STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge

Appellate Case No. 2015-000149



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THE STATE,

Respondent,

vs.

RICKY LAMONT HAYES,

Appellant.

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# INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted Appellant's post-arrest statement into evidence after determining the statement was knowingly, intelligently, and voluntarily made under the totality of the circumstances, his ruling was supported by the undisputed testimony and evidence presented during trial establishing Appellant knowingly, intelligently, and voluntarily waived his rights before making his statement. Furthermore, any alleged error was harmless and had no impact on Appellant's case.

## STATEMENT OF THE CASE

Shortly after midnight on May 7, 2013, Appellant Ricky Lamont Hayes and two accomplices (co-defendants Randi Jarrell Parks and Darren Keith Belt) were arrested shortly after they robbed Shane Burnett and Glenn McElhenney at gunpoint in Mount Pleasant, South Carolina. In September of 2013, the Charleston County Grand Jury indicted Appellant for two counts of armed robbery. On January 12, 2015, Appellant proceeded to a jury trial before the Honorable Roger M. Young, Jr. On January 15, 2015, the jury convicted Appellant as indicted. Judge Young sentenced Appellant to concurrent terms of imprisonment of thirty years and fifteen years. Appellant filed a timely notice of appeal.

## STATEMENT OF FACTS

On the evening of May 6, 2013, friends and neighbors Shane Burnett and Glenn McElhenney went to Art's Bar and Grill in Mount Pleasant to watch one of their favorite bands play and enjoy a few beers. (Tr. 136-38). Around midnight, Burnett and McElhenney left Art's and began their short walk down Coleman Boulevard to their respective homes less than half a mile away. (Tr. 137-38). The two walked along the deserted street when three men dressed in dark clothing ambushed them. (Tr. 138-39). One of the men thrusted a gun into McElhenney's stomach and demanded all his belongings. (Tr. 139). McElhenney complied, dumping his cell phone and wallet on the ground. (Tr. 139). The gunman then turned the weapon on Burnett and demanded all his property. (Tr. 139). Burnett resisted, insisting he did not have anything. (Tr. 139). The gunman then pointed the weapon at Burnett's head, causing Burnett to reach into his pockets and throw a small pack of cigars, a pocketknife, cell phone, and some loose change onto the ground. (Tr. 139-40). While the assailants bent down to pick up his belongings, Burnett threw his wallet, containing a large amount of cash, into the street. (Tr. 140).

As the three robbers collected McElhenney and Burnett's property, Officer Alex Gillespie of the Mount Pleasant Police Department charged towards them with his weapon drawn. Gillespie had been conducting safety checks on businesses across the street when he witnessed the robbery and rushed across the street. Gillespie yelled, "Hey!" to get the robbers attention, causing the three robbers to run across the street and into the Old Village neighborhood.

Gillespie pursued the robbers on foot while providing a description to dispatch and requesting backup. (Tr. 185-86). Gillespie followed the robbers down Simmons

Street to Rose Lane before losing sight of at least one suspect. (Tr. 185-86). Gillespie then returned to the robbery scene to check on the victims and wait for backup before further pursing the armed men. (Tr. 185-86). Gillespie moved Burnett and McElhenney across the street to a well-lit parking lot. (Tr. 187). The victims told Gillespie the assailants were armed with a .38-caliber Smith & Wesson handgun and Gillespie relayed this information to dispatch. (Tr. 186-87). McElhenney, who suffered from several serious hernias, was injured during the robbery and was transported by EMS to receive medical treatment.

Detective David Ivey of the Mount Pleasant Police Department was doing business checks approximately three miles away when he heard Gillespie's dispatch. (Tr. 207-08). Ivey radioed Gillespie for more information and responded to the area. (Tr. 208). Upon arriving, Ivey received a description of the suspects from Gillespie and drove into the Old Village to search. (Tr. 208-10). Shortly thereafter, Ivey made contact with Appellant approximately three to four blocks from the robbery scene. (Tr. 210-14). Appellant flagged down Ivey and approached with his hands up. (Tr. 210-211). Appellant had dark clothing on and generally matched the description of the suspects. (Tr. 211-12). Ivey told Appellant to show his hands and feared Appellant might be armed. (Tr. 211-12). Appellant told Ivey he was running from two men who pointed a gun at him and tried to shoot him. (Tr. 212). Appellant was out of breath and laid down on the ground. (Tr. 212-13). Appellant told Ivey he was either coming from or going to his cousin Doug's house when the two men approached him through a cut in the woods. (Tr. 213). Ivey took Appellant into custody on an unrelated bench warrant. (Tr. 32).

Ivey continued to canvass the Old Village for suspects and encountered co-defendant Randi Parks on Hampp Fludd Street ten minutes after leaving Appellant. (Tr.

216-17). Parks was hiding underneath a large dump truck with his feet exposed when Ivey found him. (Tr. 216-17). Parks eventually came out from under the truck and surrendered to authorities. (Tr. 221-22). After he was taken into custody, Ivey found McElhenney's wallet in parks possession. Ivey repeatedly asked Parks where he had hidden the gun but Parks did not respond. Ivey continued to search for the gun to no avail. (Tr. 223).

Approximately thirty minutes later, the third robber, Darren Belt, was apprehended by law enforcement following a traffic stop for speeding near the armed robbery on Coleman Boulevard. Based on information learned during the investigation, including Parks's statements, Belt was arrested and taken into custody. Law enforcement inventoried the vehicle following Belt's arrest and found a backpack containing mail addressed to Appellant inside. (Tr. 248-49).

After being taken into custody, law enforcement brought Appellant and Parks to the police station to be interviewed. (Tr. 362). Corporal Daniel Eckert of the Mount Pleasant Police Department advised Appellant of his rights pursuant to Miranda v Arizona, 384 U.S. 436 (1966). Appellant acknowledged that he understood these rights by signing a written "Advisement of Rights" form and initialing next to five specific rights. (Tr. 363-65; Court's Ex. No 1; State's Ex. No. 35). Appellant told Eckert he would not sign the waiver of rights portion of the advisement form nor would he give a statement, but agreed to speak with Eckert. (Tr. 365). Eckert then spoke with Appellant briefly and Appellant told Eckert he had just left a friend's house to go to his cousin Doug's house when he was accosted by three men in the woods. (Tr. 365-67). He stated his friend was a stripper named Excursion and gave Eckert a phone number for her. (Tr. 367). Eckert collected Appellant's phone for evidence. (Tr. 367-68). Eckert then told

Appellant another suspect in custody was claiming to be his cousin and implicated Appellant in the armed robbery. (Tr. 368). Appellant demanded to know the individual's identity. (Tr. 368). Eckert decided to discontinue the conversation and told Appellant they could speak at another time if Appellant wanted. (Tr. 368).

Eckert next interviewed Parks, who waived his Miranda rights and agreed to speak with Eckert. (Tr. 368-69). Parks gave a statement implicating Appellant and Belt in the armed robbery but minimized his own involvement. (Tr. 369-76). Based on Parks's statement and the investigation to that point, Parks, Appellant, and Belt were charged with two counts of armed robbery. (Tr. 374-77).

The following day, May 8, 2013, Eckert interviewed Parks for a second time. (Tr. 377). Parks again implicated Belt and Appellant but continued to minimize his involvement. (Tr. 377-78). Following the interview, Parks briefly escaped while en route to the detention center. (Tr. 379-85). Parks was apprehended shortly after fleeing and was returned to the detention center. (Tr. 384-85).

On November 14, 2014, Parks was interviewed for a third time at the Ninth Circuit Solicitor's Office. (Tr. 280, 313-14, 385). During this interview, Parks admitted to holding the gun during the armed robbery. (Tr. 385). Parks continued to implicate Belt and Appellant. (Tr. 385).

Appellant proceeded to trial on January 12, 2015. At the start of trial, Appellant moved to suppress his oral statements made to Eckert while at the police station following his arrest. (Tr. 25-61). During the hearing, the State presented testimony from Ivey and Eckert. Ivey testified as to the events of Appellant's arrest in the Old Village, including that Appellant was not advised of his Miranda rights on the scene. (Tr. 25-34). Eckert testified as to his interview of Appellant at the police station. (Tr. 34-50). Eckert

testified he advised Appellant of his rights pursuant to Miranda and Appellant signed the advisement of rights form indicating he understood those rights, including five specific rights that he initialed. (Tr. 35-36). Eckert testified Appellant stated he would not sign the waiver of rights portion of the form and would not give a written statement, but would talk to Eckert. (Tr. 36-37, 41). Eckert testified he indicated that Appellant had "invoked Miranda" on the advisement form, but that he continued to speak with him "very briefly" because Appellant indicated a willingness to keep talking. (Tr. 36-42, 49). Eckert testified he asked Appellant some basic questions to determine his involvement in the armed robbery and that Appellant appeared to be talking freely and voluntarily. (Tr. 37). Eckert elected to end the interview when Appellant wanted to know who else was in custody. (Tr. 43).

At the conclusion of the hearing, Appellant moved to suppress his conversation with Eckert, arguing Appellant had invoked his Miranda rights, Eckert understood Appellant had invoked his rights, and all questioning should have ceased at the point of invocation. (Tr. 53-54). Appellant argued any comments made after Appellant invoked his rights should be suppressed. (Tr. 53-54). In response, the prosecutor argued Appellant stated he would still talk after declining to sign the written waiver, and therefore, there was no clear indication Appellant had invoked his rights pursuant to Miranda. (Tr. 54-55). In furtherance of this argument, the prosecutor cited to Berghuis v. Thompkins, 560 U.S. 370 (2010), a United States Supreme Court case holding law enforcement can continue to question a defendant unless he or she unambiguously invokes the right to remain silent. (Tr. 54-55). Appellant responded that his invocation was unambiguous, as evidenced by Eckert's writing on the advisement of rights form. (Tr. 56, Court's Ex. No. 1). The trial court took the motion under advisement to familiarize itself with the

Berghuis opinion. (Tr. 56). The following morning, the trial court denied Appellant's motion to suppress, finding Appellant "did not unequivocally invoke Miranda" and therefore any statements were admissible pursuant to Berghuis. (Tr. 60-62).

During its case, the State presented co-defendant Parks in additional to numerous other witnesses. At the time of Appellant's trial, Parks had already pled guilty to both counts of armed robbery and was awaiting sentencing. (Tr. 259). Parks testified he had known Appellant since 2010 and was previously very close with him. (Tr. 261-62). Parks testified he was hanging out with co-defendant Belt in Columbia the morning before the robbery (May 6, 2013) when they were robbed during a dice game. (Tr. 262-63). He testified they then met up with Appellant, who had a gun. (Tr. 263-64). Parks testified the three decided to drive to Charleston in Belt's jeep to rob people based on Appellant's suggestion. (Tr. 264-65). Upon arriving in Charleston, Appellant directed them to various friends' and family members' homes. (Tr. 265-68). The group eventually left the home of Appellant's female friend around 11 p.m. after she and Appellant got into an altercation. (Tr. 267-68). Parks fell asleep in the backseat of the jeep and awoke to the car parked and his co-defendants preparing to rob Burnett and McElhenney. (Tr. 268-70). Appellant gave Parks the gun and told him to catch the victims on the side. (Tr. 270-71). The three then accosted the victims and demanded their property. (Tr. 271-72). Parks pointed the gun at the victims while Appellant and Belt approached from behind and grabbed them. (Tr. 272). After the robbery, Parks ran across the street into woods and eventually hid under a construction truck. (Tr. 273-74). He saw Appellant wave down law enforcement from his hiding place under the truck. (Tr. 274). After Appellant was placed in handcuffs, Parks attempted to jump over a fence and flee, but ended up dropping the gun. (Tr. 274-75). Parks resumed his hiding spot under the truck, but was located shortly thereafter by

the police. (Tr. 275-76). Parks was then apprehended, taken into custody, and eventually cooperated with the investigation.

## ARGUMENT

**The trial court properly admitted Appellant's post-arrest statement into evidence after determining the statement was knowingly, intelligently, and voluntarily made under the totality of the circumstances, and his court's ruling was supported by the undisputed testimony and evidence presented during trial establishing Appellant knowingly, intelligently, and voluntarily waived his rights before making his statement. Furthermore, any alleged error was harmless and had no impact on Appellant's case.**

Appellant asserts the trial court erred in admitting his statement to law enforcement shortly after his arrest. Specifically, Appellant contends he invoked his Fifth Amendment right to remain silent and Eckert understood Appellant had invoked his right to remain silent but continued to question him in violation of his constitutional rights. Appellant argues his statements therefore should have been suppressed and the trial court's refusal to do so is reversible error. To the contrary, Appellant knowingly, voluntarily, and intelligently waived his right to remain silent. Accordingly, the trial court properly denied Appellant's motion to suppress his post-arrest statements to law enforcement and admitted the statements into evidence during trial and his ruling was fully supported by the evidence and testimony presented during trial. Appellant's convictions should be affirmed.

### Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests in the sound discretion of the trial court, and will not be reversed on appeal absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) (internal citation omitted); see also State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("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."

(citation omitted)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

The trial court's factual conclusions regarding the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion, and the appellate court does not reassess the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by **any evidence**. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240, 252 (2001); see also State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (same); State v. Miller, 375 S.C. 370, 652 S.E.2d 444, 448 (Ct. App. 2007) (same).

**Discussion / Analysis**

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

However, a confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the

burden is on the State to prove by a preponderance of the evidence the defendant knowingly, intelligently, and voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990); see Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (instructing the prosecution must establish the accused understood his rights in order for the accused's waiver of those rights to be valid). "The process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). Pursuant to the bifurcated process, the trial court must first determine in an evidentiary hearing whether the State proved the statement was voluntarily made by a preponderance of the evidence during an in-camera hearing outside the presence of the jury.[1] Id. Then, if the trial court finds the State met its burden, the statement is submitted to the jury during trial where its voluntariness must be proven beyond a reasonable doubt. Id.

The critical factor in an evaluation of the voluntariness of a defendant's statements is whether the defendant's will was overborne when he confessed. State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all."). "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

[1] This hearing is commonly referred to as a Jackson v. Denno hearing based on the United States Supreme Court's decision setting forth the parameters for such a hearing.

In South Carolina, the test for determining whether a defendant's statement 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, 702 S.E.2d 395, 401 (Ct. App. 2010) (internal citations omitted). Our courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis, including but not limited to: 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. Moreover, no single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances. Id. A statement may not be extracted by threats, violence, direct or implied promises, however slight, or the exertion of improper influence. Miller, 652 S.E.2d at 452.

However, Miranda does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights, and as a general proposition, the law presumes an individual "who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford." Berghuis, 560 U.S. at 385. As the Berghuis Court stated, "[t]he main purpose of Miranda is to ensure that an accused is advised of and understands the right to remain silent and the right to counsel," and both of these Miranda rights protect the privilege against compulsory self-incrimination. Id. In Berghuis, the United States

Supreme Court recognized "there is no principled reason to adopt differing standards for determining when an accused has 'invoked' the right to remain silent or 'invoked' the right to counsel. Moses, 390 S.C. at 512, 702 S.E.2d at 400. Therefore, a suspect must "invoke" these rights "unambiguously." See id., (citing Berghuis, 560 U.S. at 385 ). "A requirement of an unambiguous invocation of Miranda rights results in an objective inquiry that avoid[s] difficulties of proof and . . . provide[s] guidance to officers on how to proceed in the face of ambiguity." Berghuis, 560 U.S. at 385 (internal quotation marks and citation omitted). Otherwise, "[i]f an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong.' " Id. (quoting Davis v. United States, 512 U.S. 452, 461 (1994)). Suppression under these circumstances would place a "significant burden on society's interest in prosecuting criminal activity." Id.

In the present case, Appellant did not unambiguously invoke his right to remain silent and therefore, the trial court properly ruled his statements to law enforcement were admissible. It is undisputed Eckert reviewed the Miranda warnings with Appellant shortly after his arrest on May 7, 2013. Appellant signed the advisement of rights form acknowledging he "fully underst[oo]d each of these rights which have been explained to me." (Court's Ex. No. 1). Additionally, Appellant initialed next to five specific rights, indicating he understood them. (Court's Ex. No. 1). Thereafter, the uncontroverted testimony reveals Appellant indicated he would not sign the written waiver portion of the advisement of right form, nor would he give a statement, but he would talk to Eckert. (Tr. 36-37, 40-42). Based on Appellant's declaration that he would speak with Eckert and his apparent voluntary willingness to speak with Eckert, Eckert continued speaking with

Appellant very briefly and asked him basic background questions, despite writing "invoked Miranda" on the advisement of rights form. (Tr. 36-37, 41-42). Eckert's questions included where Appellant was coming from and where he was going when he was apprehended, and who was his cousin. (Tr. 41-42). Eckert testified he believed it was appropriate to continue speaking with Appellant and asking him these basic questions based on Appellant's willingness to talk and his verbal statement that he would speak with Eckert. (Tr. 42). Eckert elected to end the questioning when Appellant wanted to know who else was in custody. (Tr. 42). Appellant did not testify at the suppression hearing and did not present any testimony or evidence to dispute Eckert's account.

Based on the testimony of Eckert, the trial court found Appellant "did not unequivocally invoke Miranda" and his statements were admissible. (Tr. 60-61). The trial court elaborated:

> And while he said, I'm not going to waive it and I'm not going to sign that form, he did say—basically, I think he was trying to have it both ways. He said, I'll speak with you, but I'm not going to revoke my rights. That is not equivocating and the law requires that he give a clear and unequivocal invocation of his Miranda rights, and if he doesn't give a clear and unequivocal invocation of his Miranda rights, then they can still ask him questions.

(Tr. 61). Furthermore, the trial court found Eckert writing, "invoke Miranda" was not dispositive, as it was not a legal conclusion Appellant had unequivocally invoked his right to remain silent." (Tr. 61-62) The trial court correctly noted whether Appellant unambiguously invoked his right to remain silent was a legal determination to be made first by the trial court, then by the jury. (Tr. 62)

There is ample evidence in the record to support the trial court's finding Appellant was aware of, and understood, his Miranda warnings and waived those rights when he declined to unequivocally invoke his right to remain silent. Moreover,

Appellant's statement he would not sign the waiver and not give a statement, but **would** speak with Eckert could not be considered an unequivocal indication he was invoking his right to remain silent, and instead, appears to have been an indication he was willing to walk with Eckert but not write a formal statement or sign a waiver form. Under these circumstances, Eckert was not required to cease speaking with Appellant, and Appellant's statements were admissible during trial. See Berghuis, 560 U.S. at 385 (internal citations omitted) ("If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong."). Therefore, as the evidence did not establish Appellant unequivocally invoked his rights, the trial court did not abuse its discretion in denying Appellant's motion to suppress. Appellant's convictions should be affirmed.

**Harmless Error**

Moreover, even assuming the trial court somehow erred in admitting Appellant's post-arrest comments to law enforcement, any error was entirely harmless in light of the overwhelming evidence of his guilt, the cumulative nature of the challenged testimony, and the immaterial nature of his post-arrest comments.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly

admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

"In State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1993), this Court reiterated the Supreme Court of the United States' holding in Chapman v. California[2] 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.'" State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014) (internal citations omitted), reh'g denied (Sept. 18, 2014), cert. denied (Mar. 19, 2015). 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."). Harmless error rules, even in dealing with constitutional errors, "serve a very useful purpose insofar as they block setting aside convictions for small errors or defects

[2] 86 U.S. 18 (1964) (outlining the procedure for a pre-trial hearing to determine the voluntariness and admissibility of a defendant's contested statement).

that have little, if any, likelihood of having changed the result of the trial." Chapman, 386 U.S. at 22.

Here, any error in the admission of Appellant's post-arrest silence was harmless beyond a reasonable doubt. Notwithstanding Appellant's post-arrest comments to Eckert, Appellant was named a participant in the armed robbery by his co-defendant, Randi Parks, who implicated Appellant in the armed robbery in numerous statements and his trial testimony. Additionally, Appellant's backpack (containing mail addressed to him) was found in the backseat of his other co-defendant's car when he was arrested. Appellant was apprehended blocks from the robbery, out of breath and highly excited. The testimony presented at trial overwhelming established Appellant's guilt.

Additionally, the statements Appellant challenged were immaterial to his guilt, particularly in light of the overwhelming evidence of his guilt. Eckert asked Appellant basic background questions about his whereabouts and companions around the time of the robbery before stopping the interview. Furthermore, the challenged statements were cumulative to the testimony from Ivey about Appellant's statement of similar information about either going to or coming from his cousin's house when he approached Ivey. See Blackburn, 271 S.C. at 329, 247 S.E.2d at 337 (holding the admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence). The information Eckert gleaned from this brief interview was harmless and had no impact on the outcome of Appellant's trial. For all of these reasons, Appellant's convictions should be affirmed.

## CONCLUSION

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

Respectfully submitted,

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2/11, 2016

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STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge

Appellate Case No. 2015-000149

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THE STATE,

Respondent,

vs.

RICKY LAMONT HAYES,

Appellant.

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**PROOF OF SERVICE**

---

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

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

I further certify that all parties required by Rule to be served have been served. This 11th day of Feb., 2016.

Megan Harrigan Jameson

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February 11, 2016

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RE: State v. Ricky Lamont Hayes – Appellate Case No. 2015-000149

Dear Ms. Durant:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan Harrigan Jameson

Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

MHJ/

Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services