STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGINALD L. GORDON,

APPELLANT,

Appellate Case No. 2014-002555

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
S.C. Bar No. 68383

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

SCARLETT A. WILSON
Solicitor, Ninth Circuit
101 Meeting St., Suite 400
Charleston, SC 29401
(843)958-1900

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

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RESPONDENT'S STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant, Reginald L. Gordon, in October of 2013 for the murder of Dominque Grant (Indictment Number 2013-GS-10-5815) and for possession of a firearm during the commission of a violent crime (Indictment Number 2013-GS-10-5816). (Indictments.)

On November 17, 2014, Appellant's case was called to trial before the Honorable Thomas Cooper. (T. p. 1). Michael Detreville, Esquire, represented Appellant during the trial. (T. p. 1). Deputy Solicitor Bruce Durant represented the State. (T. p. 1.) On November 20, 2014, the jury returned verdicts of guilty as to murder and guilty as to possession of a firearm during the commission of a violent crime. (T. p. 1; p. 781, line 12- p. 783, line 5.) Judge Cooper sentenced Appellant to thirty years' imprisonment for murder and five years' imprisonment for possession of a firearm during a violent crime. (T. p. 792, line 25- p. 793, line 13.)

Appellant filed a timely notice of appeal. This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

On the evening of August 17, 2012, Dominique Grant, a twenty-five year old mother of two, went out with her little sister and a couple of friends. (T. p. 169, lines 17-22; p. 170, lines 1-12.) Sometime around 4:00 am the following morning, she was shot multiple times while she was sitting in the driver's seat of her car, which was parked outside a club (Frasier's) in Ravenel, South Carolina. (T. p. 154, lines 1-8.)

Earlier that evening, Dominque and her friends decided to go out to another club called the Purple Mirage, where a local rap group from Ravenel named Crazy Wop was performing. (T. p. 170, lines 7-22; p. 221, lines 8-20.) Appellant was also at the Purple Mirage with his friends, and he had his gun in his car. (T. p. 284, lines 2-15.) Following the group's performance, Crazy Wop and their entourage, including Appellant and his co-defendant, spilled into the parking lot. (T. p. 224, line 12- p.225, line 23.) The band's videographer recorded the scene on film. (State's Exhibit 50) While in the parking lot, a member of a rival group from West Ashley jumped in front of Appellant, who was in front of the camera, which started a parking lot brawl. (T. p. 224, line 10- p. 225, line 25.) Meanwhile, in an unrelated incident, Appellant's cousin, Darnell Chaplain, got "ganged" by some people from West Ashley in a fight over a girl. (T. p. 210, line 20- p. 212, line 20.)

Following the fight, most of the crowd drifted to another bar named Frazier's. (T. p. 133, line 19-p. 134, line 7.) Dominque also went to Frasier's and spent some time that night with Lionel Blair. (T. p. 237, line 19-p. 238, line 5.) Blair was a friend of one of the members of Crazy Wop, but also from West Ashley. (T. p. 231, lines 10-14; p.234, line 18-p.235, line 2.) At Frasier's, Appellant and several of his friends recognized Blair as

being from the rival neighborhood and also from the Purple Mirage earlier. (T. p. 239, lines 6-25.) Appellant and his friends surrounded Blair, and they started arguing. (T. p. 240, lines 1-15.) Blair's friend from Crazy Wop broke up the argument by explaining he invited Blair, and Blair was not one of the guys involved in the fight earlier. (T. p. 240, lines 13-17.)

Dominique and her friends decided to leave Frasier's because they heard there was going to be a shooting. (T. p. 174, lines 14-17.) As the ladies prepared to leave, Blair walked out with them to the car. (T. p. 175, lines 21-25.) Dominque got in the driver's seat of her friend's car, her sister got in the rear driver's side, and Blair stood near the driver's side. (T. p. 176, line 18-p. 177, line 4; T. p. 181, lines 10-12.) Suddenly, someone approached the from the driver's side and opened fire. (T. p. 177, lines 7-23.) Dominque was shot multiple times through the driver's side window, (T. p. 137, lines 3-6.)

About fifteen minutes later and five miles away, Appellant started a fistfight with some girls at a Kangaroo gas station. (T. p. 322, lines 17-23.) The police were called, but Appellant had fled on foot. The responding officer looked into the white Buick left behind and saw the magazine of a Glock and the butt of a pistol. (T. p. 300, line 1- p.301, line 22.) The officer decided to watch the area and vehicle and wait for Appellant to return, which he did, after a few minutes. (T. p. 303, line 11- p. 304, line 17.) Appellant was questioned but allowed to leave later that night because the females involved in the fight declined to pursue charges. (T. p. 308, line 8- p.309, line 4.) The police did, however, impound the Glock and the white Buick. (T. p. 309, lines 5-22.) The officers did not initially make the connection between the fight at the gas station and the shooting

at the club because the two businesses are in separate jurisdictions and were being separately investigated. (T. p. 312, lines 1-20.) Detective Mitch Wilson, however, eventually made the connection between the Glock at the shooting and the gun found in the Buick at the gas station. (T. p. 525, lines 4-19.) Two of the victims of the assault at the gas station identified Appellant both at the scene and later from a photo lineup as the man who assaulted them. (T. p. 350, line 4 - p. 353, line 23; p. 533, line 8-p. 534, line 19.)

Appellant was arrested on February 13, 2013. (T. p. 536, lines 22-25.) He was interviewed by Detective Lawrence two days later after a member of Appellant's family specifically requested Detective Lawrence speak to Appellant about the murder. (T. p. 537, lines 1-14.) Appellant's sister told the detectives her brother had information about the murder, and she asked to speak to him before the detectives talked to Appellant. (T. p. 566, lines 1-7.) Appellant was allowed to talk to his sister before Detective Lawrence interviewed him. (T. p. 537, lines 17-19.) After talking to his sister, Appellant agreed to give a statement to Detective Lawrence. (T. p. 537, lines 19-21.) Following Detective Lawrence's interview with Appellant, Detective Wilson obtained a warrant against Derrick Brown (Scrappy) for murder and possession of a weapon during the commission of a violent crime. (T. p. 538, lines 3-19.)

ARGUMENT

The trial court did not abuse its discretion in admitting Appellant's statement when the interrogating officer properly advised Appellant of his Miranda rights, and the Appellant made a knowing and voluntary waiver of his Miranda rights to implicate his co-defendant in the murder of the victim.

Introduction

The trial court did not abuse its discretion in admitting Appellant's statement because the evidence shows Detective Lawrence properly advised Appellant of his Miranda rights and Appellant made a knowing and voluntary waiver of those rights when he implicated his co-defendant in the murder of the victim. Appellant's sole basis for his contention his waiver of rights was not voluntary concerns facts wholly unrelated to the interrogation itself. The investigating officer's extra-marital relationship with the mother of the co-defendant and his subsequent denial of the relationship, though improper, had no impact whatsoever on the voluntariness of Appellant's waiver of his rights. Moreover, law enforcement's interests in investigating a murder do not necessarily align with the interest of a suspect during the custodial interrogation. Detective Lawrence's affair presented no heightened conflict of interest to that of Appellant. Thus, the statement was properly admissible.

How the Issue Was Raised at Trial

After jury selection, the judge held *Jackson v. Denno*[1] hearing to determine the admissibility of the statements to the police on February 15, 2013. Two days prior, Appellant was arrested for murder. (T. p, 72, lines 4-7.) Detective Charles Lawrence, with the Charleston County Sheriff's Office, was contacted by Appellant's mother, who asked the detective to speak to her son. (T. p. 75, lines 1-6.) Lawrence also spoke to

[1] *Jackson v. Denno*, 378 U.S. 368 (1964).

Appellant's sister, who informed him Appellant had information about the crime. (T. p. 75, lines 9-13.) Lawrence retrieved Appellant from the detention center and brought him to the Charleston County Sheriff's Office. (T. p. 75, lines 13-17.) Lawrence allowed time for Appellant and his sister to speak privately.[2] After speaking to his sister, Appellant agreed to talk to Lawrence. (T. p. 75, lines 18-23.) Lawrence Mirandized Appellant and Appellant acknowledged his waiver of those rights. (T. p. 76, line 9-p. 77, line 10; State's Exhibit 58 at 13:00:00.) Lawrence testified Appellant understood his questions, exhibited no confusion, and was not intoxicated. (T. p. 77 lines 11-23.) During Appellant's questioning, Appellant admitted Brown (Scrappy) approached him at the club and told him he recognized the guys who ganged his cousin. (State's Exhibit 58 at 13:08:18.) Appellant also admitted Scrappy asked him where his gun was, and Appellant told him, "the gun is in the car." (State's Exhibit 58 at 13:11:55.) The questioning was conversational, with Appellant offering narrative answers and detailed explanations. (State's Exhibit 58.) Lawrence made no promises to Appellant, nor threatened him or his family. (T. p. 78, lines 4-22.)

On cross examination, Lawrence acknowledged he had a relationship with the mother of the co-defendant Derrick Brown (Scrappy) in Appellant's case. (T. p. 80, line 15 – p. 81, line 18.) Lawrence admitted he became involved with Brown's mother sometime after her son was arrested for armed robbery in 2013. (T. p. 85, line 23-p. 86, line 21.) Lawrence stated the reason he interviewed Appellant was because Appellant's mother specifically asked him to question her son. (T. p. 87, lines 1-7.) Ms. Gordon was unaware of the relationship between Lawrence and Brown's mother at the time. (T. p. 87, lines 12-14.) Lawrence admitted falsifying a timeline about his relationship to his

[2] Though the camera was on, there was no audio on or recording in the room. (T. p. 75, lines 18-23.)

superiors during an internal affairs investigation. (T. p. 88, lines 18-p.89. line 17.) Lawrence testified Appellant was also unaware of his relationship with Brown's mother. On redirect, Lawrence testified Appellant's statement led directly to the arrest of his co-defendant for murder. (T. p. 95, lines 13-16.)

Appellant also took the stand during the hearing. Appellant testified during the hearing about the events leading up to the shooting at Frasier's:

> Q. Okay. Your friend. Scrappy, comes up to you at Frazier's; correct?
> A. Right.
> Q. Says that the guys that ganged your cousin were there and he needs your gun?
> A. Right.
> Q. And you said, 'Sure. It's in my car.'
> A. Right.
> Q. And he went and got your car — the gun from your car and killed the girl?
> A. Right.
> Q. And then apparently took the time afterwards to stop at your car and put it back in there?
> A. Right.
> Q. And then you go to the Kangaroo; correct?
> A. Right.
> Q. And fight a bunch of girls; right?
> A. Naw. I mean, we get in a fight but you — you make it sound like I just jump the girls for no reason, you know what I'm saying?
> Q. Okay.
> A. You making it seem like I just jumping the girls for no reason.
> Q. And you went there alone; correct?
> A. Right.
> Q. In the white Buick?
> A. Right.
> Q. And in that white Buick was a Glock 23, a .40 caliber pistol?
> A. Right.
> Q. That belonged to you?
> A. Right.
> Q. That you lent Scrappy to use?
> A. Right.
> Q. To shoot the girl?
> A. Right.
> Q. Fifteen minutes after the shooting, you're at the Kangaroo, in that car, with that gun; correct?

A. Right.

(T.p. 101, line 7- p. 102, line 25.) Given Appellant's testimony at the hearing in which he easily admitted his role in the victim's death, his argument his statement to Detective Lawrence during the interview of February 15, 2013, was involuntary defies common sense. The truth of the statement is immaterial for purposes of determining a *Miranda* violation. *See, for example, Rogers v. Richmond*, 365 U.S. 534 (1961) ("[I]n many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed."); *Doby v. S. Carolina Dep't of Corr.*, 741 F.2d 76, 78 (4th Cir. 1984)(finding a trial judge is prohibited from relying upon the truthfulness of a confession when deciding whether it should be admitted as a voluntary statement of the accused). However, the ease at which Appellant admitted his culpability during the *Jackson v. Denno* hearing is indicative of Appellant's belief his statement to Detective Lawrence was exculpatory rather than inculpatory. The testimony supports the finding Appellant's statement was self-serving and the product of his own free will.

The Trial Court's Finding of Admissibility

In ruling on the admissibility of Appellant's confession, Judge Cooper specifically noted Appellant was properly advised of his rights. The trial judge also noted Appellant understood his rights because on two occasions prior Appellant had refused to talk to police about other matters. The judge found Appellant was not under duress, and the detective used no coercion to elicit the statement, further finding:

> The alleged statement was voluntary proffer from an unrestrained defendant. And I saw that in my own mind in the videos that we watched.

> He didn't seem to be restrained in any way or constrained in any way to not speak with the officer and gave a detailed account of the night – or on the day in question the alleged murder took place. And I didn't see anything in that statement that made me think that he was under any compulsion or misrepresentation or anything else. He sat there in a very colloquial manner and – I frankly didn't understand all of the facts that he did divulge, but he certainly didn't look like he was under any pressure or threat or misrepresentation by the officer.

(T. p. 111, line 5-p. 114, line 8.) In effect, the trial judge elected to give little credence to Appellant's argument Detective Lawrence's failure to disclose his relationship with Brown's mother impacted the voluntariness of his statement.

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).

Analysis

Appellant does not complain appropriate *Miranda*[3] warnings were not given or that force or intimidation was used to extract Appellant's confession. Rather, Appellant complains the detective violated his Fifth and Fourteenth Amendment rights by interrogating him without first disclosing to Appellant all the details of his private life. (IBOA, p. 8, Issue on Appeal). In *Miranda,* the Court set forth safeguards to protect the constitutional rights of persons subjected to custodial police interrogation.

The Supreme Court has long recognized that one may waive one's constitutional rights upon proper warnings:

> ... we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1996) (establishing procedural safeguard warnings must be given prior to the taking of custodial statements).

Miranda v. Arizona, 384 U.S. 436, 478-479 (1966). However, establishing whether a defendant received the *Miranda* warnings is only one part of the process to determine the correctness of the waiver – the inquiry is divided into two separate parts:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

Moran v. Burbine, 475 U.S. 412, 421 (1986) (emphasis added). *See also Miranda*, 384 U.S. at 445 ("The defendant may waive effectuation of these rights, *provided* the waiver is made voluntarily, knowingly and intelligently.").

"In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession." *State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct.App. 2010). Factors to consider include "background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep." *Id*, 390 S.C. at 513-514, 702 S.E.2d at 401. Other courts have also specifically considered and noted prior interaction with law enforcement and exposure to one's constitutional rights as points supportive of knowledge and understanding. *See, for example, United States v. Pruden*, 398 F.3d 241, 246 (3rd Cir.

2005) ("Pruden was familiar with his rights, having been involved in the justice system on numerous previous occasions."); *United States v. Robinson*, 404 F.3d 850, 861 (4th Cir. 2005) ("Robinson had, on two prior occasions, been read his *Miranda* rights and waived them."). Again, no one point is dispositive: "Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Moran v. Burbine*, 475 U.S. at 421.

Here, Appellant challenges one point – the failure of Detective Lawrence to disclose the identity of his sexual partners to the suspect prior to his interrogation-- as rendering the waiver of rights involuntary. Appellant claims his "will was overcome" and he "was not able to freely and voluntarily give a statement to Detective Lawrence" because he was not aware of all the facts and circumstances surrounding Lawrence's private life. (IBOA, p. 11.) Moreover, Appellant argues his statement should be inadmissible because, '[w]hat Appellant and his family did not know was that Lawrence's loyalties were with his paramour and her son, the shooter. In continuing the interrogation, Lawrence actively misrepresented the situation to Appellant." (IBOA, p. 17.) Appellant erroneously suggests law enforcement's loyalties would ordinarily remain with the suspect. In fact, the very nature of the Miranda warning is for the purpose of informing the suspect the police are not his fiduciaries. Detective Lawrence had no loyalty or duty to disclose his private life to Appellant.

Coercion as a Necessary Predicate

In *Colorado v, Connelly*, our Supreme Court held the some form of police misconduct in the form of coercion 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." *Colorado v, Connelly* , 479 U.S. 157, 167, (1986). South Carolina courts have faithfully adhered to the bright line holding of *Connelly*. *See, e.g.*, *State v. Pittman*, 373 S.C. 527, 568, 647 S.E.2d 144,165 (2007) (noting "courts generally do not find a juvenile's confession involuntary where there is no evidence of extended, intimidating questioning or some other form of coercion."); *see also State v. Salisbury*, 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998) *aff'd as modified*, 343 S.C. 520, 541 S.E.2d 247 (2001) ("Coercive police activity is a necessary predicate to finding a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment.")

In the case at hand, Appellant makes much of Detective's Lawrence's tarnished career with the Charleston County Sheriff's Department, but fails to indicate any coercive conduct whatsoever in the interview with Appellant. Appellant claims he would not have made the statement to Detective Lawrence had he known about the relationship with Brown's mother, but he fails to indicate why that knowledge would have made a difference. Appellant waived his rights and agreed to speak to Detective Lawrence because he wanted to shift the blame to someone else. Appellant presents no evidence his resulting implication of his co-defendant was ignored or suppressed because of Detective Lawrence's relationship with Brown's mother. In fact, Appellant's statement led to Brown's arrest for the murder of the victim. While Detective Lawrence may have exercised bad judgement in personal life, which resulted in his termination, there simply was no misconduct related to this interrogation.

Admissibility under the Totality of the Circumstances

As the *Connelly* court made clear, coercion is a necessary predicate to a finding of inadmissibility due to an involuntary waiver of Miranda rights. Appellant has shown no such activity on the part of the police during this interview that constitutes even the slightest degree of coercion. Without evidence of this coercion, Appellant's argument fails. Nevertheless, should the Court desire to examine the second step of waiver analysis, the statement remains admissible.

The trial judge is required to look at the totality of the circumstances when determining whether a suspect has made a knowing and voluntary waiver of his Miranda rights. In this case, the court could consider the following: 1) Appellant certainly had prior experience with law enforcement and the exercise of his Miranda rights. Detective Mitch Wilson testified he attempted to speak with Appellant on two occasions before February 15, 2013, Mirandizing him both times. Appellant refused to talk to Wilson on both occasion. (T. p. 66, line 1-p. 71, line 19.) 2) Appellant was allowed to speak with his sister privately for several minutes before he agreed to talk to Lawrence, suggesting his sister was the compelling force that changed Appellant's mind about cooperating with the detectives. (T. p. 75, lines 18-23.) 3) Appellant was Mirandized and was perfectly capable of understanding his rights. 4) Appellant was not restrained in any way during the questioning. 5) Detective Lawrence was polite and non-threatening in his discourse with Appellant. 6) The questioning lasted only about an hour, so the Appellant was not subjected to a lengthy or prolonged interrogation. 7) Appellant's statements were self-serving. Appellant waived his rights to implicate his co-defendant, erroneously believing he was not culpable for the victim's death as long as he did not admit to being the

triggerman. He even testified at the *Jackson v. Denno* hearing he lent Brown the gun he used to shoot Dominque Grant. (T. p. 101, lines 7-18.) Finally, 8) Detective Lawrence did not misrepresent any facts to Appellant. Lawrence had no duty to disclose his sexual relationships with a suspect in a murder investigation. Similarly, Appellant had no expectation of some sort of fiduciary relationship with the investigating officer of a homicide for which he was responsible.

The trial judge had more than sufficient evidence to conclude from the totality of the circumstances Appellant made a knowing and voluntary waiver of his Miranda rights when he gave his statement to Detective Lawrence on February 15, 2013. The detective's indiscretions and dishonesty predictably resulted in his termination from employment from the sheriff's department. However, Appellant now seeks to capitalize on this indiscretion without showing any connection between the relationship with Brown's mother and the voluntariness of Appellant's statement. Appellant asks this Court to ignore the self-serving interest of the statement and ignore the obvious conclusion that Lawrence, if he were inclined to be corrupt, would have suppressed the statement to protect his paramour's son. The argument makes no sense, and Appellant should not be granted an evidentiary windfall simply because Detective Lawrence was having an affair.

Harmless Error

Even if, as Appellant argues, his statement was admitted in violation of *Miranda*, its admission was harmless beyond a reasonable doubt. In *Chapman v. California*, the Supreme Court held error of even constitutional magnitude may be deemed harmless if, "considering the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict." 386 U.S. 18, 87 S.Ct. 824, 17

L.Ed.2d 705 (1967); *see also Taylor v. State*, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993). Similarly, in *State v. Easler*, our Supreme Court intimated that any error in the failure to suppress a statement allegedly taken in violation of *Miranda* is subject to a harmless error analysis. 327 S.C. 121, 129, 489 S.E.2d 617, 621–22 (1997); *see also State v. Newell*, 303 S.C. 471, 477, 401 S.E.2d 420, 424 (Ct.App.1991) (finding failure to suppress evidence for *Miranda* violation harmless where record contained overwhelming evidence of guilt); *State v. Lynch*, 375 S.C. 628, 636, 654 S.E.2d 292, 296 (Ct.App.2007) ("The failure to suppress evidence for possible *Miranda* violations is harmless if the record contains sufficient evidence to prove guilt beyond a reasonable doubt.")

Here, considering the entire record on appeal, any error in admitting Appellant's statements to detectives on February 15, 2013, was harmless beyond a reasonable doubt. The State presented compelling evidence of Appellant's guilt of murder: Appellant brought his gun with him and left it in the car the night of the murder. (T. p. 284, lines 2-15.) Appellant initiated the altercation with Lionel Blair, the suspected target of the shooting, earlier in the evening at Frasier's. (T. p. 239, lines 6-25.) Appellant was identified in a white Buick within fifteen minutes and five miles of the shooting at a gas station nearby. (T. p. 336, line 14- p.338, line 23.) Police officers investigating the fight at the gas station found the murder weapon inside the Buick. (T. p. 298, line 10 – p. 300, line 25.) Appellant had the motive to kill Lionel Blair, and he was in possession of the murder weapon within minutes of the crime.

The State's case against Appellant was compelling. Even excluding Appellant's statement to police, the record supports the jury's verdict of murder beyond of reasonable doubt. Any error in its admission by the trial court judge was harmless.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Circuit

BY: _____
SUSANNAH R. COLE
SC Bar No. 68383

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

ATTORNEY FOR RESPONDENT

November 13, 2015
Columbia, South Carolina

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THE STATE,

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REGINALD L. GORDON,

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PROOF OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to her attorney of record:

Susan B. Hackett
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

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

This 13th day of November, 2015.

Susannah R. Cole
Assistant Attorney General
SC Bar No. 68383