STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
The Honorable Clifton Newman, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2010-172506
Unpublished Opinion No. 2014-UP-304 (S.C. Ct. App. filed 7/30/2014)

THE STATE

RESPONDENT,

V.

TAWANDA ALLEN,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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TABLE OF CONTENTS

PETITIONER'S QUESTIONS PRESENTED

Whether the Court of Appeals erred by holding it was not an abuse of discretion for the trial court to admit petitioner's confession where petitioner was threatened that she would be charged with murder if she did not "come straight," since a confession that is procured as a result of a threat is not admissible?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether the Court of Appeals erred in affirming Petitioner's convictions after finding the trial court did not abuse its discretion in admitting Petitioner's statement to law enforcement when Petitioner was read her Miranda warnings, Petitioner waived the rights provided by the warnings, the totality of the circumstances supported the trial court's determination that the waiver was voluntary, and there was evidence supporting a finding that the Petitioner's will was not overborne by the investigator's comments during the interrogation?

STATEMENT OF THE CASE

On August 30-September 1, 2010, Petitioner Tawanda Allen ("Petitioner") was tried by a jury for the murder of Kenyon Dorsey, first-degree burglary, and for criminal conspiracy. Petitioner was tried in the Williamsburg County Court of General Sessions before the Honorable Clifton Newman, Circuit Court Judge. Verdell Barr, Esquire, represented Petitioner. The State was represented by Kimberly V. Barr, Esquire and Doward Harvin, Esquire, both Assistant Solicitors for the Third Judicial Circuit. On September 1, 2010, Petitioner was convicted of murder, first-degree burglary, and criminal conspiracy. (R. p. 470). She was sentenced to forty-five years confinement for the murder conviction; thirty years confinement for the burglary conviction; and five

years confinement for the conspiracy conviction, all to be served concurrently. (R. pp. 472-73).

Petitioner timely filed a notice of appeal. After full briefing and oral argument, the South Carolina Court of Appeals issued an unpublished opinion affirming Petitioner's convictions. State v. Allen, Op. No. 2014-UP-304 (S.C.Ct.App. filed July 30, 2014). (App. pp. 1-6). Petitioner filed a Petition for Rehearing on August 13, 2014. (App. pp. 7-11). The Court of Appeals denied the petition on September 18, 2014. (App. pp. 12). Petitioner now seeks review of the South Carolina Court of Appeals' opinion in this Court.

STATEMENT OF FACTS

On April 4, 2009, Petitioner Tawanda Allen ("Petitioner") drove her then boyfriend, Kelvin Bowen, Jr., from Glen Burnie, Maryland to Kingstree, South Carolina. They picked up her son, Ronald Mack, and one of his friends, Antonio McClary, on the early morning of April 5, 2009. Petitioner then drove the group to the residence of Annette Bradshaw and the victim, Kenyon Dorsey. Mack, Bowen, and McClary went into the house, and then shot and killed the victim. The victim died as a result of a shotgun wound and three gunshot wounds. (R. p. 277). Petitioner then dropped her son and his friend back at the house from where they were picked up, and she drove Bowen back to Maryland. (R. pp. 126-27, 383, 411, 520-21, 525).

Ronald Mack and Kenyon Dorsey's Relationship Before the Shooting

The victim and Ronald Mack were once friends. (R. pp. 44, 122). According to the victim's mother, Mack had spent at least one night at her home. (R. p. 48). She also testified that Mack and the victim would hang out after school playing basketball, going

to the car wash, or running to Mack's family's gift shop in Kingstree. (R. pp. 71-2). The victim, who had his own vehicle, also drove Mack around from place to place. (See R. pp. 51, 68). Ms. Bradshaw also testified that she became aware that the victim stopped speaking with Mack approximately one month before the shooting. (R. pp. 48-49). Quadir Wilson, a friend of Mack's, testified that Mack and the victim were not friends on the day of the shooting because of something the victim may have said to Mack. (R. p. 122). Mack testified that he and the victim had issues regarding drug money. (R. pp. 375-77). Mack claimed that at some point in time after the two initially had confrontations regarding drug money, he believed the victim attempted to attack him in a shooting at a park in Conway. (R. p. 378). That led Mack to contact Bowen about assistance in killing the victim. (R. p. 379).

Ms. Bradshaw indicated that she was unaware that the victim was a member of a gang. (R. pp. 72-3, 77). However, Ronald Mack testified that the victim was indeed a member of a gang, and that the victim also would sell drugs with Mack from time to time. (R. p. 375).

Night of the Shooting

Ms. Bradshaw testified that on the day before the shooting, the victim spent the whole day at the beach with friends. (R. p. 50). She noted that the victim returned home around 12:30 a.m. on April 5. (R. p. 51). He did not immediately enter their home; instead he spent about one hour next door with one of the friends with whom he went to the beach. (R. p. 52). The victim did return to his residence at 1:30 a.m. (R. p. 53). Ms. Bradshaw spoke with the victim shortly thereafter. She then went to her bedroom, locked her bedroom door, and went to sleep. (R. p. 54).

Wilson testified that he was out at a club with Mack, McClary, and Dontrey Barr on the night leading up to the shooting. He noted Mack was saying that he was going to get the victim that night. (R. p. 122). Wilson left the club with McClary around 2 a.m. (R. p. 122-23). He and McClary met up with Mack and Barr at Barr's house. (R. p. 123). Wilson testified that in response to a question from McClary, Mack indicated that he was going to be doing something. (R. p. 123). McClary and Mack changed into dark clothes. (R. pp. 124-25). They left shortly thereafter. Wilson saw Mack and McClary leave, but neither Wilson nor Barr went with the other two. (R. p. 126). Wilson did not see Petitioner that night. (R. p. 132).

According to Petitioner's statement, she and her boyfriend, Kelvin Bowen, drove down from Maryland on the night of April 4, 2009. (R. pp. 504-05; State's Ex. 45). Petitioner noted that Bowen had put the shotgun and a 9mm handgun in her vehicle before they left Maryland. (R. pp. 505-07; State's Ex. 45). Bowen placed the handgun under the driver's seat of the vehicle, and he placed the shotgun in a coat that he laid in the back/trunk area of the vehicle. (R. pp. 506-07; State's Ex. 45). While the two were on the road, Petitioner and Bowen received several phone calls from Mack, specifically asking when they would be arriving. (R. pp. 505, 507; State's Ex. 45). During one of those calls, Mack requested that the two pick him up from Barr's house when they arrived in Kingstree. (R. p. 507; State's Ex. 45).

In her statement, Petitioner indicated that she and Bowen arrived in Kingstree approximately 1:50 a.m. (R. p. 508; State's Ex. 45). When they arrived at Barr's house, Mack and McClary came out of the house and walked towards Petitioner's vehicle. (R. p. 509; State's Ex. 45). Petitioner indicated that Bowen was initially concerned about

McClary's presence, and Bowen pulled the handgun from under the driver's seat. (R. p. 509; State's Ex. 45). When the two walked out, Petitioner retook the driver's seat. McClary sat in the front passenger seat; Mack and Bowen sat in the back seat. (R. p. 509; State's Ex. 45). According to Petitioner, Bowen and Mack then had a discussion about whether the victim was home alone; Mack had indicated that the victim was alone because his mother's truck was not at home. (R. pp.509-10; State's Ex. 45). Petitioner drove the four to the front of the victim's house. (R. p. 510; State's Ex. 45).

As per Bowen's instructions, Petitioner turned her vehicle around to face towards the main highway, turned her lights off, and parked. (R. pp. 510-11; State's Ex. 45). Bowen, Mack, and McClary all exited the vehicle, went down the road, and went into the victim's house. (R. p. 511; State's Ex. 45). Petitioner stated that she heard two gunshots approximately ten to fifteen minutes after the three left her vehicle. (R. pp. 511, 514; State's Ex. 45). Petitioner also relayed what Bowen told her about what occurred inside of the house.

> He [Bowen] said we got up to the porch, and walking up the steps, and I guess it makes noise, and when they got up to the porch that there was screen door, and they opened the screen door, and they pushed the door but the door wouldn't open so Tony was going to kick the door in Callie said no, no, tum and see if the door opens. I don't know who turned the knob or whatever, he didn't say, but whoever turned it the door opened up, and being that Ronald used to hang with Kenyan so much I guess he knew the setup of the house. He said Ronald went in first, and he said Ronald went straight for Kenyan's room. He said Tony went like in the living room putting all sorts of clothes and wrapping himself up in clothes.
>
> ...
>
> He said he saw something laying across the bed, a cover or something, but there was no one in that bedroom. He said Tony must have went toward the kitchen, and Callie said Tony waved at him and said someone is sitting in the kitchen or where ever. I know he said he was sitting in front of the TV. He said Tony waved at him, and Ronald was coming back down the

> hall because he went straight to Kenyan's room, and Ronald came back down the hall and Callie said he waved and said right here. He said he pointed right here, right here. He said Ronald had the handgun, and Ronald came in and stood in the front of Kenyan and shot him once. He said no, he knew that he's probably not dead so that's when he took the gauge and he shot him.
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> ...
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> He said his eyes were closed and he had headphones on his ears. He said but when Ronald shot Kenyan, there was some sound that he made, and he said no, he's not dead, and he said that's when he shot him with the 10 gauge.

(R. p. 516, ll 3-17; p. 516, l 24 – p. 517, l 15; p. 517, ll 17-21; see State's Ex. 45).

Petitioner indicated in her statement that Bowen told her they were going to shoot the victim during the drive to Kingstree. (R. pp. 520-21; State's Ex. 45). She noted that it had not thought about attempting to talk Mack out of shooting the victim, and she did not think about calling law enforcement to tell them what happened. (R. pp. 520, 521; State's Ex. 45).

Events After the Shooting

Ms. Bradshaw testified that she heard a noise that sounded similar to a firecracker at around 2:20 a.m. (R. p. 55). She got up and went to see what caused the commotion. (R. pp. 55-56). She testified that she heard people running out of her house when she exited her bedroom. (R. p. 56). She found the victim had been shot in the chair where he was sleeping. (R. p. 56).

During her interview, Petitioner stated that when the three returned to Petitioner's vehicle, Mack got into the front passenger seat, and Bowen and McClary got into the back seat. (R. pp. 514-15; State's Ex. 45). She then drove the group away from the victim's house. Ms. Bradshaw testified that when she ran to her mother's house next

door to get help, she saw a dark colored truck or sports utility vehicle leaving the area. (R. pp. 56, 58, 63-66).

Petitioner and Mack talked about school as they drove back to Barr's house. (R. pp. 410, 515; State's Ex. 45). Petitioner and Bowen dropped Mack and McClary back at Barr's house. (R. pp. 126-27, 383, 411, 520-21; State's Ex. 45). Mack and McClary changed back into their original clothes. (R. pp. 127, 416). Mack also washed his hands with bleach. (R. pp. 127-28, 416). Petitioner and Bowen drove back to Maryland. (R. pp. 383, 411, 525; State's Ex. 45).

Discoveries Made during the Police Investigation

One cartridge casing was found on the floor in the kitchen. (R. p. 85). Further, two shotgun shells were also found in the vicinity of the kitchen. (R. p. 86). A projectile was located underneath the front deck of the house. (R. p. 84). Another cartridge casing was located in the victim. (R. p. 96). Based on the cartridge casings, law enforcement was seeking both a shotgun and a 9 millimeter weapon. (R. pp. 108-09).

A twelve-gauge shotgun, four twelve-gauge shotgun shells, ten nine millimeter rounds of ammunition, two spiral notebooks belonging to Mack, and various documents belonging to Petitioner, Bowen, and Mack were retrieved from Petitioner's apartment in Maryland. (R. pp. 156-59, 184-202, 209-11). Two fired projectiles and some shotgun pellets were recovered from the victim's body during the autopsy. (R. pp. 171-72). The firearms and toolmarks examiner testified that the shotgun shells recovered at the crime scene were most likely fired by the shotgun recovered from Petitioner's apartment. (See R. pp. 213-19, 234). The examiner was also able to determine that the fired nine millimeter cartridge casings were all fired by the same firearm. (R. p. 239). However,

the examiner was not able to determine if the fired projectiles were also fired from the same weapon because the handgun had not been recovered for examination. (R. pp. 235-36, 240).

Investigator Lail testified that she initially interviewed Ms. Bradshaw and the victim's friend who lived next door. (R. pp. 296-97). During the course of the investigation, Lail also interviewed Wilson, and he provided a statement. (R. p. 304). On May 14, 2009, Lail interviewed McClary. (R. p. 305). Based upon that interview, Lail sought out Mack, Petitioner, and Bowen. (R. p. 305). Lail also interviewed Mack's biological father, and he provided Lail with Petitioner's name. (R. p. 306). Lail then tracked down Mack's location in Maryland. (R. pp. 308-09). Petitioner, Mack, and Bowen were eventually arrested in Maryland by local authorities based upon arrest warrants issued in relation to this case. (R. pp. 308-11).

ARGUMENT

This Court should deny this petition for writ of certiorari. The Court of Appeals correctly affirmed Petitioner's convictions. Petitioner's statement was properly admitted into evidence; the totality of the circumstances supported the trial court's determination that Petitioner's waiver of her Miranda rights was voluntary, and there was evidence supporting a finding that the Petitioner's will was not overborne by the investigator's comments during the interrogation.

Standard of Review

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct.App.2007) (citing State v. Washington, 296 S.C. 54, 55, 370

S.E.2d 611, 612 (1988); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977)). "If admitted, the jury determines whether the statement was freely and voluntarily given beyond a reasonable doubt." Arrowood, 375 S.C. at 365, 652 S.E.2d at 441.

> The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Dickerson v. U.S., 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). When considering the voluntariness of a statement, the court and jury should consider "not only the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (omitting internal citations). Misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible. Frazier v. Cupp, 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969). "Coercion is determined from the perspective of the suspect." [State v.] Miller, 375 S.C. [370,] 386, 652 S.E.2d [444,] 452 [(Ct.App.2007)].

State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). "A statement may be held involuntary if induced by threats or violence, or if obtained by any direct or implied promises, or if obtained by the exertion of improper influence." State v. Register, 323 S.C. 471, 478, 476 S.E.2d 153, 158 (1996) (citing State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)). 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. State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987)

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. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996); Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct.App.1999). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Arrowood, 375 S.C. at

366, 652 S.E.2d at 442; State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct.App.2005). Accordingly, the appellate courts are "bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

The Court of Appeals correctly affirmed Petitioner's convictions after finding there was evidence to support the trial court's determination that Petitioner's statement to law enforcement was freely and voluntarily given. The Court of Appeals applied the proper standard of review. In finding the trial court's determination was supported by the record, the Court of Appeals noted as follows:

> Prior to trial, the circuit court conducted a hearing pursuant to Jackson v. Denno to determine the voluntariness and admissibility of Allen's confession. Officer Pamela Jean Lail testified at the hearing that she, along with Investigator Whack and Lieutenant Collins, interviewed Allen for one hour. Lail maintained that Allen did not appear to be under the influence of alcohol or drugs during the interview, nor did Allen appear to be suffering from any mental or physical ailments. Additionally, Lail stated Allen could read and write, seemed to understand what the officers were saying, acknowledged that she understood her rights, and never requested to stop the interview for any reason. According to Lail, the police did not promise Allen anything in exchange for her confession, nor did they threaten or mistreat her in any way, such as denying her food or bathroom breaks. Lail further claimed that when Collins told Allen halfway through the interview that she could be charged with murder and urged her to "come straight," Collins's remarks were not delivered in a threatening manner. Lail also testified Allen's confession was brought about after "she knew [the police] had witnesses" disproving her story and connecting her to the crimes. In listening to the audio recording of the

> interview, we note a lack of discernable change in Allen's speech before and after Collins's statement. We hold the above-listed facts are evidence that Allen's will was not overborne by the circumstances surrounding the given confession. See Breeze, 379 S.C. at 545, 665 S.E.2d at 251 (finding that, based upon an officer's testimony regarding the circumstances of the defendant's statement, it could not conclude the circuit court's ruling that the defendant's statement was voluntary was unsupported by any evidence); Miller, 375 S.C. at 387-88, 652 S.E.2d at 453 (upholding the circuit court's determination of voluntariness because the circuit court had the opportunity to listen to the testimony, assess the demeanor and credibility of witnesses, and weigh evidence accordingly when defendant's attorney testified defendant was coerced into making a statement by a promise of a lenient sentence but four witnesses for the State denied any promise of leniency).

(App. 3)(footnotes omitted).

The Court of Appeals did not err in affirming Petitioner's convictions because the trial court did not abuse its discretion in admitting Petitioner's statement into evidence; the trial court's finding that Petitioner voluntarily waived her rights in giving the statement is supported by the record, and there was no evidence indicating Petitioner's will was overborne by any coercive action by law enforcement.

At issue is whether Petitioner was coerced into providing incriminating statements after the following exchange:

> QUESTIONS BY LT. COLLINS:
>
> Q. As a matter of fact Antonio was riding with ya'll, you need to come straight.
>
> A. I'm coming straight.
>
> Q. These are serious charges.
>
> A. Yes, ma'am.
>
> Q. You understand you also can be charged with murder?
>
> A. Yes, ma'am, I understand.

> Q. Right now you're not charged with murder. We are giving you the benefit of the doubt. I'm sitting here listening to you, and I have known you for a long time, but you're not telling us the whole story. You were here, and Antonio McClary is in jail. We transferred him yesterday to Georgetown, and he's charged with this murder, because he got in your vehicle with you and Ronald and Callie from Trey's house. Trey and those saw when you picked them up in your vehicle, and saw when ya'll brought them back so you need to be straight. Ronald was on the phone talking to you and Callie when he left Club Jordan. He talked to ya'll to find out what time ya'1I were going to get here. You just need to be straight, because yon have been seen here, and saw when Ronald and Antonio got in the car with you. Don't let us have to change your charge to murder, so you need to tell us exactly what happened. I've been sitting here listening to you roam on about what happened. All that is good, but you were here, so let's start on the 4th which is the Saturday that Kenyan got killed that night. You were contacted by your son Ronald, and you and Callie came down here and picked him up right in the front of Trey's house. You need to start when Ronald called you that day. What did he call you for and what was your conversation?
>
> (R. p. 500, l 5 – p. 501, l 15; State's Ex. 45).

A Jackson v. Denno[1] hearing was held in this case on Friday, August 23, 2010, the Friday before the trial began. At issue was the admissibility of Petitioner's statement to police given on May 28, 2009. At the Jackson v. Denno hearing, Investigator Pamela Lail testified. Lail testified Petitioner had been arrested on accessory before the fact and accessory after the fact of murder, accessory before the fact and accessory after the fact for burglary first, and accessory before the fact and accessory after the fact of armed robbery. (R. p. 11). The arrest warrants were served on Petitioner in Maryland. (R. p. 11). The interrogation began at 10:38 a.m. (R. p. 10).

According to Lail, Petitioner did not appear to be under the influence of any drugs or alcohol. (R. pp. 11-12). She also did not appear to be suffering from any physical or mental conditions, and she could read and write. (R. p. 12). Petitioner was read the

[1] Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

Miranda warnings. (R. p. 12). Petitioner indicated that she understood her rights. (R. pp. 12-14). Petitioner was then asked if she wished to waive her rights and speak with the officers at that time. (R. p. 12). Petitioner both verbally indicated that she wished to waive her rights, and she indicated in writing that she wished to waive her rights. (R. pp. 12-13).

Lail further testified that she had no concerns about Petitioner's ability to understand Lail. (R. p. 16). Lail indicated that she did not threaten Petitioner in any way, did not mistreat Petitioner, did not withhold medical care, food, bathroom breaks, or anything else from Petitioner. (R. p. 16). Overall, the interrogation lasted approximately one hour. (R. p. 16). Lail also stated that Petitioner never requested a lawyer, and she never requested a break. (R. p. 17). No promises were made in exchange for the statement, and Petitioner was not threatened in any way if she did not give a statement. (R. p. 17).

During cross-examination, Lail acknowledged that there was a point in time during the interrogation that Investigator Collins told Petitioner that she needed to come straight, and told Petitioner that she could be charged with murder. (R. p. 21). Prior to that statement by Collins, Petitioner had denied being present in South Carolina on the date of the murder. (R. p. 22). Lail testified that the statement by Collins that Petitioner could be charged with murder was not a threat to charge Petitioner with murder if she did not "come straight" with the investigators. (R. pp. 22-4). Lail stated that Petitioner was not given her Miranda warnings again during the interrogation. (R. pp. 25-6).

In arguing the statement was not voluntarily made, Petitioner argued as follows:

> [I]t would be the Defense position that we would ask the Court to suppress the May 28th statement of Ms. Tawanda Allen. It would be based on

> Jackson Denno, and it would be our position that clearly Ms. Allen was threatened at least twice in the taking of this statement. And after being threatened and after being told that she would be placed in a greater position of jeopardy if she was not straight with the investigators and of course the statement took a different turn at that point. Ms. Allen then made statements that to a very large degree incriminating her, and we don't feel as if those statements were necessarily given on a voluntary basis but that they were coerced by the investigators. And it's clear that at that point what the police officers saw as charges that could be substantiated were the accessory charges, and they got no additional information that they didn't already have. And she, even though the time, the potential sentencing may be the same, the charges are distinctly different. The conduct is distinctly different. And for those reasons we would ask, Your Honor, that the statement given by Ms. Tawanda Mack Allen not -- on May 28, 2009 -- not be allowed to be a part of this trial.

(R. p. 30, l 12 – p. 31, l 11).

The State responded by arguing that a person charged with accessory before the fact was subject to the same sentence as a principal. (R. p. 31). The solicitor also contended that law enforcement is not required to tell a defendant the possible penalties one is facing, nor are they required to explain specific laws. (R. pp. 31-2). The solicitor went on to argue that Petitioner was intelligent, could read and write, and was not threatened or harmed in any way. (R. p. 32). Further, Petitioner was advised of her rights, and she knowingly and intelligently her rights, and the statement as given in a voluntary manner. (R. p. 32).

In response, Petitioner argued "that once the investigators start to threaten the defendant the defendant is not then sure what might happen, and then the defendant is entitled to be advised as to what might happen at that point. She would be entitled to be told again if this now is a situation that you don't fully understand or you don't fully appreciate, then you're entitled to have a lawyer and even if you can't afford the State has

to give you one. And I think that's the situation that was created here at least twice." (R. pp. 32, l 22 – 33, l 7).

Petitioner ended his argument by contending a waiver of rights made at the beginning of a statement does not allow law enforcement to do whatever they want in taking a statement after the waiver is made. (R. pp. 35-6).

The trial court found the statement was voluntary.

> Well, the examination of the witness in this case sort of took on a new twist as far as a Jackson v. Denno inquiry because the questioning on cross-examination did not center on the voluntariness of the statement itself but on the contents of the statement and whether or not the answers were influenced by the firmness of the interrogation or the interrogation technique. And generally, when a Court looks to whether or not a statement is freely and voluntarily given the Court is not interested in the contents of the statement. The Court is interested in whether or not a statement was made and whether or not the statement was itself was freely and voluntarily and without hearing whatever was said was part of the statement. Because once a statement is freely and voluntarily given, what is said is beyond know the scope of the inquiry as to whether the statement is free and voluntarily. So the Court doesn't then go on and examine the statement itself to test whether each response was free and voluntary and making an assessment that at some point in time it no longer became free and voluntary, but generally just whether the statement itself after being properly advised whether the rights were waived and the statement freely and voluntarily given. I find that the State has established by a preponderance of the evidence that the statements made by the defendant in this case were free and voluntary statements after the constitutional rights as outlined in Miranda versus Arizona and all other subsequent cases were given.

(R. p. 36, l 3 – p. 37, l 9).

At trial, Lail testified Petitioner was Mirandized before she gave her statement. (R. pp. 314-15). Lail further testified that Petitioner read the waiver of rights form. (R. p. 316). Lail indicated that she was satisfied that Petitioner could read, had the ability to understand, and was not under the influence of alcohol or drugs. (R. p. 317). Lail also stated that Petitioner did not appear to be suffering from any illnesses or ailments. (R. p.

318). Petitioner never asked to stop the interrogation, and she never indicated she wanted to talk with someone. (R. pp. 331-32). Lail described the interview as a matter-of-fact conversation that lacked emotion. (R. pp. 332-33).

During cross-examination, Lail testified that Collins' statement about a murder charge was not a threat, and Petitioner did not see it as one. (R. p. 355). Lail noted that Petitioner did not stop the interview, which was her right to do. (R. p. 355). Lail maintained that no threats were made, and that it was unnecessary to re-Mirandize Petitioner after Collins' request for Petitioner to come clean. (R. p. 356).

The trial court did not abuse its discretion in finding the statement given by Petitioner was made after she voluntarily waived her constitutional rights as enunciated under Miranda v. Arizona. It is uncontroverted that the interrogation lasted approximately one hour. (R. p. 16; State's Ex. 45). The interrogation occurred at the Williamsburg County Sheriff's Office. (R. p. 9; State's Ex. 45). It consisted of a single interview of Petitioner. At the time of the interrogation, Petitioner was thirty-seven years old. (See R. p. 478; see also State's Ex. 104). While it does not appear that the investigators ascertained Petitioner's educational background, they did determine that she appeared to be able to read and write with no problems. (R. pp. 12-16; State's Ex. 45). Lail testified that Petitioner did not appear to be under the influence of alcohol or drugs, and she did not appear to be suffering from any physical conditions or mental conditions. (R. pp. 11-12). Lail also indicated that Petitioner was employed at the time of the interview. (R. p. 17).[2] Lail also testified that Petitioner was not threatened in any way

[2] Lail testified that she thought Petitioner worked at an ice cream shop, like a Dairy Queen. (R. p. 17). In her statement, Petitioner stated she worked for Breyer's Brand Ice Cream in Maryland. (R. p. 477).

during the interrogation, and the investigators did not withhold medical care, food, bathroom breaks, or any similar amenities that Petitioner may have needed. (R. p. 16). There was no indication the investigators misrepresented any facts during the interrogation. Petitioner was clearly advised of her rights prior to making the statement. (R. pp. 10-14; 478; State's Ex. 45). At no point during the interrogation did Petitioner either ask to end the interview or request to speak with an attorney. Altogether, Respondent submits the trial court's determination that Petitioner's waiver was knowing, intelligent, and voluntary is supported by the record.

Petitioner's will was not overborne by any alleged coercive tactic by law enforcement. Respondent submits this case is akin to the factual scenario presented in State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). In Rochester, the defendant was taken to SLED for a polygraph exam. After the polygraph examiner administered the Miranda warnings, the defendant was given three polygraph exams. Id. at 198, 391 S.E.2d at 246. The defendant continuously denied any involvement in the murder about which he was being questioned even though the polygraph examiner told the defendant that he knew the defendant was lying. Id. at 199, 391 S.E.2d at 246. At some point, the polygraph examiner indicated it would be in the defendant's best interest to tell the truth. Id. Sometime thereafter, the defendant gave a detailed confession. Id. The Supreme Court upheld the trial court's admission of the confession in Rochester. The Court specifically noted the polygraph examiner did not promise the defendant anything if he gave a statement, and the examiner's statement "was not on its face an inducement or hope of lighter punishment. Standing alone, the polygraph examiner's comment did not constitute the kind of hope of reward or benefit," as was done in State v. Peake, 291 S.C.

138, 352 S.E.2d 487 (1987). Rochester, 301 S.C. at 200-01, 391 S.E.2d at 247. "In addition to our finding that appellant's confession was not induced by a promise of leniency, there is sufficient evidence that shows appellant was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit. Petitioner's confession was not induced by force, psychological or physical, or by direct or implied threats." Id. at 201, 391 S.E.2d at 247.

Petitioner's case is analogous to Rochester in several respects. First, the alleged coercive statement by law enforcement in both cases were made while the interrogator was informing each defendant that law enforcement knew they were not telling the truth. Second, as was the case in Rochester, the statement by Investigator Collins neither promised any leniency for a statement nor implied leniency for cooperation. To the contrary, Collins' statements reflected that at that time, law enforcement believed it had enough information to charge Petitioner with murder. In essence, Collins' remark that Petitioner should tell them exactly what happened was equivalent to the polygraph examiner's statement that it would be in the defendant's best interest to tell the truth. Further, as was the case in Rochester, there was no indication that any other elements the trial court would have reviewed under a totality of the circumstances review would support a finding the waiver of rights was involuntary. The interrogation only lasted a little more than one hour. There was no testimony or evidence presented to indicate law enforcement attempted to trick Petitioner. There were no threats of force, psychological or physical, or any direct or implied threats. Altogether, the admission of Petitioner's statement was not so manifestly erroneous as to show an abuse of discretion. See also Miller, 375 S.C. at 387, 652 S.E.2d at 453 (finding no abuse of discretion when officers

and prosecutor told defendant it was in his best interest to cooperate but made no promise of leniency); Saltz, 346 S.C. at 133, 551 S.E.2d at 250 (finding no abuse of discretion in admission of statements given after officer indicated he told defendant "the only way they could help him was for him to tell the truth.").

Petitioner's reliance upon State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), is misplaced. In Osborne, the defendant challenged two of eleven statements she gave over a two and one-half month period. The defendant claimed the statements were coerced because the officers threatened to charge her with "withholding evidence" if she did not make a statement. Id. at 365, 392 S.E.2d at 179. In regards to the first statement, she also asserted that she was told that the first statement she challenged did not "fit the facts" and therefore she must provide another statement or face charges for withholding evidence. Id. In Osborne, both the defendant and the sheriff testified that the defendant was essentially told that she did not have to talk, but if she withheld evidence, she could be charged with a crime. Id. at 365-67, 392 S.E.2d at 179-80. The Supreme Court concluded that the State failed to meet its burden by a preponderance of the evidence that the rights were voluntarily waived. Id. at 367, 392 S.E.2d at 180.

Petitioner's case is distinguishable in several respects. First, Investigator Collins' statements in this case regarding the possibility that Petitioner could face a murder charge was neither a promise of leniency in exchange for more information nor a threat of increased punishment if she failed to provide more information. It was merely an assessment of Petitioner's potential predicament in light of the information that was available to law enforcement that contradicted Petitioner's denials that she was not in the state when the murder occurred. There was no testimony or evidence at either the

Jackson v. Denno hearing or at trial that indicated Petitioner perceived the statement as anything else. Second, contrary to Petitioner's assertions, there was no evidence presented that Petitioner believed or had reason to believe she would face some additional punishment if she did not continue speaking with the investigators. As was noted by Investigator Lail at the pre-trial hearing, Petitioner actually would not have faced any additional time had she been charged with murder because an accessory before the fact is subject to the same potential sentence as a principal. (R. p. 29); S.C. Code Ann. § 16-1-40. There was no testimony to support Petitioner's current contention that she may have believed the death penalty would have been an available punishment had she been charged with murder. In light of the absence of such evidence, and the lack of evidence reflecting that Petitioner felt the questioning was coercive, Respondent submits Petitioner's contention is without merit.

State v. Peake, 291 S.C. 138, 352 S.E.2d 487, does not afford Petitioner any relief in this case. In Peake, the Supreme Court found that a statement was involuntary when the investigating officer promised the defendant that the solicitor would not seek the death penalty in the defendant's case if he gave a statement. Id. at 139, 352 S.E.2d at 488. The State had failed to meet its burden of showing the statement was not the product of the promise of leniency. Id. Here, the testimony at the pre-trial hearing and at trial indicates that no promise of leniency was made. Nor were there any threats of severe consequences if Petitioner chose not to continue with her statement. This is also borne out by the lack of any substantial change of demeanor by Petitioner on the audio tape of the statement. (See State's Ex. 45).

Altogether, the trial court did not abuse its discretion in admitting Petitioner's statement into evidence. The State established by a preponderance of the evidence that the statement was made after Petitioner voluntarily and intelligently waived her constitutional rights outlined in Miranda. Furthermore, there was no evidence indicating that Petitioner's will was overborne by any coercive conduct by law enforcement. As a result, Petitioner's convictions were properly affirmed. Thus, certiorari should be denied.

CONCLUSION

Petitioner has failed to show that there is a special and important reason for this Court to grant his Petition. It raises no novel question of law. There is no conflict between the Court of Appeals' opinion and any prior decision of this Court. The Court of Appeals was correct in its findings. As a result, Petitioner's Petition for a Writ of Certiorari should be dismissed.

Respectfully submitted,

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November 26, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Williamsburg County
The Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2010-172506

THE STATE

RESPONDENT,

V.

TAWANDA ALLEN,

APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari on Appellant by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 26th day of November, 2014.

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ATTORNEY FOR RESPONDENT

ALAN WILSON
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November 26, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: *The State v. Tawanda Allen*
Appeal from Williamsburg County
Appellate Case No. 2010-172506

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Respondent's Return to Petition for Writ of Certiorari, in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: Robert Michael Dudek, Esq. (w/two copies of encls.)
The Honorable Ernest Finney, III, Solicitor, 3rd Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Services (w/copy of encls.)