STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2013-001210

THE STATE, ...RESPONDENT

v.

JERMEL RASHOND DANIELS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
S.C. Bar No. 1871

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

P.O. Box 516
Greenwood, SC 29648
(864) 942-8800

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

Did the trial court properly admit Appellant's incriminating statement made before Miranda[1] warnings were provided when the statement was not made in response to custodial interrogation?

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

Appellant was indicted in Greenwood County in August 2012 for obstruction of justice (2012-GS-24-1515). He proceeded to trial on May 13 – 15, 2013, before the Honorable Frank R. Addy, Jr., and a jury. Appellant was found guilty as charged and was sentenced to imprisonment for a period of seven (7) years.

This appeal follows.

STATEMENT OF FACTS
Pretrial Hearing

Prior to the start of trial, the trial court conducted a Jackson v. Denno hearing. At the hearing, Appellant contended that he was questioned by law enforcement while in custody and before he was informed of his Miranda rights and moved to exclude any testimony regarding his statement to law enforcement before he had been given Miranda warnings. (R. pp. 2-3). A video of the incident was presented to the trial judge. (R. p.4 – 5; see State's Exhibit 1). Also, Trooper Cody Bishop testified that Appellant was a passenger in a vehicle containing multiple suspects. (R.p. 12). Appellant was removed from the vehicle during the stop. Appellant was intoxicated, "fidgety," pulled away from officers, and repeatedly "reach[ed] around," causing officers to place him in handcuffs for the safety of all involved. (R. pp. 10; 14-15). The handcuffs were placed behind Appellant's back. Before Appellant was handcuffed, a quarter-size baggie of white substance believed to be cocaine was found and placed on the top of the vehicle. (R. p. 11). Appellant grabbed the baggie but it was taken from him by the trooper for the second time and then placed on the trunk of the vehicle in front of Appellant. (R. pp. 11-12). Thereafter, standing with his hands behind his back and against the vehicle, Appellant grabbed the baggie from the trunk and quickly swallowed it. (R. p.11). Alarmed, Trooper Bishop exclaimed several times "Why'd you do that?" Trooper Bishop explained the statement was made in the "heat of the moment," that he was not fishing for an incriminating response, and that he was merely making a statement rather than questioning Appellant. (R. p. 7-8; 12; 15-16). Trooper Bishop testified he was merely trying to tell Appellant that the decision he just made – to swallow the plastic bag – was not a wise one. Bishop was concerned that Appellant would choke on the plastic.

(R. p.8; 12). Bishop immediately asked another trooper to summon EMS for Appellant. (R. p.8). After making the statement, a short period of time elapsed before Appellant volunteered that "It was just a little coke. Hell. Now you have no evidence." (R. p. 8- 9; 13). Trooper Bishop then told Appellant that everything he said and did was captured on video and Appellant then denied that he made any statements. (R. p. 17). Bishop also testified that Appellant had not been arrested at that point. (R. p. 7). He further testified that his exclamations in response to Appellant's action were statements or rhetorical questions and did not constitute interrogation or questions calling for an answer or response. (R. pp. 12; 15 – 16). Bishop reiterated that he was not looking for a response from Appellant but was merely exclaiming that the action taken was not wise. (R. p. 7). On cross-examination, Trooper Bishop confirmed he also said "Do you think that's going to help you?" to Appellant on at least two occasions. Trooper Bishop never asked what substance the plastic bag contained. Appellant voluntarily conveyed to Trooper Bishop the substance he swallowed was cocaine. Once Appellant was arrested and placed in the patrol car, Trooper Bishop informed him of his Miranda rights. (R. p. 7-10; 12).

Appellant did not testify at the hearing on the motion to suppress or at trial. At the conclusion of the hearing, the State conceded Appellant was in custody for purposes of Miranda. However, the State argued that Trooper Bishop's statements did not qualify as interrogation for purposes of Miranda, and Appellant's incriminating statement was admissible. Specifically, the State argued Trooper Bishop's rhetorical questions did not fall into the category of "words or actions . . . the police should know are reasonably likely to elicit an incriminating response from [a] suspect." The State also noted Appellant's statement was made ten to fifteen seconds after Trooper Bishop's statements

and thus, even if the statements constituted interrogation, the interrogation ended. On the other hand, defense counsel argued the situation was a custodial interrogation and sought to exclude from evidence Appellant's incriminating statement because Trooper Bishop did not read Appellant his Miranda rights. (R. p. 18 – 22; SROA. p.1).

The trial court ruled Appellant's statement admissible because it found the statement was not made in response to interrogation on the part of Trooper Bishop. The trial judge stated: "It's clear to me, from the video, as well as from the testimony, that the officer's reaction to the defendant swallowing the items was merely rhetorical . . . along the lines of making a statement: How could you be so stupid? You're putting your health in danger, something to that effect." The trial judge went on to say Trooper Bishop's statement may have been in the form of a question, but it was "more of a declaratory statement . . . as opposed to an effort to elicit information by way of questioning." (R. p. 21).

Trial Testimony

The State called Trooper J.C. Ashley as its first witness at trial. Trooper Ashley stated that he was called to assist Trooper Cody Bishop with a traffic stop around two or three o'clock in the morning on May 31, 2012. Trooper Ashley found Trooper Bishop speaking with the driver of the vehicle when he arrived at the scene. (R. pp. 29; 36). According to protocol when multiple occupants of a vehicle are involved, Ashley approached the passenger side and used his flashlight to illuminate inside the rear passenger seat where Appellant was sitting. (R. p. 29 – 30; 37). Trooper Ashley observed a white Styrofoam cup that he suspected contained liquor. He asked Appellant to step out of the vehicle and, when Trooper Ashley leaned into the car to retrieve the cup

of liquor, he observed a dime or nickel baggie containing white powdery substance in plain view between Appellant and the door. (R. p. 30 – 32; 37). Ashley placed the baggie on top of the vehicle and attempted to conduct a pat-down; however, Appellant struggled and attempted to pull away. (R. p. 30 – 32; 38). With Trooper Bishop's assistance, Appellant was placed in handcuffs. (R. p. 39). As Ashley attempted to gain control, Appellant grabbed the baggie. Appellant was taken to the rear of the vehicle and Ashley advised Trooper Bishop that Appellant had the baggie. (R. p. 33; 39 – 40; 43). Ashley proceeded to the front of the vehicle to speak with the driver but soon heard a commotion and Trooper Bishop say "Spit it out." Ashley testified that Bishop was attempting to prevent Appellant from swallowing something. (R. pp. 34; 40). He also heard Bishop later say something to the effect of "Why did you swallow it?" (R. p, 34 – 35). He also heard Appellant state that "It was just a little cocaine." (R. p. 45).

Trooper Bishop testified that he stopped the vehicle because the driver was unable to maintain a proper lane. Appellant was a backseat passenger. (R. p. 49). Bishop explained there were three occupants inside the vehicle who all appeared "extremely fidgety." There was so much "movement going on" that Trooper Bishop could actually see "the vehicle shaking." Due to the unusual circumstances and to ensure his safety, Trooper Bishop called Lance Corporal Ashley for back up. (R. pp. 48-52). Trooper Bishop approached the driver side of the vehicle. While Trooper Bishop spoke with the driver, he noticed the Appellant, the right-rear passenger, reaching to the floorboard and constantly moving his hands. Trooper Bishop commanded Appellant to stop moving and to hold his hands up. When Trooper Ashley arrived on the scene and approached the passenger side of the vehicle, Bishop warned him that Appellant was extremely fidgety

and fumbling with something on the floorboard. (R, p. 52). He heard Trooper Ashley ask Appellant to exit the vehicle and observed Appellant's failure to comply with Ashley's requests and try to pull away. (R. p. 52-53).

Trooper Bishop explained that he proceeded to Appellant's location and placed Appellant in handcuffs for the safety of all involved. (R. p. 53; 54). Based on his experience, Trooper Bishop believed Appellant should be restrained while the investigation continued. (R. p. 54). In addition, Trooper Bishop smelled alcohol on Appellant's breath and smelled marijuana emanating from the vehicle. Appellant's eyes were red and bloodshot. (R. p. 54). Appellant managed to grab the baggie, and Trooper Bishop retrieved it and placed it on the trunk of the vehicle. (R. p. 55). Bishop believed the substance in the baggie was cocaine. (R. p. 56). After Trooper Bishop placed the baggie on the trunk, Appellant, who was handcuffed behind his back facing away from the vehicle, grabbed the substance from behind his back in one quick motion. Appellant maneuvered himself in a way that allowed him to place the substance in his mouth. Trooper Bishop yelled for Appellant to "Spit it out!" multiple times, but Appellant swallowed the substance. (R. pp. 56; 58). Trooper Bishop confirmed at trial he saw Appellant place the baggie in his mouth. (R. p. 57). Trooper Bishop stood directly in front of Appellant at the time of the incident and the lighting was more than sufficient to observe the events. (R. p. 57). Appellant began to cough and Bishop feared he might be choking on the cellophane. (R. pp. 58 – 59). Trooper Bishop explained that he told Appellant "it wasn't a wise idea" to swallow the plastic bag. In response, Appellant told Trooper Bishop: "It was just a little coke. Hell, now you don't have any evidence." (R. p. 59-60). Trooper Bishop testified he believed with "110 percent certainty" that

Appellant knew exactly what he was doing – to get rid of the evidence and obstruct law enforcement from doing its job. Appellant also stated on video: "Now you have no evidence; it's gone." (R. pp. 53-60, 69).

EMS was summoned and Appellant was transported to the hospital where he remained for one or two days. Based on his extensive training and experience as a law enforcement officer, Trooper Bishop "absolutely" believed the plastic bag contained cocaine. Trooper Ashley also believed the substance appeared to be cocaine about the size of a nickel or dime. The substance was never field tested because Appellant swallowed it, and he never passed the plastic bag at the hospital. (R. p. 30, 39, 41-42, 77-78).

ARGUMENT

The trial court properly admitted Appellant's incriminating statement because the statement was not made in response to a custodial interrogation.

Appellant contends the statement should not have been admitted because he was subject to a custodial interrogation and had not been informed of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1996), when he made the statement. However, Appellant's argument fails for two reasons. First, Appellant did not preserve the issue for appellate review. Second, even though the State conceded Appellant was in custody at the time he offered the statement, Trooper Bishop's rhetorical, exclamatory statements were not interrogation.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). "On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed unless so manifestly erroneous as to

show an abuse of discretion." State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). "[T]he appellate court does not re-evaluate the facts based upon 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. Miller, 375 S.C. 370, 652 S.E.2d 444 (2008).

Analysis

A. Error Preservation

Defense counsel did not properly object to the issue at trial because Trooper Ashley was an intervening witness between the trial court's pretrial ruling and the introduction of the disputed evidence at trial during Trooper Bishop's testimony. Furthermore, although defense counsel made an objection to the State's question to Trooper Ashley during trial regarding whether he heard Appellant "mention anything about coke or cocaine," the objection did not address the Miranda issue in "a sufficiently specific manner that brought attention to the exact error." See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Thus, the issue of whether Trooper Bishop's remarks qualify as interrogation was not preserved for appellate review.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). The failure to object when evidence is offered constitutes a waiver of the right to raise the issue on appeal. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Contemporaneous objection is required to properly preserve an error for appellate review. State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994)

(objection to testimony was broadly made and well after initial, allegedly prejudicial, testimony).

"Generally, a motion *in limine* seeks a pretrial ruling preventing the disclosure of potentially prejudicial matter to the jury." State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (1995). In most cases, making a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a *motion in limine* is not a final determination; rather, it is preliminary and subject to change based upon developments at trial. State v. Wood, 362 S.C. 520, 526, 608 S.E.2d 435, 438-39 (Ct. App. 2004); State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct.App. 2002). Thus, the moving party must make a contemporaneous objection when the evidence is introduced. Wood, 362 S.C. at 526, 608 S.E.2d at 439; see also State v. Mitchell, 330 S.C. 189, 193 n. 3, 498 S.E.2d 642, 644 n. 3 (1998) ("We have consistently held a ruling *in limine* is not final, and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.") (citation omitted). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." Wood, 362 S.C. at 527, 608 S.E.2d at 439 (quoting Forrester, 343 S.C. at 642, 541 S.E.2d at 840) (emphasis added); see also State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct.App.1997) (noting the general rule that a court's ruling on *in limine* motion is not a final decision, but applying State v. Mueller and holding that where objection is made during trial and there are no intervening witnesses before the disputed testimony, the decision is final and the objection need not be renewed). Pretrial *in limine* proceedings are "granted to prevent

prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence." State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988).

In Forrester, the State argued the issue of the appellant's consent to search was not preserved for appellate review. 343 S.C. at 643, 541 S.E.2d at 840. The Supreme Court of South Carolina disagreed with the State and reasoned because neither party presented intervening evidence between the pretrial ruling on the admissibility of the evidence and the evidence presented at trial, the trial court did not have an opportunity to change its ruling. Id. Consequently, the appellant's failure to object a second time to the introduction of the evidence at issue did not preclude the issue to be properly preserved for appellate review. Id.

Similarly, in Wood, the Supreme Court of South Carolina noted the State presented the testimony sought to be excluded at the beginning of trial, immediately after the judge ruled on the issue. Wood, 362 S.C. at 527, 608 S.E.2d at 439. Thus, the Court deemed the motion to be a final ruling as opposed to a motion *in limine*. Id. Since the motion was deemed a motion *in limine*, the appellant was not required to make an objection when the evidence was submitted and the issue was preserved for appellate review. Id.

Here, following the Jackson v. Denno hearing requested by Appellant, the trial court ruled Appellant's incriminating statement was admissible. However, defense counsel failed to make an objection when the evidence was actually presented at trial. In contrast to Forrester and Wood, the State called Trooper Ashley to the stand as its first witness at trial. Since the State presented Trooper Ashley as an intervening witness

between the pretrial hearing and Trooper Bishop's testimony at trial, the ruling from pretrial hearing is considered one made *in limine* because the trial court had an opportunity to change its pretrial ruling. Consequently, Appellant was required to object to the Miranda issue during Trooper Bishop's testimony at trial. As a result, defense counsel failed to preserve the issue because he did not make a contemporaneous objection concerning the Miranda issue when Trooper Bishop testified regarding Appellant's incriminating statement. (R. pp. 59 – 60). Thus, Appellant did not properly preserve the issue for appellate review. Moreover, the objection made by Appellant during Trooper Ashley's testimony at trial was based upon the fact Ashley previously testified that he did not hear anything and not on the ground the statement violated Miranda. (R. p. 44).

B. Miranda Interrogation Requirement

Even if this Court finds the issue preserved for appellate review, Respondent submits that the trial court properly admitted Appellant's statement finding Appellant was not subject to an interrogation at the time he made the statement. The findings of the trial court in this regard are supported by the record and must be affirmed by this Court.

The Miranda warnings are designed to protect several constitutional rights of an accused, most importantly, the privilege against self-incrimination. State v. Howard, 296 S.C. 481, 374 S.C.2d 284 (1988). In order to assure that an accused's right to remain silent is not compromised during custodial interrogation, the United States Supreme Court ruled that "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed."

Miranda v. Arizona, 384 U.S. 436, 444 (1966). "A statement, whether exculpatory or inculpatory, obtained as a result of custodial interrogation is inadmissible unless the person was advised of and voluntarily waived his rights under Miranda . . . ." State v. Kennedy, 325 S.C. 295, 302, 479 S.E.2d 838, 842 (Ct. App. 1996) aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

The special procedural safeguards outlined in Miranda are not required if a suspect is simply taken into custody, but only if a suspect in custody is subjected to interrogation. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App. 1996) aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998). The interrogation requirement of Miranda is met by express questioning or its functional equivalent, and includes words or actions the police should know are reasonably likely to elicit incriminating responses from a criminal suspect. Rhode Island v. Innis, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714 (1998). Volunteered statements not made in response to custodial interrogation do not require Miranda warnings. Arizona v. Mauro, 481 U.S. 520, 107 S. Ct. 1931, 95 L. Ed. 2d 458 (1987); Howard, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988). Miranda warnings are inapplicable to volunteered statements not the product of interrogation. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). In Howard, the court stated:

> In formulating a definition of interrogation, the [Innis] Court pointed out that "the concern of the Court in Miranda was that the 'interrogation environment' created by the interplay of interrogation and custody would 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination." The Court noted that interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself.

State v. Howard, 296 S.C. at 488, 374 S.E.2d at 288 (emphasis added).

When courts make an objective determination of whether police statements would be perceived as interrogation by a reasonable person in the same circumstances, courts have distinguished between statements that merely rephrase a defendant's remarks or constitute rhetorical questions, see Commonwealth v. Foley, 445 Mass. 1001, 1002–1003, 833 N.E.2d 130 (2005), cert. denied, 548 U.S. 927, 126 S.Ct. 2980, 165 L.Ed.2d 990 (2006), and those that are aimed at eliciting information likely to be incriminating. See Commonwealth v. Larkin, 429 Mass. 426, 432, 708 N.E.2d 674 (1999). Commonwealth v. Martin, 467 Mass. 291, 309 (2014). Compare Commonwealth v. Mitchell, 47 Mass.App.Ct. 178, 180–181, 711 N.E.2d 924 (1999) (statement commenting on poor timing of defendant's arrest merely an "observation"), with Commonwealth v. Chadwick, 40 Mass.App.Ct. 425, 428, 664 N.E.2d 874 (1996) (officer's statement disputing defendant's denial of rape charges was functional equivalent of custodial interrogation). Martin, 467 Mass. 291 at 309.

In Foley, following the defendant's arrest, the defendant was loud, screaming, and "motioning aggressively" while he was handcuffed in the backseat of a police car. 445 Mass. at 1002, 833 N.E.2d at 133. Observing the defendant's antics, an officer commented: "You seem pissed off...[a]re you having a rough day man?" Id. In response, the defendant exclaimed: "I choked her out, but she deserved it" and "I should beat her f'ing brains in." Id. The defendant argued his statements should be excluded because he made the statements in response to interrogation before being advised of his Miranda rights. Id. The court concluded the officer's question was merely rhetorical.

Thus, the officer's question did not constitute the functional equivalent of interrogation and was not likely to elicit an incriminating response. Id. at 1003.

In Smith v. United States, an inmate convicted of various weapons offenses in a penal institution challenged the admissibility of his statement to a corrections officer, which he contended was a product of custodial interrogation obtained without Miranda warnings. 586 A.2d 684 (D.C. Cir. 1991). The corrections officer conducted a "property check" on the appellant to ensure the appellant did not carry contraband into the halfway house. Id. at 685. The corrections officer became suspicious of the shoe box that appellant left on his bathroom floor because the appellant seemed to be concealing the shoebox from the officer. Id. After a struggle ensued with the appellant, the officer eventually opened the shoebox and observed that it contained a handgun, ammunition, and a clip. Id. In shock, the officer yelled: "Man, are you crazy. You got a gun in here. What the hell are you going to do with a gun in here?" Id. The appellant responded: "I need it to protect myself." Id. The District of Columbia Court of Appeals characterized the officer's remark as an "instinctive question" asked ". . . reflexively in a context of wonderment," as opposed to one that would be likely to elicit an incriminating response. Id. The court noted the officer's question – more in the nature of an exclamation than a question – was a "reflex reaction" to his discovery of a gun inside the box that appellant brought into the halfway house, and did not qualify as interrogation for purposes of Miranda. Id.

Similar to the officer's question in Foley, Trooper Bishop's question was merely rhetorical. Also, analogous to the correction officer's remarks in Smith, Trooper Bishop's response to Appellant's unusual act of swallowing a plastic bag was instinctive,

reflexive, and made "in a context of wonderment." The Supreme Court of the United States noted in Innis one of the main purposes of Miranda warnings is to protect against a compulsive "interrogation environment" that subjects the individual "to the will of his examiner." Howard, 296 S.C. at 488, 374 S.E.2d at 288. Trooper Bishop's spontaneous, reflexive remarks do not create the "interrogation" environment the Supreme Court of the United States envisioned to prevent. See Smith, 586 A.2d at 686 ("we regard appellant's 'instantaneous response' as 'more akin to a volunteered statement which Miranda deems admissible than an incriminatory statement wrung from an accused [whose will] is overborne" [internal citations omitted]). Trooper Bishop's statements were not made with the intention of interrogating Appellant but were rhetorical, unpremeditated exclamations of alarm made in the heat of the moment and which did not call for an answer or invite an incriminating response. U.S. v. Johnson, 734 F.3d 270 (4th Cir. 2013); U.S. v. Farlee, 910 F.Supp2d 1174 (D.S.Dakota 2012); Wert v. State, 383 S.W.3d 747 (TX 2012).

Thus, the trial court properly concluded that Appellant did not make the statements in response to interrogation and were admissible.

C. Harmless Error

Moreover, error, if any, in refusing to suppress the statements in question is harmless because the record before this court contains sufficient evidence of Appellant's guilt beyond a reasonable doubt. See State v. Lynch, 375 S.C. 628, 654 S.E.2d 292 (Ct. App. 2007)(stating that any error in failing to suppress evidence for possible Miranda violations is harmless if the record before the appellate court contains sufficient evidence

to prove Appellant's guilt beyond a reasonable doubt). The record contains the direct eyewitness testimony of both officers present at the scene who testified that they saw a baggie containing cocaine and that after a repeated attempt, Appellant was successful in grabbing the baggie and swallowing it with no other purpose than destroying the evidence and obstructing justice. Appellant's overwhelming evidence of guilt renders any possibility of a Miranda violation harmless.

CONCLUSION

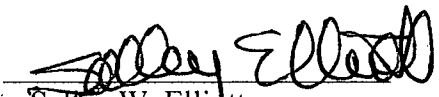
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No. 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

June 20, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2013-001210

THE STATE,.....RESPONDENT

v.

JERMEL RASHOND DANIELS, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: _____
Salley W. Elliott
S.C. Bar No. 1871

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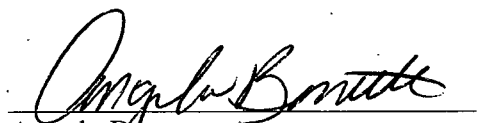
JERMEL RASHOND DANIELS, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 20, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Lara M. Caudy, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 20th, day of June, 2014.



Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

June 20, 2014

Lara M. Caudy, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

The State v. Jermel Rashond Daniels
Appellate Case No. 2013-00001210

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

Salley Elliott

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No. 1871

SWE/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services