ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2012-213478

THE STATE,

Respondent,

vs.

BRIAN KEITH BYRD,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issue regarding the admission of Appellant's incriminating statement was not preserved for appellate review because defense counsel did not renew his pre-trial objection to the admission of the statement when it was introduced during trial and elicited further testimony regarding the substance of the statement during cross-examination. However, regardless of any issue preservation concerns, the trial judge committed no error in admitting the statement because it was voluntarily made and did not result from any coercive actions undertaken by the law enforcement officer who heard the statement.

STATEMENT OF THE CASE

In April of 2011, Appellant Brian Keith Byrd was arrested after law enforcement officers responded to a report of a burglary in progress and found Appellant inside of the victim's residence. In October of 2011, the Greenville County grand jury indicted Appellant for one count of first-degree burglary. On November 13, 2012, a jury trial was commenced in the Greenville County court of general sessions with the Honorable Letitia H. Verdin, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of incarceration of twenty years. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Shortly after 3:00 a.m. on April 16, 2011, Officer James Metcalf of the Greenville County Sheriff's Office was alerted of a burglary in progress and quickly responded to the home of the victim, Berry Butler. (R. pp. 162-163). Upon arriving, he encountered Butler outside of the residence, and Butler advised him that a man had broken into his home, had been subdued, and was still inside. (R. pp. 163-164). Officer Metcalf then entered the home, found Appellant Brian Keith Byrd lying on the floor in the doorway between Butler's kitchen and den with a large wound to his head, noticed a bloody tire iron inside of the residence, and observed James Rector, a friend of Butler's, standing a few feet away from Appellant.[1] (R. pp. 20-21; pp. 50-51; pp. 164-165).

Upon seeing Appellant, Officer Metcalf advised him that he was a suspect in the burglary of Butler's home, and ordered him to stay on the ground. (R. p. 21; p. 169). However, Appellant, who was conscious and highly animated, did not comply with the officer's commands and, instead, made statements and yelled profanities at him while repeatedly trying to get up. (R. p. 21; pp. 168-170). Appellant then got up onto his knees, and Officer Metcalf responded by shooting Appellant in the chest with a Taser. (R. pp. 21-22; p. 171). Undeterred, Appellant pulled out one of the Taser prongs and continued to try to get up. (R. pp. 21-22; p. 171). Officer Metcalf then again deployed his Taser on Appellant. (R. pp. 21-22; pp. 171-172).

After that, Appellant finally stopped attempting to rise but continued to make statements without any prompting or questioning from the officer. (R. pp. 23-25; pp. 172-173). In one of those statements, Appellant indicated that he broke into Butler's

[1] Additionally, Officer Metcalf noticed that one of the doors to the home was completely smashed in and that the broken glass from the door was located entirely inside of the residence, which suggested that it had been shattered from outside of the residence. (R. pp. 165-166).

residence because it was a gambling house and that the officer knew that was the reason why he broke in. (R. p. 23; p. 25; p. 173). Shortly thereafter, Officer Michael Derosa of the Greenville County Sheriff's Office arrived on the scene, handcuffed Appellant, and removed him from the house. (R. p. 174; pp. 190-193). Appellant then received medical treatment and was transported to the hospital. (R. p. 194).

Subsequently, Appellant was indicted for first-degree burglary, and he proceeded to trial. (R. pp. 1-2; p. 33). At the outset of trial, the solicitor informed the trial judge that a pre-trial hearing was necessary in regard to the admissibility of Appellant's statement, and the trial judge conducted an in camera hearing on the issue. (R. pp. 5-6).

During the hearing, Butler testified about the incident and indicated that Appellant was conscious, was talking and yelling, and was not questioned by Officer Metcalf throughout the incident. (R. pp. 7-11). However, he stated that he did not recall hearing Appellant say anything about his residence being a gambling house during the incident. (R. pp. 9-11).

Similarly, Rector testified about the incident and stated that Appellant was conscious and repeatedly making statements throughout the incident even though he was not questioned or coerced. (R. pp. 15-18). However, Rector indicated that he could not specifically hear what Appellant said because he was not close enough to him and because Appellant was mumbling and lying face down on the floor. (R. pp. 17-19).

Additionally, Officer Metcalf testified about the details of the incident and recounted that Appellant stated that he broke into Butler's home because it was a gambling house after he deployed his Taser on Appellant when Appellant would not comply with his commands. (R. pp. 20-25). The officer further noted that Appellant was

conscious during the incident and that he did not ask Appellant any questions or do anything to prompt Appellant to make the incriminating statement. (R. pp. 21-23).

After Butler, Rector, and Officer Metcalf testified, Appellant chose to testify during the pre-trial hearing and stated that he lost consciousness during the incident and was only semi-conscious when Officer Metcalf and another officer entered the residence. (R. pp. 26-27). Regarding his own actions, Appellant claimed that he "had to have" complied with Officer Metcalf's commands, insisted that he did not make any statements, and asserted that he was in too much pain "to be doing anything." (R. pp. 27-28). Furthermore, he specifically denied stating that he broke into Butler's home. (R. p. 28).

Following that testimony, the solicitor argued that Appellant's statement was admissible because it was a spontaneous utterance and was not induced by any questioning from Officer Metcalf. (R. p. 29). In response, defense counsel conceded that no interrogation took place but contended that Appellant's statement should nonetheless be suppressed as involuntary due to the facts that neither Butler nor Rector heard the statement and that Appellant was allegedly either unconscious or rattled as a result of sustaining a head wound and being shocked with a Taser two times prior to making the statement. (R. pp. 30-31). After considering the arguments of counsel, the trial judge found by a preponderance of the evidence that Appellant's statement was a voluntary, spontaneous utterance and was not elicited by any state action. (R. p. 31). As a result, the trial judge ruled that the statement was admissible and that it would be for the jury to determine if the statement was voluntary beyond a reasonable doubt. (R. p. 31).

Subsequently, during trial, Butler and Rector testified about the details of the incident and confirmed that Appellant broke into Butler's residence and demanded money. (R. pp. 50-84; pp. 120-138). Furthermore, they both noted that Appellant was

conscious during the incident and was making statements, but they indicated that they could not specifically hear what he said. (R. pp. 78-79; p. 104; p. 134; pp. 136-137). Following their testimony, Officer Metcalf recounted the circumstances of the incident and noted that Appellant was conscious, animated, and highly talkative when he encountered him on the floor of Butler's residence. (R. pp. 162-169). He further testified that Appellant voluntarily stated without any prompting that he broke into Butler's residence because it was a gambling house.[2] (R. p. 173).

Thereafter, at the conclusion of the State's case, the trial judge advised the jury that the solicitor and defense counsel had agreed to stipulate that Appellant had two or more prior convictions for burglary, and the State rested. (R. pp. 201-202). Appellant then took the stand in his own defense and offered his account of the incident. (R. pp. 217-218). During his testimony, Appellant claimed that he went to Butler's residence to see a friend named "Goat" and get some cigars, he was driven there by a female friend, he went around back and was let inside by an unknown individual, he got into a physical altercation inside of the residence with Rector after Rector insulted "Goat," and then he was thrown into window panes, struck from behind with an object, and continuously hit in the head until he lost consciousness.[3] (R. pp. 218-224; pp. 226-227). After that, Appellant testified that he regained consciousness and an officer had arrived, but he indicated that he could not hear the officer speaking to him because he was incoherent. (R. pp. 227-228). Appellant then stated that he was shot in the side with a Taser twice

[2] When that testimony was introduced, defense counsel did not renew his pre-trial objection. (R. p. 173). Then, on cross-examination, defense counsel elicited additional testimony from Officer Metcalf confirming that Appellant admitted to the officer that he broke into Butler's residence. (R. p. 181).

[3] Prior to the date of the incident, Appellant claimed that he had visited the house on seven or eight earlier occasions and that the house was a gambling house with gambling machines inside and was also a location from which drugs, cigarettes, and other items were sold. (R. pp. 214-215). However, no evidence was discovered during the investigation into the incident that supported Appellant's claims. (R. pp. 200-201).

while he was "rolling around a little bit[,]" was handcuffed, and was taken to the hospital with lacerations to his head and fractures to his hand.[4] (R. pp. 229-231). However, Appellant insisted that he neither broke into Butler's house nor told the officer that he did so, and he affirmed on cross-examination that he specifically remembered not saying that he broke into Butler's house because it was a gambling house.[5] (R. pp. 231-232; pp. 235-236).

Following Appellant's testimony, the parties presented their closing arguments to the jury. (R. pp. 251-308). The trial judge then instructed the jury on the applicable law, including on the requirement that Appellant's statement had to be found to be voluntary beyond a reasonable doubt before it could be given any consideration in the jury's deliberations. (R. pp. 308-321). Subsequently, at the conclusion of trial, the jury convicted Appellant of first-degree burglary. (R. p. 332). Following the verdict, the trial judge sentenced Appellant to a twenty-year term of incarceration. (R. p. 349).

[4] During direct examination, Appellant specifically stated that he was shot with a Taser on two occasions and indicated that the Taser prongs struck him in roughly the same area both times. (R. pp. 229-230). However, during cross-examination, Appellant offered a contradictory account and stated that he was only shot with a Taser once and was shocked twice. (R. p. 241).

[5] During his testimony, Appellant also claimed that he personally knew Butler even though Butler had testified earlier during the trial that he had never seen Appellant prior to the incident. (R. pp. 52-53; p. 76; p. 236). However, on cross-examination, Appellant acknowledged that he wrote a letter to the solicitor prior to trial in which he indicated that he did not know Butler and that Butler did not know him. (R. pp. 241-242). When questioned about the obvious inconsistency between his trial testimony and his claims in the letter, Appellant asserted that the information in the letter was a lie while insisting that the letter was a "defensive ploy" with an unspecified purpose. (R. pp. 243-245; p. 248).

ARGUMENT

Any issue regarding the admission of Appellant's incriminating statement was not preserved for appellate review because defense counsel did not renew his pre-trial objection to the admission of the statement when it was introduced during trial and elicited further testimony regarding the substance of the statement during cross-examination. However, regardless of any issue preservation concerns, the trial judge committed no error in admitting the statement because it was voluntarily made and did not result from any coercive actions undertaken by the law enforcement officer who heard the statement.

Appellant contends that the trial judge erred in admitting into evidence an incriminating statement that Appellant made to a law enforcement officer after he was discovered inside of the victim's home. In support of that contention, Appellant maintains that the statement was involuntary because it was made after he was beaten in the head by the victim and the victim's friend and was twice shocked with a Taser by the officer. Initially, any issue regarding the voluntariness or admissibility of the statement was not properly preserved for appellate review because defense counsel did not renew his objection to the admission of the statement when it was introduced during trial and, instead, allowed it to be admitted without objection and then elicited cumulative testimony regarding the substance of Appellant's incriminating statement during his cross-examination of the officer. However, even assuming the issue was somehow preserved for appellate review, Appellant's statement was properly admitted into evidence during trial because the testimony presented during the pre-trial hearing established that Appellant made the incriminating statement voluntarily and not in response to any interrogation from the officer or any other coercive actions on the part of the officer. Absent some evidence of coercive law enforcement conduct causally related to the making of the statement, there was no basis upon which to find the statement to be

involuntary, and the trial judge committed no error in ruling that the statement was admissible. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "When reviewing a trial court's ruling concerning voluntariness [of a statement], [the appellate court] does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by **any evidence**." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (emphasis added). "The trial judge's determination of the voluntariness will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998); see State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007) ("Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion.").

ANALYSIS

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time that the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993).

"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." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (emphasis added). "This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009).

In the case sub judice, defense counsel made a motion in limine seeking the suppression of Appellant's statement as involuntary at the outset of trial, and the trial judge issued a preliminary ruling finding the statement to be voluntary "for the purposes of [the pre-trial] hearing" after conducting an evidentiary hearing on the matter. (R. p. 31). Thereafter, during trial, Butler and Rector testified about the incident before the solicitor called Officer Metcalf to the stand, who specifically testified about Appellant's incriminating statement. When the testimony about the statement was elicited, defense counsel did not renew his pre-trial objection to the statement. Instead, defense counsel allowed the statement to be admitted without objection before eliciting further testimony

on the statement during his cross-examination of the officer. Under those circumstances, Appellant's appellate issue with the voluntariness and admissibility of his incriminating statement was not properly preserved for appellate review.

Critically, in Appellant's case, the trial judge only ruled on the voluntariness and admissibility of Appellant's incriminating statement during the pre-trial hearing, and she clearly conveyed that her ruling on the matter was not final by stating that the ruling was for the purposes of the pre-trial hearing. Because the trial judge's pre-trial ruling was not final and the statement was not admitted immediately after the trial judge issued her ruling, defense counsel was required to renew his objection to the statement during trial in order to preserve his issue with the statement's admission. See State v. Stokes, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) ("[T]he record reflects that this issue was only raised and ruled on in limine. Stokes never raised the issue again at any time during the trial. Merely raising an argument in limine does not preserve the issue for appellate review."); see, e.g., Armstrong v. Atl. Coast Line R.R. Co., 137 S.C. 113, 121, 133 S.E.2d 826, 828 (1926) ("In each case the trial Judge clearly indicated that his action in admitting the testimony *was not final,* and that he would thereafter hear objections on a motion to strike out the testimony, and in each case no further effort to secure a final ruling on a motion to strike out was made. Under no construction can the motion to strike out with the Judge's ruling thereon, in the case at bar, be considered a final settlement of the question of admissibility." (italics in original)). However, defense counsel did not do so and, instead, elicited further testimony regarding Appellant's incriminating statement on cross-examination. See State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) ("During the course the trial certain testimony was admitted over the objection of [McKinney's] counsel. Thereafter, counsel for

[McKinney] cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured."); see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."). As a result, Appellant's issue in regard to his incriminating statement was not properly preserved for appellate review and cannot properly be raised or addressed on appeal. See Schumpert, 312 S.C. at 507, 435 S.E.2d at 862 ("A ruling in limine is not a final ruling on the admissibility of evidence. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review." (citations omitted)). Appellant's conviction should be affirmed.

B. Voluntariness and Admissibility of Appellant's Statement

In criminal cases, a confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). The use of an involuntary statement violates a criminal defendant's constitutional right to due process. Dickerson v. United States, 530 U.S. 428, 433-434 (2000); see Jackson v. Denno, 378 U.S. 368, 377 (1964) ("[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[.]"). The reason for the prohibition against the use of such a confession is that "coerced confessions" have been recognized to be "inherently untrustworthy." Dickerson, 530 U.S. at 433; see also Jackson, 378 U.S. at 385-386 ("[T]he Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction,

wrings a confession out of an accused against his will,' and because of 'the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.' " (citations omitted)).

The "ultimate test" of voluntariness involves determining whether the confession was "the product of an essentially free and unconstrained choice by its maker" or was the product of an overborne will and critically-impaired capacity for self-determination. Schneckloth v. Bustamonte, 412 U.S. 218, 225-226 (1973). "The process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). Pursuant to the bifurcated process, the trial judge must first determine in an evidentiary hearing whether the State proved that the statement was voluntarily made by a preponderance of the evidence, and then, if the trial judge finds that the State met its burden, the statement is submitted to the jury where its voluntariness must be proven beyond a reasonable doubt. Id.

The voluntariness of a statement "is a question of fact to be determined from all the circumstances[.]" Schneckloth, 412 U.S. at 248-249. When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of any interrogation that took place, to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4)

the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth, 412 U.S. at 226. Critically, the most important factor in an evaluation of the voluntariness of a defendant's statements is whether the defendant's will was overborne when he confessed. State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996). Importantly though, in order for a criminal defendant's statement to be found to be involuntary, the defendant's statement must have been the product of some coercive law enforcement activity or state action. See Colorado v. Connelly, 479 U.S. 157, 167 (1986) ("[C]oercive police activity is **a necessary predicate** to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." (emphasis added)).

Notably, in State v. Hill, 361 S.C. 297, 301, 604 S.E.2d 696, 698 (2004), Hill murdered several people at a Department of Social Services office and fled the scene. He was then apprehended the next day after an apparent suicide attempt and had a gunshot wound to the roof of his mouth and an exit wound in the top of his skull. Id. After he was arrested, he was taken to a hospital, was informed of his rights, and made an incriminating statement. Id. Subsequently, Hill's incriminating statement was admitted during trial, and he was convicted. Id. at 306, 604 S.E.2d at 700. Thereafter, Hill appealed, arguing that his statement should have been suppressed as involuntary "because police told him he was dying and because of his mental condition due to his brain injury." Id. However, the Supreme Court found no error in the admission of the statement. Id. In reaching that conclusion, the Supreme Court held that the officers' statements did not rise to the level of coercion and that Hill's mental condition alone did not "support a finding of involuntariness absent evidence of police coercion." Id. at 307, 604 S.E.2d at 701.

Just like the trial judge in Hill, the trial judge in the case at bar committed no error in admitting Appellant's incriminating statement. That is true because the evidence and testimony presented during the pre-trial hearing and during trial established that Appellant's incriminating statement was not elicited by any questioning, prompting, or coercive action on the part of Officer Metcalf. Because Appellant's statement was not made in response to any questioning or coercion and, instead, was volunteered by Appellant, there was no basis upon which to conclude that the statement was involuntary or that the use of the statement violated Appellant's due process rights. See State v. Brown, 274 S.C. 592, 594, 266 S.E.2d 415, 416 (1980) ("Volunteered statements, not in response to custodial interrogation, are admissible **without more**." (emphasis added)); see also Connelly, 479 U.S. at 164 ("Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."). As a result, the trial judge committed no error in finding the statement to be admissible, and her ruling was fully supported by the evidence. See Arrowood, 375 S.C. at 369, 652 S.E.2d at 443 ("The trial judge's determination [as to the voluntariness of a statement] is not in error if there is any evidence in the record to support it.").

In arguing to the contrary, Appellant – like the appellant in Hill – contends that his statement was not voluntary due solely to his physical and mental condition at the time that the statement was made. Specifically, Appellant argues that his will was overborne because he was beaten by Butler and Rector and was shocked with a Taser two times by Officer Metcalf prior to making his incriminating statement. However, while Appellant's physical and mental condition might have been relevant factors to be considered in determining his level of susceptibility to law enforcement coercion, his

mental and physical condition alone were insufficient to establish that his statement was involuntarily made. See Connelly, 479 U.S. at 165 ("[W]hile mental condition is surely relevant to an individual's susceptibility to police coercion, mere examination of the confessant's state of mind **can never** conclude the due process inquiry." (emphasis added)). Importantly, Appellant does not contend that his statement was the product of any coercion on the part of Officer Metcalf and has not identified any specific evidence of coercion. Moreover, Appellant does not dispute that his incriminating statement was not made in response to any law enforcement questioning.[6] Absent evidence establishing that Appellant's statement was the product of a coercive act by Officer Metcalf that overbore his will, Appellant's statement simply could not be considered to be involuntary. See State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2008) ("Coercive police activity is a necessary predicate to finding a statement is not voluntary."); cf. State v. Hughes, 336 S.C. 585, 594, 521 S.E.2d 500, 505 (1999) ("[T]he only factor [Hughes] relies on as evidence of involuntariness is his mental condition. The statements in question were spontaneously made and there is no evidence of police coercion. Since mental condition alone does not support a finding of involuntariness, the issue is without merit.").

Although Appellant contends that his physical and mental condition were affected by the beating that he sustained from Rector and Butler after he broke into Butler's home and the jolts from the Taser that he sustained after he failed to comply with Officer Metcalf's commands, Appellant's physical and mental condition alone were insufficient to establish that his incriminating statement, which was volunteered without any

[6] Notably, defense counsel conceded during trial that no interrogation occurred in Appellant's case. (R. p. 30). As a result, Appellant was precluded from arguing that his statement was elicited through interrogation on appeal. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing that an issue conceded during trial cannot subsequently be argued on appeal).

questioning or coercion, was involuntary. See State v. Doby, 273 S.C. 704, 709, 258 S.E.2d 896, 899 (1979) (recognizing that " 'mental deficiency alone is not sufficient to render a confession involuntary' " (citations omitted)); see also Connelly, 479 U.S. at 168 ("[T]he voluntariness determination has nothing to do with the reliability of jury verdicts; rather, it is designed to determine the presence of police coercion."); cf. Stokes v. State, 828 N.E.2d 937, 940 (Ind. Ct. App. 2005) (rejecting the contention that the use of a Taser to subdue Stokes rendered Stokes' subsequent statement involuntary). Because there was no evidence supporting a conclusion that Appellant's statement was the involuntary product of law enforcement coercion, the use of his statement during his trial was entirely proper. See Connelly, 479 U.S. at 166 ("Only if we were to establish a brand new constitutional right – the right of a criminal defendant to confess to his crime only when totally rational and properly motivated – could respondent's present claim [that his deficient mental condition rendered his statement involuntary] be sustained."); cf. Hill, 361 S.C. at 306-307, 604 S.E.2d at 700-701 (declining to find Hill's incriminating statement to be involuntary even though it was made after a bullet passed through Hill's brain). Accordingly, the trial judge committed no error in admitting Appellant's statement during trial, and there is no basis to reverse that ruling on appeal. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing that a trial judge's ruling regarding the voluntariness of a statement will be affirmed on appeal if supported by any evidence). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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SC Court of Appeals

I further certify that all parties required by Rule to be served have been served.
This 18th day of June, 2014.

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