STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
The Honorable Eugene Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002207

THE STATE,

Respondent,

v.

WILLIAM JARRELL ALEXANDER,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly ruled Appellant knowingly and voluntarily gave his statements to the police, despite his purported consumption of alcohol, cocaine, and MDMA at a party the previous day because evidence showed Appellant was fully capable of understanding and communicating clearly with law enforcement, particularly as time passed.

II.

Appellant's statements to police were properly admissible because Appellant was neither threatened nor coerced when the officers truthfully told him he would be charged with murder, nor was his will overborne by these comments.

STATEMENT OF THE CASE

On September 6, 2013, a Laurens County grand jury indicted Appellant for accessory after the fact to murder. (R. pp. 685-86.) The Honorable Eugene Griffith, Jr. presided over the jury trial, which took place September 8-12, 2014. (R. p. 1.) David M. Stumbo, Esquire and C. Dale Scott, Esquire represented the State, and Chelsea McNeil, Esquire represented Appellant. (R. p. 1.) The jury convicted Appellant, and Judge Griffith sentenced him to seven years' imprisonment, suspended to three years' imprisonment with three years' probation. (R. p. 681.) This appeal follows.

STATEMENT OF FACTS

On the evening of June 29, 2013, Lieutenant Tyrone Goggins of the Clinton Department of Public Safety was the lieutenant on shift. He received a call indicating a female at the home of Henry and Cynthia Simmons at [redacted] Calvert Avenue was either seriously hurt or dead. (R. p. 9, line 6- p. 10, line 3.) Upon arrival around 11:30 pm, he spoke to Casey Jones, EMS supervisor, and observed the EMS crew working on someone in the back of the EMS unit. (R. p. 10, lines 8-17.)

The homeowner, Henry Simmons, approached Goggins and told him his son, Michael Beaty, and his son's friend (Appellant) knocked on his door requesting his help because their friend Emily Anna Asbill (the Victim) was hurt. (R. p. 10, lines 17-20.) Appellant was inside the residence when Goggins arrived, so Simmons went inside and asked Appellant to come out to talk to Goggins. (T. p. 104, lines 17-22.) Goggins noticed Appellant was unsteady on his feet, swaying back and forth as if he were intoxicated, and smelled of alcohol. (R. p. 12, lines 1-5.) Appellant indicated to Goggins that he, Beaty, and the Victim were celebrating at a wake for the death of a friend that day and arrived at the residence in Beaty's Buick. (R. p. 13, line14 – p. 14, line 3.) Beaty was standing on the driveway near the garage. (R. p. 13, line 15.)

At this point, Goggins was not certain what happened to the Victim, and what crime, if any, he was investigating. (R. p. 13, lines 19-22.) He only knew the Victim was unresponsive when EMS arrived and they were working on her in the ambulance. (R. p. 13, line 24 – p. 14, line 7.) Goggins did not Mirandize Appellant, nor did he arrest him, but he did ask Appellant, "what happened to Emily Asbill?" (R. p. 13, lines 15-18.) Appellant told Goggins the three of them left a party at a friend's house, and he blacked out in the back seat of the car. The next thing Appellant remembered was waking up at

Henry Simmons' house and going inside to lay down. (R. p. 14, line 15.) Appellant said shortly after he went inside the house, Beaty came to the door and said he needed help for Emily. (R. p. 14, lines 16-17.) Appellant also mentioned the Victim was a "cutter", but when questioned by Goggins whether he had seen the Victim cut herself that night, Appellant said no. (R. p. 16, lines 2-5.)

Goggins noticed Appellant appeared to have trouble staying on his feet due to his intoxication, but Goggins also testified Appellant understood his questions and had no trouble communicating with him. Goggins asked Appellant if he would come to the Police Department to help with the investigation, and Appellant agreed. (R. p. 15, lines 16-20.) Coggins asked another officer to escort Appellant to the station while he remained on scene. (T. p. 16, lines 14-16.)

Crystal Roberts, the police commander of the Clinton Department of Public Safety, responded directly to the police station late that night after Goggins called her to report the possibility of a suspicious death. (R. p. 20, lines 4-24.) She arrived at the station around midnight, or shortly after. (R. p. 21, lines 19-20.) Although he was free to move about the station, Appellant was sleeping in a chair in one of the offices. (R. p. 22, lines 17-21.) Robert's instructions from Goggins were to Mirandize the witness upon her arrival in case he elected to speak, but not to purposely question him. (R. p. 23, lines 9-14.) Roberts read Appellant his Miranda rights from the form, and Appellant indicated he understood each one of his rights by initializing each line. (R. p. 24, lines 7-11.) Roberts Mirandized Appellant at 1:25 am. (R. p. 24, line 17.)

In Roberts' opinion, Appellant was intoxicated, but he understood the rights she read to him. (R. p. 26, lines 6-11.) Roberts informed Appellant they were waiting for SLED to arrive before they talked in detail about the incident at Calvert Avenue. (R. p.

26, lines 15-22.) Appellant asked for and received a blanket and something to drink while they waited. (R. p. 27, lines 1-3.) Appellant began talking about the events of the evening; he said he drank a lot that night, and he didn't know what happened. (R. p. 27, lines 10-12.) He further stated that he blacked out in the back of the car and did not remember anything other than waking up and seeing tape around the Victim's car at Calvert Avenue. (R. p. 27, lines 14-16.)

Special Agent Michael Collins, with the State Law Enforcement Division, responded that evening to the Clinton Department of Public Safety to assist in the investigation. (R. p. 27, lines 1-5.) At the time he knew little about the incident; only there was a death and a vehicle involved. (R. p. 36, lines 2-5.) Collins began speaking with Appellant at approximately 2:00 am. (R. p. 36, line 15.) He appeared coherent and seemed to understand the agents. Appellant did not seem distressed, and he agreed to talk to them. (R. p. 37, lines 17-25.)

Collins asked Appellant to recall the day's events. Appellant said he went to a party at a friend's house around 2:00 pm and stayed most of the day until Beaty and his girlfriend arrived. (R. p. 40, lines 7-20.) Appellant decided to leave with them when they left the party, and he sat in the backseat, Beaty sat in the driver's seat, and the Victim sat in the front passenger's seat. (R. p. 40, lines 21-23.) Appellant noticed tension between Beaty and the Victim, but he could not recall what the two were arguing about. (R. p. 41, lines 1-6.) When they arrived at Beaty's parents' house on Calvert Avenue, Appellant went inside to lie down in a back bedroom, but had some trouble sleeping because Beaty and Victim were talking loudly. (R. p. 41, lines 13-23.) The next thing Appellant clearly remembered was the EMS arriving on scene. (R. p. 41, line 19.) Appellant also told Collins he and Beaty were lifelong friends, and he met the Victim when she began dating

his friend. (R. p. 42, lines 1-3.) Appellant described seeing physical altercations in the past between the Victim and Beaty in which the Victim would bite Beaty. (R. p. 42, lines 14-21.)

Special Agent Harvey Owens assisted Agent Collins in the interview of Appellant. (R. p. 47, lines 7-8.) Owens brought the signed Miranda waiver into the interview with him when they first talked to Appellant to confirm Appellant's signature. (R. p. 48, lines 17-24.) Owens did not believe Appellant appeared to be inebriated or incapable of understanding the questions or his surrounding circumstances, but Owens 8037874862was aware Appellant had been drinking earlier that day. (R. p. 52, lines 2-16.)

Appellant left the station in the early morning hours of June 30, 2013. (R. p. 58, lines 3-6.) Appellant returned later that day for an additional interview around 2:00 pm. (R. p. 57, lines 22-24.) Lieutenant Goggins, who was at the crime scene the night before, had called Beaty and his father and asked them to come in and give a statement, and Appellant volunteered to come in again, as well. (R. p. 58, lines 14-19.) Appellant drove himself to the station. (R. p. 58, line 14.) Goggins and two other officers conducted the interview. (R. p. 58, lines 8-9.) Goggins read Appellant his Miranda rights again, and Appellant initialed each one. (R. p. 59, lines 23-25.) Goggins noticed none of the prior evening's signs of intoxication. (R. p. 61, lines 11-13.)

Appellant told the officers the morning of the party he bought three cases of beer and cigarettes. (R. p. 62, lines 10-14.) His friends picked him up to take him to the party, where he snorted cocaine and took a drug called Molly. (R. p. 63, lines 14-16.) Appellant remembered little more about the previous night than standing under the garage at the Simmons home and going to the police station later. (R. p. 62, lines 21-24.) Appellant

wrote and signed a statement to this effect. (R. p. 63, lines 17-24.) Special Agent Jeffrey Kindley observed Appellant as he wrote the statement and found Appellant was cooperative and cognizant of his circumstances. (R. p. 71, lines, 5-11.) Agent Kindley notarized Appellant's statement, and as part of that procedure, asked the declarant to swear under oath that the statement was the truth. (R p. 72, lines 13-18.)

Commander Crystal Roberts next spoke to Appellant at approximately 5:30 pm later that day. (R. p. 77, lines 20-24.) The police received conflicting reports about what happened at the crime scene, so they hoped to obtain more information from Appellant about what he remembered. (R. p. 79, lines 1-5.) Roberts did not recall what Appellant did in the time between when he spoke to Coggins and when she spoke to him later that day, but she did recall that he was free to leave. (R. p. 79, lines 12-21.) Roberts Mirandized Appellant again, and as before, Appellant initialed each one and indicated he wanted to waive his rights. (R. p. 81, line 9 – p. 83, line 22.)

Appellant remembered he went to the party and left with Beaty and Victim, but he could not recall any conversation between the two and did not remember any stops along the way, or any other details. His next recollection was seeing the yellow tape around the crime scene and talking to Mr. Simmons. (R. p. 84, line 17 – p. 86, line 4.) Roberts began to point out inconsistencies in the timing of his statement and the nature of the Victim's injuries. (R. p. 85, lines 5-16.) Appellant told her he consumed twenty six beers, and taken cocaine and Molly at the party, and claimed he blacked out so he could not remember much of the night. (R. p. 85, lines 20-25.) Roberts told Appellant the Victim was "choked to death," and their investigation showed something happened during his presence on the way home from the party. (R. p. 86, lines 1-11.) Roberts told Appellant either he, Beaty, or both of them must have been involved in the crime or were covering

it up, and he could be charged with the Victim's murder. (R. p. 86, lines 14-18 and p. 94, lines 6-8.) Roberts told Appellant, "You need to tell us today because if we don't get anything today before you walk out that door I'm telling you you're going to be charged with murder, of killing Emily Asbill." (R. p. 109, lines 14-17; Defense Exhibit 1 32:08.)

Appellant eventually acknowledged Beaty approached him while he was standing under the garage of the Simmons house and told him, "I think I've gone too far, I might have ended her life." (R. p. 86, lines 22-23.) Appellant provided a written statement to police indicating what Beaty told him, and Appellant admitted he told Beaty they should call 911. Instead, Appellant and Beaty sought help from Simmons, who checked on the Victim and then called 911. (R. p. 87, lines 9-16.)

After Roberts interviewed Appellant, Special Agent Rick Charles with SLED interviewed him at approximately 6:30 pm that evening. (R p. 124, line 21 - p. 125, line 6.) Agent Charles Mirandized Appellant again and obtained his consent to interview using polygraph. (R. p. 125, lines 9-13.) After the polygraph concluded, Appellant gave an oral statement to Agent Charles, in which he gave new information that Beaty argued with the Victim, stopped the car, and had a physical confrontation with the Victim. He also admitted he watched as Beaty "got on top of the victim and appeared to choke her." (R. p. 133, lines 8-14.) Appellant asked Agent Charles if he could "go and talk to those guys and tell them basically what happened." (R. p. 133, lines 19-20.)

Agent Charles informed Lieutenant Goggins of Appellant's statements at approximately 9:00 pm. (R. p. 137, lines 1-6.) Goggins obtained another statement from Appellant at 9:04 pm. In this statement, Appellant gave even more details about the events leading up to the Victim's death. The three of them left the party and rode around drinking beer and smoking marijuana. (R. p. 142, lines 18-19.) Beaty and the Victim

fought about their relationship. (R. p. 142, lines 20-23.) During one of the stops on the country roads to use the bathroom, Beaty pushed the Victim down. (R. p. 142, lines 24-25.) Beaty also dragged the Victim down the road until Appellant stopped him, and the Victim appeared to have injured her arm badly. (R. p. 143, lines 1-6.) The three got back in the car and drove to the Simmons house, where Beaty and the Victim continued arguing and hitting each other. (R. p. 143, lines 6-7.) Appellant got out of the car and went into the garage to continue smoking and drinking. He saw Beaty climb on top of the Victim and put his hands around her throat. (R. p. 143, lines 7-11.) Beaty approached him and said he thought he messed up: "I may have taken her life. If I didn't tell anyone –if I did, don't tell anyone if you are my friend. I said I will do my best, but I don't want to be involved." (R. p. 143, lines 12-15.) Beaty told Appellant to act as if he did not know what was happening. (R. p. 143, lines 17-18.)

The following day, Micheal Beaty was charged with the murder of Emily Asbill. (R. p. 449, lines 4-6.) Appellant was charged with accessory after the fact to murder. (R. p. 449, lines 2-6.)

The following is a timeline of the oral and written statements made by the Appellant:

1) Oral statement to Lt. Goggins at approximately 11:30 pm at the scene. Appellant claims he came from the party and blacked out in car. He remembers Beaty asking for help at the Simmons house. (R. p. 296, lines 1-21.)
2) Oral interview with Commander Roberts at 1:25 am at station. Appellant was Mirandized and said he was at party and passed out, and he does not remember much. Roberts smells alcohol on Appellant, but ascertains Appellant is fully capable of understanding and communicating. (R. p. 398, lines 4-24, p. 400, lines 12-25.)
3) Oral interview with Agent Collins and Agent Owens of SLED at 2:15 am at station. Appellant seemed drunk but coherent. He knew the seating arrangement of the passengers and noticed tension in the car. Appellant also claimed they went inside and he tried to sleep, but

Beaty and Victim were fighting. He next remembered EMS there. (R p. 356, line 2 – p. 357, line 21.)

4) Written statement with Lt. Coggins at 3:10 pm the following day at station. Appellant is Mirandized again. He says he remembers the party, drinking, getting in the car, and passing out. (R. p. 305, line 25-p. 306, line 10.)
5) Written statement with Commander Roberts and Agent Collins at 6:17 pm at station. Appellant is Mirandized for the third time. Roberts knew of the autopsy report and was aware the Victim was murdered. The officers determined either Appellant or Beaty, or both, could be charged with murder. (R. p. 438, lines 21-25.) Roberts told Appellant the Victim was strangled. He now recalls Beaty said he may have ended her life and that he told Beaty to call 911. Roberts pressed Appellant for more, but Appellant claimed he did not remember. (Defense Exhibit 1)
6) Oral statement to Agent Charles at 6:39 pm at station. Appellant was Mirandized a fourth time. Upon completion of the polygraph, he informed Charles he wanted to tell "those guys" what really happened. Appellant said he remembered a physical altercation in which Beaty pushed Victim down and dragged her behind the car. Appellant also saw Beaty get on top of Victim and choke her. (R. p. 386, line 8 – p. 387, line 8.)
7) Written statement to Goggins at 9:04 pm at station. In this written statement, Appellant went into more detail about the previous night. He recalled witnessing the murder, and said Beaty told him to cover it up. (R. p. 310, line 11 – p. 311, line 21.)

Appellant argues the first three statements should be inadmissible because of his intoxication, as should the statements on following day because he was threatened with a murder charge in the interview with Roberts and Collins.

ARGUMENT

I.

The trial court properly ruled Appellant knowingly and voluntarily gave his statements to the police, despite his purported consumption of alcohol, cocaine, and MDMA at a party the previous day because evidence showed Appellant was fully capable of understanding and communicating clearly with law enforcement, particularly as time passed.

Appellant contends the trial judge erred in admitting his incriminating statements to officers at the police station. Appellant argues his gross intoxication from alcohol, cocaine, and MDMA precluded a knowing and voluntary waiver of his Miranda rights. Intoxication does not automatically render a person incapable of waiving his rights, however, and the evidence shows Appellant was fully able to understand and communicate with officers. The trial judge committed no error in admitting Appellant's statements, and Appellant's conviction should be affirmed.

Standard of Review

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court are based on 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, 177, 460 S.E.2d 368, 370 (1995); *see also* State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court's findings regarding whether a defendant was in custody when statements were made if the trial judge's ruling is supported by the record). On appeal, the conclusion of

the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. State v. Livingston, 223 S.C. 1, 6, 73 S.E.2d 850, 852 (1952); see also State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). The standard of review is limited to determining whether the trial court's ruling is supported by **any evidence**. State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) (emphasis added).

Voluntariness of Waiver

Prior to a custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney, pursuant to Miranda v. Arizona, 384 U.S. 436, 444 (1966). If a defendant is advised of his Miranda rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that he voluntarily waived those rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting State v. Neeley, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978)). The waiver must also be made with the full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it. Moran v. Burbine, 475 U.S. 412, 421 (1986). The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of the totality of the circumstances surrounding the waiver. State v. Doby, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979).

In the instant case, law enforcement read Appellant his Miranda rights on four occasions during a twelve hour window. Appellant gave seven statements to the police; three of them written and four oral. Appellant does not argue police questioned him in violation of Miranda. Instead, he argues that despite the proper administration of the Miranda warnings, he did not freely and voluntarily waive his right to remain silent

because he was too intoxicated. (Appellant's Brief, p. 8.) Appellant cites as evidence of his intoxication **his statements** to the police that he consumed twenty-six beers, cocaine, and MDMA. Appellant also cites the officers own observations of his demeanor during the early interrogations. (R. p. 63, lines 14-16; Appellant's Brief pp. 6-8.)

Appellant's efforts to mislead the police make it difficult to determine fact from fiction, however. Evidence showed the following facts at the Jackson v. Denno[1] hearing:

1) Goggins questioned Appellant on scene at the Simmons house, and noticed Appellant appeared unsteady on his feet, swaying back and forth, and smelled of alcohol. (R. p. 12, lines 1-5.) Though Appellant had trouble staying on his feet, he understood the questions presented to him and had no trouble communicating with Coggins. (R. p. 15, lines 16-20.)
2) Crystal Roberts, who arrived at the station after midnight, noticed Appellant sleeping at various times at the station house. (R. p. 22, lines 17-21) Roberts testified Appellant understood his rights and was able to communicate his needs to her while waiting for the SLED agents to arrive. (R. p. 27, lines 1-3.)
3) Agent Collins, who interviewed Appellant at approximately 2:00 am testified Appellant appeared coherent and seemed to understand him. (R. p. 37, lines 17-25.) In this statement, Appellant gave more detail about the events of the evening. (R. p. 41, lines 13-23.)
4) Agent Owens, who assisted Agent Collins, testified he did not believe Appellant was intoxicated at the time of questioning, but was aware Appellant had been drinking earlier in the day. (R. p. 52, lines 2-16.) Owens, too, testified Appellant communicated with the agents without any difficulty and seemed to understand his circumstances. (R p. 52, lines 2-16.)
5) Appellant returned to the station around 2:00 pm later that day, which was approximately fourteen hours after his purported drug and alcohol consumption.[2] (R. p. 57, lines 22-24.) **Appellant drove himself to the station**. (R. p. 58, line 14.)
6) Coggins interviewed Appellant again, and noticed none of the previous evening's unsteadiness or signs of intoxication. (R. p. 61, lines 11-13.)
7) Roberts spoke to Appellant at 5:30 pm. (R. p. 77, lines 20-24.) Roberts made an audio recording of the conversation. (Defense Exhibit 1.) In that conversation with Roberts, Appellant spoke clearly, discussed his child and portrait tattoos with the officers, and audibly waived his right to speak to them about the Victim's death without an attorney.

[1] 378 U.S. 368 (1964)

[2] Assuming his last opportunity to consume alcohol was around 11:00 pm. EMS responded approximately 11:15 pm. (R. p. 251, lines 24-25.)

(Defense Exhibit 1.) Appellant again mentioned his alcohol and drug consumption as an explanation of why he purportedly remembered almost nothing about the Victim's death.

8) Agent Charles testified Appellant volunteered to speak to Goggins and the other detectives "and tell them basically what happened." (R. p. 133, lines 19-20.)
9) At approximately 9:00 pm, Appellant gives his most detailed statement yet to law enforcement. (R. pp. 683-84.) In his statement, Appellant admits he told Beaty he would do his best to assist him in the cover up of the Victim's death. Appellant wrote, "He said, 'act like you don't know whats going on.'" (R. p. 684.) Goggins testified Appellant had something to eat and drink while he was making the statement. (R. p. 142, line 7.)

As Appellant's story changed, so did his observed level of intoxication. In his final written statement, Appellant admitted he was covering for Beaty initially. His earlier claim of gross intoxication was consistent with his efforts to deny knowledge of the Victim's death. Without independent testimony collaborating Appellant's drug use, his statements about the cocaine and MDMA use lack credibility. On the other hand, Appellant's alcohol consumption was supported by testimony from law enforcement officers and should be considered under the totality of the circumstances surrounding the waiver of his Miranda rights. Thus, the truth should only be inferred from what the officers observed, not what the Appellant claimed in his early statements.

Numerous jurisdictions have shed light on what it means to waive one's rights with "full awareness" within the context of intoxication or while under the influence of drugs or other impairments. Intoxication is one factor to be considered by the trial court in determining voluntariness and validity of a waiver of Miranda rights. However, intoxication alone does not invalidate a knowing, intelligent, and voluntary waiver. In State v. White, the Court held that a suspect voluntarily waived his Miranda rights when he was in hospital bed on four point restraints and had been given sodium pentothal five hours prior to the questioning. 311 S.C. 289, 294-95, 428 S.E.2d 740, 743 (Ct. App.

1993). The officers did not question the suspect until after they had given him the Miranda warnings. White seemed to understand what he said to them and be aware of why the troopers were there. "The fact that he had been under medication and was strapped to his bed was, at best, only a circumstance the trial court was to consider in determining voluntariness." Id. at 294-295, 428 S.E.2d at 743; *see also* Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (holding coercive police activity is a necessary predicate to a finding that a confession is not voluntary, and a defendant's mental condition by itself and apart from official coercion does not dispose of the issue of voluntariness); People v. Veloz, 946 P.2d 525 (Colo.App.1997) (finding that intoxicated defendant who was stumbling around was properly advised of his rights and made statements voluntarily); State v. Tribou, 488 A.2d 472 (Me.1985) (although defendant had been drinking and smoking marijuana on the day of incident, he was not intoxicated and was able to understand and voluntarily to waive his rights); State v. Finson, 447 A.2d 788 (Me.1982) (even a person heavily intoxicated is not necessarily incapable of waiving constitutional rights).

State and federal courts are consistent in this holding. In United States v. Curtis, 344 F.3d 1057 (10th Cir. 2003), the court found a valid waiver where the defendant was under the influence of marijuana, crack cocaine, and alcohol consumed earlier in the day. In Curtis, the defendant looked "a little punchy," laid his head on the table, closed his eyes at times, and had bloodshot eyes. After reviewing the entire record, the court nevertheless determined the defendant knowingly and intelligently waived his rights. Id. at 1065. In reaching this conclusion, the court relied particularly on the testimony of the arresting officer that the defendant was calm, cool, and able to answer questions, and appeared to be operating under his own free will. Id.

Similarly, in United States v. Morris, 287 F.3d 985 (10th Cir. 2002), the court found the defendant, although in the hospital recovering from gunshot wounds, had nevertheless knowingly and intelligently waived his Miranda rights. The court acknowledged the defendant's mental capacity was affected by pain medication administered at the hospital, and the posttraumatic stress of being shot in the back multiple times. Id. at 989. Nevertheless, looking at the totality of the circumstances, the court said the defendant knowingly and intelligently waived his rights because he was "alert and responsive during the interview," "coherent in previous conversations with the agents guarding the room," and "demonstrated that he understood his right to remain silent." Id.

These cases indicate a defendant must be impaired to a substantial degree to overcome his ability to knowingly and intelligently waive his privilege against self-incrimination. *See also* U.S. v. Phillips, 506 F.3d 685 (8th Cir. 2007) (waiver was voluntary despite defendant's claimed intoxication from four ecstasy pills and a cup of brandy); U.S. v. Shan Wei Yu, 484 F.3d 979 (8th Cir. 2007) (waiver was voluntary despite defendant's argument that he was on prescription medicine and should have received rights in Chinese). The mere fact of drug or alcohol use does not preclude a finding of a knowing and voluntary waiver of rights. "The defendant must produce evidence showing his condition was such that it rose to the level of substantial impairment. Only then could we conclude the government has failed to prove the defendant possessed full awareness of both the nature of his rights and the consequences of waiving them." United States v. Burson, 531 F.3d 1254, 1258 (10th Cir. 2008)

Turning to the case at hand, Appellant failed to demonstrate a level of intoxication so substantial he lacked a full awareness of his rights and the consequences of their

waiver. Even assuming Appellant was truthful when he told the officers he had consumed twenty six beers, cocaine, and MDMA, no testimony was presented to determine when during the day he used these substances. EMS responded to the scene at approximately 11:15 pm (R. p. 251, line 25.) Lt. Coggins received the call to report to the crime scene around 11:30 pm. Without any specific evidence to pinpoint the timing, the State submits Appellant likely consumed his last beverage some time before 11:00 pm that evening. When Appellant's first spoke to Lt. Goggins at the crime scene, the intoxicants in his system would have been at their most potent. Even at his most inebriated state, Appellant was able to understand Lt. Coggins, answer his questions, and agreed to come to the station to aid in the investigation. During that conversation, Appellant was neither in custody nor subject to an interrogation, so he was not Mirandized. His Miranda rights did not attach, therefore, so no waiver of those rights need be examined.

Later, at the station, Appellant received his Miranda rights and spoke to Agent Collins and Agent Owens around 2:00 am. Both agents testified he fully understood their questions and was able to communicate clearly. Though it was clear he was drinking earlier in the day, his intoxication was not as evident to these agents as it was to Lt. Coggins at the scene. By the time of this questioning, three hours passed since his last possible consumption of alcohol, and many hours passed since Appellant attended the party during which he purportedly used MDMA and cocaine.

Appellant was certainly sober when he appeared the next afternoon at the station for questioning. The officers saw no indication of the previous night's intoxication, and they repeatedly Miandized him and discussed his waiver of those rights. Appellant gave another incriminating statement in which he claimed to be unable to remember that night just after 6 pm (nineteen hours after his last likely alcohol consumption and more than

twenty-four hours after his supposed cocaine and MDMA use). Three hours later, he gave the statement in which he admitted he agreed to cover for Beaty. Any intoxicants consumed the day before would have dissipated long before then.

At no point was Appellant confused or incapable of understanding or communicating with law enforcement. Out of an abundance of caution, the officers Mirandized Appellant four times in a twenty-four hour period and made every effort to make Appellant comfortable by offering him blankets, food, drinks, and the freedom to move around the station. Appellant presented no evidence his intoxication was so substantial the night of the Victim's death that it in any way prevented him from understanding his Miranda rights and waiving them with a full understanding of the consequences. Thus, his argument that he did not freely and voluntarily make incriminating statements because of his intoxication is without merit.

II.

Appellant's statements to police were properly admissible because Appellant was neither threatened nor coerced when the officers truthfully told him he would be charged with murder, nor was his will overborne by these comments.

Appellant next argues his incriminating statements were the result of threats made by Agent Collins and Commander Roberts during questioning the day after the death of the Victim. The officers were not threatening Appellant, however, but were merely explaining the consequences of his silence under the circumstances. The officers even explained to Appellant the rationale behind the charges if they were not given further explanation of the events of the night. Far from threatening Appellant, Roberts and Crystal were informing him of a very likely outcome.

A statement may not be "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of improper influence." State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (2007). However, the mere existence of threats, violence, implied promises, improper influence, or other coercive police activity does not automatically render a confession involuntary. State v. Register, 323 S.C. 471,479, 476 S.E.2d. 153, 158 (1996). The proper inquiry is whether the defendant's "will has been overborne and his capacity for self-determination critically impaired." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). The courts base this determination by considering the totality of the circumstances. State v. Register, 323 S.C. 471,480, 476 S.E.2d 153,158 (1996).

In this case, Appellant argues the officers threatened him with a murder charge if he did not give them more information about the Victim's death. Appellant characterizes the officer's statements as threats only because he did not appreciate the gravity of his situation. Appellant's arrest for murder was not a far-fetched hypothetical, but a probable

outcome of the investigation without evidence to the contrary. Concerning threats of future arrests, the issue turns on whether the arrest could have been lawfully executed. United States v. Johnson, 351 F.3d 254, 263 (6th Cir. 2003). In Johnson, the police threatened to arrest the suspect's sister unless the suspect gave them more information about his drug distribution. The officers had probable cause to believe the sister was aware of and involved in her brother's drug business because the operation was run out of her home and drugs were found in her bed. Id. at 263. Because the police had probable cause to arrest the person in question, the court found their threat to do so was not coercive and thus did not render a confession involuntary. Id. If the law allows a statement given for the protection of a family member, when the arrest is supported by probable cause, it certainly should allow a statement given by a suspect to protect himself when he faces more serious charges.

During the interview at approximately 5:30 pm, Agent Collins said to Appellant, "If we don't get the absolute truth from either of you, it's going to be both of you and the charges are going to be the same: murder." (Defense Exhibit 1, 22:45.) Roberts also told Appellant, "You need to tell us today because if we don't get anything today before you walk out that door I'm telling you you're going to be charged with murder, of killing Emily Asbill." (Appellant's brief, p. 9, R. p. 109, lines 14-17.) Collins reasonably explained why the murder charge would be forthcoming: "Because the two of you were in the car-- the three of you were in the car. Y'all are the only three in the car from the time y'all leave Kyle's to the time you got to Calvert Street. Only three people; one of you ended up dead. Process of elimination tells one or both of the three people did something." (Defense Exhibit 1, 23:30.) At this point of the investigation, Roberts and Collins knew the Victim's cause of death was asphyxiation. (R. p. 117, line 3.) Law

enforcement had two suspects, Appellant and Michael Beaty, and still investigating the crime. (R. p. 117, line 20 and p. 120, lines 4-7.) Roberts attempted to record the entire conversation but her iPhone stopped recording every time someone called the phone. (R. p. 121, lines 4-9.)

When Roberts and Collins interviewed Appellant that afternoon, their statements about Appellant's arrest for murder were neither threats nor coercion, but simply the truth. Moreover, Appellant maintained he did not remember the events of the evening and disavowed any knowledge of the details of Victim's death. Appellant's will was not overborne, clearly, as he refused to provide information to the officers despite their efforts to learn more about that night. Instead, Appellant chose to speak truthfully with officers only after Agent Charles administered a polygraph test.

Agent Charles read Miranda rights and administered the polygraph to Appellant at approximately 6:30 pm later that day. (R. p. 125, line 6.) After the polygraph, Appellant admitted to Charles he remembered Beaty and the Victim arguing in the car, Beaty stopping the car for a physical altercation, and then Beaty climbing on top of the Victim and apparently choking her. (R. p. 133, lines 8-14.) Appellant also asked Agent Charles if he could "go talk to those guys and tell them basically what happened." (R. p. 133, lines18-20.) The interview concluded around 9:00 pm. (R. p. 135, line 20.) When Appellant finally admitted the truth, hours had passed since his interview with Roberts and Collins. Without any evidence of prompting by Agent Charles, Appellant volunteered to speak to Coggins in more detail about the previous night. Far from being coerced, Appellant realized cooperation with the police was in his own best interest, and he opted to help himself.

Appellant was neither threatened nor coerced into making an incriminating statement for two reasons: first, the probable arrest for murder was the truth, not a threat; and second, Appellant did not make the statement in response to Roberts' and Collins' questioning. Given the totality of the circumstances, the trial court properly concluded Appellant's will was not overborne, and his statements were entirely voluntary. Therefore, Appellant's argument his statement was the result of an improper threat is without merit.

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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October 2, 2015

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
The Honorable Eugene Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002207

THE STATE,

Respondent,

v.

WILLIAM JARRELL ALEXANDER,

Appellant.

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, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 2nd day of October, 2015.

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