 S.E.2d at 317 (citing *Dickerson*, 530 U.S. at 433). “In *Miranda v. Arizona*, the Court determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.” *Edwards v. Arizona*, 451 U.S. at 481–82 (citing *Miranda v. Arizona*, 384 U.S. at 479). A suspect

must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to

exercise these rights must be afforded to him throughout the interrogation.

Miranda, 384 U.S. at 479. “After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.” *Id.* See *Edwards v. Arizona*, 451 U.S. at 487 (after invoking right to counsel, accused’s “statement made without having had access to counsel, did not amount to a valid waiver and hence was inadmissible”); *Maryland v. Shatzer*, 559 U.S. at 105 (the *Edwards* rule is a “judicially prescribed prophylaxis”).

“*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” *Rhode Island v. Innis*, 446 U.S. at 300–01. “[I]nterrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.*, 446 U.S. at 301 (footnote omitted).

A waiver of *Miranda* rights “must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The “waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* Where the totality of circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension, a court may properly find a waiver. *Id.*

“If the accused indicates that he wishes to remain silent, the interrogation must cease. If he requests counsel, the interrogation must cease until an attorney is present.” *Edwards v. Arizona*, 451 U.S. at 482. “*Edwards* is ‘designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights.’” *Minnick v. Mississippi*, 498 U.S. 146, 150 (1990) (quoting *Michigan v. Harvey*, 494 U.S. 344, 350 (1990)). “It does this by presuming his postassertion statements to be involuntary, ‘even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards.’” *Montejo v. Louisiana*, 556 U.S. 778, 787 (2009) (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 177 (1991)). “The rule ensures that any statement made in subsequent interrogation is not the result of coercive pressures.” *Minnick v. Mississippi*, 498 U.S. at 151.

“[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” *Edwards v. Arizona*, 451 U.S. at 484. An accused, “having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Id.*, 451 U.S. at 484–85. See *State v. McCray*, 332 S.C. 536, 547, 506 S.E.2d 301, 306 (1998) (“If the accused invokes the right to counsel, interrogation must cease and police may not conduct interrogation unless the accused initiates communication, exchanges, or conversations with the police.”) (citing *Edwards*, *supra*). However, if an accused requests an attorney and the police wait 14 days before reinitiating questioning, that period of time is long enough to avoid the consequence of the *Edwards* presumption. *Maryland v. Shatzer*, 559 U.S. at 110.

When an accused has invoked his right to remain silent rather than his right to counsel, the admissibility of subsequent custodial statements “depends under *Miranda* on whether his ‘right to cut off questioning’ was ‘scrupulously honored.’” *Michigan v. Mosley*, 423 U.S. at 104. The police may not “fail[] to honor a decision of a person in custody to cut off questioning, either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind.” *Id.*, 423 U.S. at 105–06. Where the police “immediately ceased” an initial interrogation after the accused invoked his right to silence, “suspended questioning entirely for a significant period before beginning” a second interrogation, gave *Miranda* warnings again at the outset of the second interrogation, and restricted the second interrogation to a crime that had not been the subject of an earlier interrogation, the admission of the subsequent incriminating statement did not violate the principles of *Miranda*. *Id.*, 423 U.S. at 104–07.

An invocation of the right to counsel must be made unambiguously. *Davis v. United States*, 512 U.S. 452, 459 (1994).

Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.

Davis v. United States, 512 U.S. at 459 (cleaned up). Thus, a suspect “must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect.” *Id.* Likewise, “an accused who wants to invoke his or her right to remain silent [must] do so

unambiguously.” *Berghuis v. Thompson*, 560 U.S. 370, 381-82 (2010). An “unambiguous” invocation of the right to remain silent is present where an accused stated that “he wanted to remain silent or that he did not want to talk with the police[.]” *Id.*, 560 U.S. at 382.

“The State bears the burden of proving by a preponderance of the evidence that a statement allegedly given by an accused was voluntary and that the accused voluntarily, knowingly, and intelligently waived his rights to silence and to have counsel present during interrogation.” *State v. Henderson*, 286 S.C. 465, 470, 334 S.E.2d 519, 522 (Ct. App. 1985) (citations omitted). “In order to secure the admission of a defendant’s statement, the State must affirmatively show the statement was voluntary *and* taken in compliance with *Miranda*.” *State v. Middleton*, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986) (citations omitted) (emphasis in original).

The State did not satisfy its burden to show that Appellant voluntarily waived his rights to silence and an attorney and that his statement was voluntarily made. Appellant’s invocation of his Fifth Amendment rights was unequivocal—although the investigator claimed at the *Denno* hearing that Appellant did not unequivocally invoke, this claim cannot be squared with the recording. The investigator plainly understood that Appellant had invoked his rights because he recorded himself stating at the beginning of the interrogation: “*I know you said you didn’t want to talk. If you want to reconsider that or you wanna wait and have an attorney that’s fine.*” Court’s Exhibit #1 at 0:00:18 – 0:00:41. *Berghuis v. Thompson*, 560 U.S. at 382 (statement by accused that he wanted to remain silent or that he did not want to talk with the police is an unambiguous assertion of right to silence); *Davis v. United States*, 512 U.S. at 459 (suspect “must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney”).

Appellant articulated his invocation of *Miranda* rights with sufficient clarity that the investigator understood that he had done so, as evidenced by the investigator's remarks at Court's Exhibit #1, 0:00:18 – 0:00:41. The repeated, unsuccessful attempts to get Appellant to waive his *Miranda* rights throughout the interrogation, both to silence and counsel, also contradict a finding of voluntary waiver. E.g., Court's Exhibit #1 at 0:01:25 – 0:01:28; 0:20:54 – 0:21:00; 0:02:30 – 0:02:42. See *State v. Kennedy*, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998) (“it is obvious from the record the solicitor and everyone involved viewed petitioner's request as an invocation of his right to counsel”). The trial court erred in concluding Appellant had not unequivocally invoked his right to silence or his right to counsel.

After hearing Appellant invoke, the investigator should not have proceeded to immediately get his recording equipment, get into another officer's car with Appellant, and interrogate him. *Edwards v. Arizona*, 451 U.S. at 484 (“when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights”); *Michigan v. Mosley*, 423 U.S. at 104 (police must “scrupulously honor” an accused's invocation of his right to remain silent); *Rhode Island v. Innis*, 446 U.S. at 301 (*Miranda* safeguards apply to words or actions on the part of the police other than those normally attendant to arrest and custody that the police should have known are reasonably likely to elicit an incriminating response).

Because Appellant invoked his right to silence, police were required to wait a “significant period of time” before questioning him and provide a fresh set of warnings at the outset of any subsequent interrogation. *Michigan v. Mosely*, 423 U.S. at 106. This investigator did neither of those things. Counsel correctly argued a fresh set of warnings was required. Because Appellant

invoked his right to counsel, police could not reinitiate communication prior to providing him with counsel or waiting 14 days. *Edwards v. Arizona*, 451 U.S. at 484–85; *Maryland v. Shatzer*, 559 U.S. at 110. This was not an instance of Appellant reinitiating communication: “This was not at his suggestion or request.” *Edwards*, 451 U.S. at 487. This was an improper interrogation technique—disregard of Appellant’s invocation of his *Miranda* rights—which was coercive. See *Minnick v. Mississippi*, 498 U.S. at 151 (*Edwards* rule ensures that any statement made in subsequent interrogation is not the result of coercive pressures); *Michigan v. Mosley*, 423 U.S. at 104 (requirement that law enforcement authorities must respect a person’s exercise of his right to remain silent “counteracts the coercive pressures of the custodial setting”); *In re Tracy B.*, 391 S.C. 51, 65, 704 S.E.2d 71, 78 (Ct. App. 2010) (*Edwards* rule did not require confession to be suppressed where the defendant “reinitiated communication with police, and not vice-versa”: “we do not believe the actions taken by police can fairly be characterized as ‘coercive’”).

The admitted statements were in response to interrogation, and the court erred in concluding otherwise. The particularly damning admissions—about what types and amounts of drugs Appellant had—were in response to “express questioning.” *Rhode Island v. Innis*, 446 U.S. at 300-01. Court’s Exhibit #1 at 0:07:53 – 0:08:23; State’s Exhibit #14. The other two portions that were admitted were in response to the “functional equivalent” of express interrogation. *Id.* After Appellant invoked, the narcotics investigator got into another officer’s car with Appellant to talk about his DEA role and elicit a confession: all of Appellant’s recorded remarks were captured solely because of “words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.*, 446 U.S. at 301 (footnote omitted). As seen, prior to the telephone call, the investigator misrepresented to Appellant that he was not

recording anything. The investigator was recording for investigatory purposes—if he were not, then he would have admitted he was recording when Appellant asked him. His conduct in approaching and interrogating Appellant despite Appellant’s invocation of *Miranda* rights was a tactic likely to evoke an incriminating response. “A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.” *Id.* “[W]here a police practice is designed to elicit an incriminating response from the accused, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect.” *Id.*, 446 U.S. 291, 302 n. 7.

Appellant’s initial exclamations of: “You got me man,” and, “I’m f***ed,” Court’s Exhibit #1 at 0:00:00 – 0:00:17; State’s Exhibit #13, would not have been obtained but for the investigator disregarding the *Miranda* invocation. The third portion of the statement that was admitted, Appellant’s affirmative response to his child’s mother’s question: “You in Calhoun, you got stuff on you?”, Court’s Exhibit #1 at 1:21:12 – 1:23:27; State’s Exhibit #15, came at the conclusion of the interrogation. This too would not have been obtained but for the investigator disregarding a *Miranda* invocation.¹ This investigator should not have even been in the car with Appellant. He was surreptitiously recording him. Appellant had already confessed and expressed fear that he would be killed because “they knew” he was kept to talk with the investigator. These tactics were “words or actions on the part of the police (other than those

¹ Additionally, as to the telephone call, Appellant had no way to privately call his child’s mother as law enforcement had confiscated Appellant’s telephone. *See State v. Collins*, 442 S.C. at 456, 900 S.E.2d at 432 (coercion is determined from the perspective of the suspect). *Cf. State v. Ellefson*, 266 S.C. 494, 500-01, 224 S.E.2d 666, 669-70 (1976) (detective’s search of detainee’s mail for investigatory purposes was in violation of Fourth Amendment as it was warrantless and in violation of First and Fourteenth Amendments as it impinged upon detainee’s right to “be able to communicate without the uninvited ears and eyes of the government”).

normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. at 301.

All three of the portions were in response to interrogation and obtained as a result of the *Miranda* violation. Thus, all three portions were inadmissible. The State did not demonstrate waiver. *See Miranda v. Arizona*, 384 U.S. at 479 (“unless and until” “warnings and waiver are demonstrated by the prosecution at trial, *no evidence obtained as a result* of interrogation can be used against him”) (emphasis added). These were not volunteered statements. *Michigan v. Mosely*, 423 U.S. at 104 (“admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his ‘right to cut off questioning’ was ‘scrupulously honored’”). Law enforcement did not “scrupulously honor” Appellant’s invocation. *Id.* The investigator simply overrode it.

The totality of the circumstances included the investigator’s remarks about his position with the DEA task force; that Appellant should “save” himself by talking; his offer to confer “consideration” in exchange for a statement; and his remark: “There’s two types of people: there’s those that cooperate and those that wish they did.” Appellant’s speech was induced by this improper influence which included promises of leniency and implied threats. *See State v. Rochester*, 301 S.C. at 201, 391 S.E.2d at 247 (confession properly admitted where it was not induced by a promise of leniency or by psychological or physical force, or by direct or implied threats, and the defendant was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit). The recording reflects that Appellant was clearly emotional and expressed his fear that “they know” he has been held in the car to talk with the narcotics officer, and therefore he is a “dead man.” *See State v. Miller*, 375 S.C. at 386, 652 S.E.2d at 452 (totality of circumstances includes background, experience and conduct of accused). Moreover, the

investigator misrepresented that he was not recording Appellant and it is clear Appellant did not know was being recorded. *See State v. Miller*, 375 S.C. at 386, 652 S.E.2d at 452 (totality of circumstances includes police misrepresentations). *Cf. Moran v. Burbine*, 475 U.S. at 421 (waiver of *Miranda* rights must have been voluntary in the sense that it was the product of a free and deliberate choice rather than deception); *State v. Collins*, 442 S.C. at 455, 900 S.E.2d at 432 (“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.”).

Appellant’s post-assertion statements are presumed to be involuntary. *Montejo v. Louisiana*, 556 U.S. at 787. All three portions of the recording should have been suppressed given the totality of the circumstances, particularly as the State would not have obtained them but for the investigator overruling Appellant’s *Miranda* invocations. *Jackson v. Denno*, 378 U.S. at 385; *Edwards v. Arizona*, 451 U.S. at 484; *Miranda v. Arizona*, 384 U.S. at 479; *Michigan v. Mosley*, 423 U.S. at 104; U.S. Const. amend. V; U.S. Const. amend. XIV.

The error in admitting the statements was not harmless. *See State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (“Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result.”). Whether an error is harmless depends on the particular circumstances of the case.” *State v. Reeves*, 301 S.C. 191, 193, 391 S.E.2d 241, 243 (1990). This trafficking case was based on constructive possession, which presents a difficult burden for the State to meet. Tr. 342, l. 22 – 346, l. 9. *See State v. Stewart*, 433 S.C. 382, 387, 858 S.E.2d 808, 810 (2021) (to prove trafficking when based on possession, the State must prove 1) the defendant had actual physical custody over the drugs or the right or power to exercise control over the drugs, and 2) the defendant had knowledge of the drugs and the intent

to control their disposition or use). The car was a rental car that was not rented by Appellant. Tr. 234, ll. 22-25. The drugs were contained within a closed tin in the closed bookbag. The jury was instructed on mere presence. Tr. 342, l. 22 – 346, l. 9.

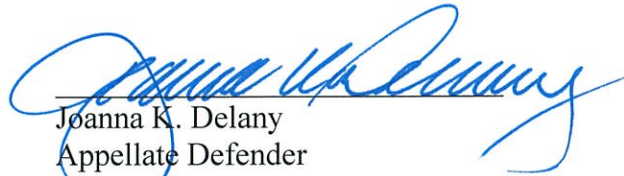
Assuming *arguendo* this Court finds State's Exhibit #13 and State's Exhibit #15 were properly admitted but State's Exhibit #14 was not, for purposes of a harmless error analysis, these exhibits were not cumulative. At the point of the initial exclamations by Appellant: "You got me man," and, "I'm f***ed," in State's Exhibit #13, the officers had not yet found the drugs. Notably, the trial judge sustained the defense's objection to speculation when the prosecutor attempted to ask the investigator what he thought Appellant was referring to there. Tr. 198, ll. 8-20. This exhibit could reasonably have been perceived by the jury as Appellant's reaction to being arrested on the existing warrant rather than any admission regarding the drugs, thus it is not cumulative to the other exhibits. However, it was damaging as the solicitor posited the exclamations showed guilt. The solicitor relied upon and even played this exhibit in closing argument. Tr. 311, ll. 4-17. State's Exhibit #15, the portion of the telephone call, was also not cumulative. Appellant initially stated: "they got me," but this too could have been a reference to his arrest on the Georgia warrant. The woman asked: "You in Calhoun, you got stuff on you?", and he answered: "Hell, yeah." Appellant was objectively not in Calhoun. He was distraught. What weight—if any—to give this remark was for the jury. Additionally, Appellant was caught with other contraband, including a false or stolen ID in the name of Michael Goins (in his pocket), drug paraphernalia—scales (in the backseat of the car), and what the police believed was marijuana or marijuana sales-related packaging (in the bookbag but separate from the closed tin of narcotics), although this material was not tested. The car smelled "overwhelmingly" like

marijuana. Tr. 154, ll. 10-24; Tr. 160, ll. 2-4; Tr. 162, ll. 4-15; Tr. 168, ll. 21-23; Tr. 170, l. 17 – 171, l. 1. This remark was ambiguous and it too is not cumulative.

Even with Appellant's recorded confession, the jury still deliberated for over an hour. Additionally, the jury asked if it could hear the entire confession, which indicates it was keyed in on this evidence. Tr. 351, l. 3 – 353, l. 19. *See State v. Blassingame*, 271 S.C. 44, 46-47, 244 S.E.2d 528, 530 (1978) (when the jury submits a question to the court following a jury charge, it is reasonable to assume the jury is focusing its "critical attention" on the question asked). The jury also asked if it could know what Appellant's original warrant was for, which indicates it may have been considering alternative contexts for his statements or was credulous about the testimony from the State's witnesses. Tr. 351, ll. 15-19. The recordings were key evidence in the case. The solicitor repeatedly relied on them in closing argument. *See State v. Collins*, 442 S.C. at 461, 900 S.E.2d at 435 (error in admitting involuntary confession was not harmless where the statement was the key evidence placing the defendant at the scene of the fire and linking him to the arson scheme). This Court should reverse.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2026.