THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State.....Respondent

vs.

Darius Ransom-Williams.....Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Darius Ransom-Williams ("Appellant") was indicted under 2011-GS-38-0114 and -0124 for burglary in the first degree and attempted murder. Appellant was tried July 16-18, 2012, in Orangeburg County. A jury found Appellant guilty of burglary in the first degree and assault and battery of a high and aggravated nature (ABHAN). Appellant was sentenced to an aggregate term of thirty years' imprisonment.

During the pendency of this appeal, there were significant delays in the delivery of the trial transcript. Almost a year after the trial, the trial's court reporter's tapes and notes were delivered to Court Administration for their handling. After the tapes were transcribed, it was discovered that tapes were missing and portions of the present tapes were inaudible—resulting in no transcription of a Batson v. Kentucky, 476 U.S. 79 (1986) hearing and the closing arguments of both the solicitor and trial counsel. This Court granted a motion for remand and reconstruction on December 11, 2013. The reconstruction hearing was held before the Honorable Judge Dickson in Orangeburg County on January 3, 2014. Judge Dickson issued an Order, filed January 22, 2014, finding the reconstructed proceedings should be included in the record on appeal and that the transcript was sufficient for appellate review. Appellant timely served a Rule 59(e), SCRCP, Motion for Reconsideration and Supporting Memorandum on January 27, 2014. By order filed January 31, 2014, Judge Dickson denied the Motion for Reconsideration.[1]

STATEMENT OF THE FACTS

On July 25, 2011, George Harrison ("Harrison" or "Victim"), a sixty-one-year-old gentleman, was attacked in his home in Orangeburg County. (R.p.111, line 18-p.112,

[1] It should also be noted that the Reconstruction Transcript was not delivered until over seven (7) months after the Reconstruction hearing.

line 14; p.114, lines 21-25). Harrison lived on a lot where three (3) trailers were situated in close proximity, with Harrison's trailer being first in the row of trailers, Travis Smart ("Smart") residing in the second trailer, and Warren Jennings ("Jennings") residing in the third trailer. (R.p.114, lines 9-14; p.126, lines 7-11; p.142, line 11-p.143, line 18). Harrison testified that upon his return from the neighborhood store, he opened his door and someone "grabbed [him] and pulled [him], hit [him]," and caused him to fall to floor before he gave the assailant his money—$20.00—and his phone. (R.p.114, line 20-p.115, line 15; p.183, lines 21-22). Harrison testified he attempted to flee from his attacker to seek help from Jennings, but his attacker continuously hit him with an axe handle and pursued Harrison out the front door and for about fifty feet as he crossed the yard to Jennings' trailer. (R.p.118, lines 14-17; p.131, line 4-p.135, line 15). This account was uncorroborated, as Officer Kertcherside, who investigated the crime scene, testified the trail of blood leaving Harrison's home to Jennings' home was in ninety-degree droplets indicating the blood was merely dripping off Harrison, not that Harrison was being attacked as Harrison moved towards Jennings' home. (R.p. 227, lines 3-14).

Jennings sought police assistance, and while waiting for help, Harrison told Jennings what occurred at his home. (R.p.145, lines 3-p.149, line 15). Importantly, Harrison did not tell Jennings he knew his attacker. Id. Additionally, the police incident report does not indicate that Harrison told the police he knew his assailant when he was providing the police with a description of the assailant. (R.p.196, lines 5-20).

Although the assailant was wearing a mask, Harrison testified the mask fell during the attack and he recognized his assailant as someone he had seen before at Smart's home. (R.p.116, line 23-p.117, line 10). Harrison did not report this fact to the

police at the time of the incident. (R.p.196, lines 21-25; p.90, lines 9-17). Despite testifying that he had been hit about the head "forty to fifty" times with an axe handle, that he could not recall how he got to the hospital, that he was unconscious for twenty days, and that he suffered a fractured skull, Harrison positively identified Appellant as the assailant in court. (R.p.117, line 19-p.118, line 24; p.121, lines 6-23). Ultimately, Harrison was in the hospital for fifty days and has residual impairments from his attack including being often light-headed, with hearing and speech difficulties. (R.p.121, line 23-p.123, line 25).

Appellant was apprehended several hours later with the assistance of a gentleman named Derrell Jenkins ("Jenkins"). (R.p.177 line 1-p.178, line 5). Jenkins indicated he knew Appellant through their mutual friend, Smart. (R.p.162, lines 5-10). At trial, Jenkins testified that he spoke to Appellant several times on the day of the incident. (R. p.164, lines 21-22). Jenkins indicated his conversations earlier in the day with Appellant involved Appellant asking to borrow money and Jenkins telling Appellant he would loan him the money later in the day. (R.p.164, line 21-p.165, line 12). Jenkins further testified Appellant contacted him a third time, later in the day, stating he "had hit somebody across the head and left them leaking" and that he had done a "lick."[2] (Id.; p.180, lines 4-7). Jenkins testified he initially did not want to get involved, but decided to go to Smart's home to see what happened, and upon his arrival on Smart's street, he observed Sheriff's Department vehicles. (R.p.167, lines 7-18). Jenkins contacted the police, explained his earlier interactions with Appellant, and offered to assist the police in apprehending Appellant. (R.p.168, line 13-p.178, line 19). Jenkins suggested he would

[2] Later testimony defined the street term, "lick" as "somebody who is getting ready to perform some type of robbery." (Id. at p.264, lines 15-19).

pretend to pick Appellant up and then have the police "randomly stop [them] and pick him up." (Id.) When Appellant was apprehended, the amount of money he possessed "wasn't close to Twenty-five Dollars." (R. p.286, line 12-p.287, line 22).

Deputy James Thorpe ("Officer Thorpe") of the Orangeburg County Sheriff's Department responded to the scene of Harrison's attack and later transported Appellant to Investigations Headquarters after his apprehension. (R.p.181, lines 2-9; p.182, line 11-p.184, line 14; p.185, lines 6-16). Importantly, Officer Thorpe testified that after he transports individuals in his patrol car he always searches his back seat, including lifting the seat cushions up. (R.p.186, lines 1-7; p.195, lines 4-6). After Officer Thorpe transported Appellant, he searched his back seat and found nothing. (Id. at p.195, lines 4-9). However, two days later, Officer Thorpe found a broken cell phone under the cushion of his back seat. (R.p.186, line 24-p.187, line 14; p.195, lines 4-12). Victim identified the cell phone as belonging to him. (R.p.124, lines 19-25).

Investigator William Ketcherside ("Ketcherside") of the Orangeburg Sherriff's Department also responded to the scene of Harrison's attack. (R.p.200, line 25-p.201, line 7; p.202, lines 6-10). Investigator Ketcherside processed the scene for fingerprints, DNA, footwear impressions and blood spatter analysis. (R.p.201, line 16-p.230, line 17). The axe handle, which appeared to have blood on it, was recovered from Harrison's home. (R.p.212, lines 7-19). Investigator Ketcherside also recovered the cell phone, which appeared to have blood on it, from Officer Thorpe's patrol car and placed it into evidence for DNA testing. (R.p.218, line 23-p.221, line 25). Investigator Ketcherside testified that the phone was positioned in Officer Thorpe's car such that if Officer Thorpe had pulled the back seat up after he transported Appellant he would have seen the cell

phone. (R.p.230, lines 3-16). Officer Ketcherside also collected DNA samples from Appellant and Victim for comparison to the DNA specimens collected from the crime scene and the cellphone. (R. p.222, line 18-p.225, line 6).

The South Carolina Law Enforcement Division ("SLED"), who analyzed the evidence recovered from the crime scene, was unable to recover any DNA from the axe handle. (R.p.238, line 16-p.239, line 4). No fingerprints were recovered from the back door or any interior or exterior door knobs of Harrison's home. (R.p.214, line 125-p.215, line 5). The DNA on the cellphone was a mixture of at least two individuals—the major contributor being Victim and the minor contributor's profile was insufficient for comparison. (R.p.242, line 17-p.244, line 5). SLED's analysis of the samples provided to them revealed **no** DNA from Appellant was present at the crime scene, on the weapon, or on the cellphone. (R.p.250, lines 1-18).

Lieutenant James Shumpert ("Shumpert"), the supervisor of the Criminal Investigations Division of the Orangeburg County Sheriff's Office, was the state's last witness and testified as to his involvement in the investigation of this incident. (R.p.259, lines 5-16; p.260, lines 8-11). Shumpert was the officer who coordinated with Jenkins for the apprehension of Appellant. (R.p.261, line 19-p.263, line 9). After the "traffic stop," Appellant was detained, subjected to a Terry[3] frisk, and transported to the Criminal Investigation office. (R.p.263, line 10-p.264, line 6).

Over objection,[4] Shumpert testified regarding the contents and circumstances surrounding three "statements" he obtained from Appellant. (R.p.258, lines 5-14). Shumpert testified that once Appellant arrived at the Criminal Investigations Division,

[3] Terry v. Ohio, 392 U.S. 1 (1968).

[4] A Jackson v. Denno hearing, pursuant to Jackson v. Denno, 378 U.S. 368 (1964), was held prior to trial and will be discussed more fully in Issue II *infra*.

Shumpert advised Appellant of his Miranda[5] rights, had Appellant sign an advisement of rights form, and attempted to interview Appellant. (R.p.264, line 24-p.267, line 17). At that point, Appellant informed Shumpert he had no knowledge of the incident and requested an attorney ("Statement 1") and asked to speak to Jenkins.[6] (R.p.267, line 18-p.268, line 6; p.573). Shumpert discontinued his questions, allowed Appellant to speak with Jenkins per Appellant's request, and then facilitated Appellant's transport to the Orangeburg County Detention Center. (R.p.268, line 10-p.269, line 5).

Shumpert testified that the next day he was contacted by Appellant's mother, whom he had had previous professional interaction based on her employment at the Orangeburg County Jail, who informed him Appellant wished to speak with him. (R. p.269, line 10-p.270, line 5). As a result of their conversation, Shumpert met Appellant's mother at the Bamberg County Detention Center where Appellant had been transferred.[7] (R.p.270, lines 1-19). Shumpert testified he inquired as to whether Appellant wanted to speak with him and that Appellant answered affirmatively, so he proceeded to get a statement from Appellant. ("Statement 2"). (R.p.270, line 24-p.273, line 9). In Appellant and Shumpert's handwriting, the content of Statement 2 is as follows:

> Mr. George kum [sic] to me after he was bruise and battery [sic] up he ask me to kall [sic] I tried but the phone I had was not working, so tell him [sic] to go to the next door neighbor and they will assit [sic] you. I was walking out to my Aunt and stay there about 2 hours [sic] The person who have done it was a guy tre [sic], dez [sic] and another character who they kall [sic] scrap [sic] I had nothing to do with it all I been trying to do is got home to my 2 daughters and couldn't even do that [sic] there was no withness

[5] Miranda v. Arizona, 384 U.S. 436 (1966).

[6] "Statement 1" is a misnomer in that Appellant did not actually give a statement the first time; however this reference is for convenience and ease of differentiation of the three interactions Shumpert had with Appellant and the distinct results of each.

[7] Appellant was transferred based on his mother's employment at the Orangeburg County Jail. (R.p. 33, lines 1-5).

[sic] no one around I just assume they did it because of how they was acting and you know actions speak louder than words.
Q: Did you use George Harrison's Phone to call Derrell?
A: yes
Q: Did you call him at 7:05 p.m. and told him to pick you up from Lil Cricket?
A: yes
Q:Do you own a Red Bandana?
A: yes
Q: Did you ask to speak to me?
A: yes

(R.p.273, line 15; p.276, line 24; p.576). Shumpert testified the main body of the statement and the responses after the "A" listings were in Appellant's handwriting and that Shumpert had written the "Qs" and the questions listed thereafter. Id. Shumpert testified that following his receipt of Statement 2, he told Appellant's mom and Appellant that Appellant was not telling him the truth (R.p.277, lines 7-17). Shumpert testified he knew Appellant was not being truthful based on the evidence he had learned from Ketcherside. (R.p.277, lines 16-19). On cross-examination, Shumpert testified he knew Appellant was not telling the truth based on the information he had and that he specifically told Appellant's mother he knew it "was a lie because Deputy Thorpe had found the cell phone in the back of his car." (R.p.294, lines 10-18). This testimony was in spite of the fact that the cell phone was not found in the back of Deputy Thorpe's car until the day after Statement 2 was taken—on July 27, 2011. (R.p.282, line 13-p.283, line 12; p.299, line 15-p.301, line 24).

Some twenty (20) minutes later and after Shumpert confronted Appellant telling Appellant he was lying, Appellant provided another statement ("Statement 3"). (R. p.277, line 20-p.280, line 18). Statement 3, in Appellant's handwriting reads:

I [sic] Darius Ransom is [sic] 21 [sic] I have high blood pressure [sic] an Enlarge Heart, [sic] a siss [sic] and a tumer [sic] on my

> right kidney [sic] I went threw [sic] a bad situation [sic] I just flip [sic] I never a day in my life put my hands on anyone [sic] I am truly sorry and ask for your forgiveness. I went in Mr. George house waitn [sic] 4 [sic] him to use his fone [sic] again and all of a sudden I hit em [sic] 4 to 5 times [sic] scare I was crying and left a guy name tre [sic] has his fone [sic] and a kouple [sic] of dollars [sic] all I have been threw [sic] was just trying to get home to my gurls [sic] We went threw [sic] the back door and that was that. I'm sorry for the pain and suffering I have put Mr. George and my family [sic].

(R.p.279, line 14 – p.281, line 8; p.579). Shumpert admitted he never inquired as to Appellant's educational background. (R.p.292, lines 18-20).

The jury found Appellant guilty of first-degree burglary and assault and battery of a high and aggravated nature. (R.p.337, lines 2-13).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008). "The court is bound by the trial court's findings of fact unless they are clearly erroneous." Id. "The admission or exclusion of evidence is left to the sound discretion of the trial judge." State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004). "A trial judge's evidentiary rulings will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." Id. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Brockmeyer, 406 S.C. 324, 751, 751 S.E.2d, 645, 653 (2013).

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. Parker at 74, 671 S.E.2d at 622. Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. Id. "In criminal cases,

appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." Id. (citing State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997)). On appeal, "[w]hen reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." Id. (citing State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001)).

ARGUMENT

I. The trial court erred in finding the inclusion of the reconstructed proceedings made the record sufficient for appellate review.

Following the trial of this matter, a timely notice of appeal was filed and a transcript ordered. Several months later, through no fault of Appellant's, the court reporter still had not produced the transcript. Ultimately, Court Administration retrieved the tape and notes from the court reporter and transcribed what portions of the transcript it could. Unfortunately, the Batson[8] motion and closing arguments were not transcribed. This Court ordered a reconstruction hearing. (R.p.1; pp.511-572). The Batson motion was reconstructed from the Court's and counsels' strike lists and notes. (R.p. 2-4; p.515, line 21-p.531, line 10). The Solicitor and Public Defender attempted to reconstruct their closing arguments by reading their respective closing argument outlines into the record. (R.p.531, line 11 – p.561, line 11) However, this attempt does not create a sufficient record for appellate review because it does not reflect any objection(s) made during the closing arguments at trial.

[8] Batson v. Kentucky, 476 U.S. 79 (1986).

A defendant complaining of a defective transcript is entitled to a new trial if the defendant "establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review." See Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) ("[T]he reconstructed record must allow for meaningful appellate review."). Therefore, "before a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a specific appellate claim that [an appellate court] would be unable to review effectively using the reconstructed record." Id. at 325, 644 S.E.2d at 273.

Here, the reconstructed record is insufficient for appellate review. As argued during the hearing, the reconstruction is woefully deficient in presenting an adequate review of the closing arguments. (R.p. 567, line 1 – p.571, line 16).

On appeal, the appellate court must review the impropriety of a solicitor's closing argument in the context of the entire record. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). The appellant has the burden of proving he did not receive a fair trial because of an alleged improper argument by the solicitor. See Humphries v. State, 351 S.C. 362, 373, 570 S.E. 2d 160, 166 (2002). Here, Appellant can never meet this burden because the reconstruction of the closing arguments does not fully and accurately demonstrate what transpired during the closing arguments. Merely reading the closing argument outlines, as was done in this case, cannot capture the full extent and context of the closing argument. As conceded by the Solicitor during the reconstruction hearing, "I don't really see any way I can word-for-word attempt to come back and say what I said to the jury a year and a-half ago." (R.p.533, lines 6-8). Furthermore, the reading of the outlines does not reflect any objections or arguments related thereto for

appellate review. Accordingly, Appellant cannot raise any issues related to the solicitor's closing arguments or whether the trial court correctly ruled on any objections made during closing arguments because the record is incomplete. No reconstruction could sufficiently cure this error, and Appellant is forever precluded from raising any errors related to the solicitor's closing argument at his trial. This is the specific appellate claim–prejudicial statements made by the solicitor–that this Court is unable to review.

That neither trial counsel nor the trial judge can recall objections made during the closing arguments is not proof that the objections did not occur. Over one year has passed since the trial of this matter. Memories are unreliable. Further, the purpose of transcribing records is so that appellate courts do not have to rely on memories and conjecture as to what transpired during trial. Accord State v. Ladson, 373 S.C.320, 326, 644 S.E.2d 271, 274 (Ct. App. 2007) (finding a defendant established prejudice and demonstrated that the reconstructed record did not allow for meaningful appellate review "for a host of reasons" including "[t]he court reporters delay in disclosing the lack of transcript made a bad situation worse as the passage of time clearly dimmed the recall of the participants.").

Because of the deficiencies in the reconstruction, Appellant is deprived of the opportunity to present any arguments regarding the propriety of the solicitor's closing arguments on appeal. Therefore, the reconstruction of the closing argument is not adequate to provide this Court with a record sufficient for appellate review and Appellant must be granted a new trial. See also United States v. Rivera, 444 Fed.Appx. 774, 779 (5th Cir. 2011) ("If a defendant is represented by different counsel on appeal than at trial, the absence of a substantial and significant portion of the record is sufficient to warrant

reversal for a new trial.") (internal citations omitted); United States v. Selva, 559 F.2d 1303, 1306 (5th Cir. 1977) (reversing a conviction because the transcript did not contain the closing arguments made by either counsel and information about the closing argument was unavailable to the attorney on appeal); Jones v. State, 780 So.2d 218 (Fl. Ct. App. 2001) (finding the omission of the State's closing argument compels the grant of a new trial, reasoning that an improper closing argument, standing alone, can be grounds for reversal, and the appellant was prejudiced "by the incomplete transcript because his appellate attorney is incapable of reviewing the State's closing argument to determine the presence or absence of reversible error.").

Accordingly, the trial court erred in finding the record was sufficient for appellate review and this matter must be remanded for a new trial.

II. In the alternative, and should this Court find the record is sufficient for appellate review, the trial court erred in admitting Appellant's confession because the confession was obtained in violation of Appellant's constitutional rights.

At trial, Statements 1, 2, and 3 were published to the jury. A Jackson v. Denno hearing was held prior to the commencement of trial and the trial judge erred in determining the statements were admissible.

During the hearing, the judge heard testimony from Shumpert, Appellant's mother, Janet Williams ("Mother"), and Appellant. Shumpert's testimony largely mirrored the testimony he later delivered at trial, summarized supra; however, a few portions are specifically relevant to this section. (R.p.27, line 12-p.52, line 1). First, Shumpert unequivocally testified that Appellant never communicated to him that he wished to speak with him; rather, the communications came via Appellant's mother. (R. p.41, lines 2-25). Shumpert further testified he was aware Appellant requested an

attorney, but did not know whether Appellant had ever received an attorney, that Shumpert made no efforts to get him an attorney prior to Shumpert's interrogation, which yielded Statements 2 and 3, and that Shumpert did not ask Appellant again if he wanted a lawyer before he began the interrogation which yielded Statements 2 and 3. (R.p.42, line 3-p.43, line 3; p.48, line 5-p.49, line 16). Shumpert also testified that when he initially entered the room to speak with Appellant, Mother also entered the room with Shumpert and another officer. (R.p.44, line 16-p.45, line 6). Shumpert testified he told Appellant something to the effect of "Your mom stated you wanted to speak to me." (R.p.45, lines 7-25). Shumpert further testified he was aware of Mother's health issues.[9] (R.p.50, lines 6-10).

Mother's recollection of the events markedly differed from that of Shumpert's. Mother testified that Shumpert called her the morning of July 26, 2011, to inform her that Appellant had been arrested the night before. (R.p.58, line 8-p.59, line 1). Mother then went to the jail to speak with Appellant and following that conversation, called Shumpert. (R.p.59, lines 2-10). Mother testified she contacted Shumpert of her own volition and that Appellant was not aware that she would contact Shumpert. (R.p.53, lines 1-21; p.55, lines 12-18; p.59, lines 16-20). Mother further testified that she knew Shumpert and wanted him to talk to Appellant because she felt "[Appellant] would tell him the truth." (R.p.55, lines 8-21; p.60, lines 19-22). Mother also testified that she spoke with Appellant, and informed Appellant that Shumpert was coming to "get the truth out of him." (R.p.53, line 22-p.54, line 25). Mother further testified that initially, when Appellant was brought to speak to her, Shumpert, and the other officer, Appellant indicated he did not want to speak to Shumpert but that Mother told Appellant that "yes

[9] Mother had recently been released from the hospital.

he would" talk to Shumpert and tell Shumpert the truth. (R.p.56, line 3-p.57, line 16; p.61, lines 7-13).

Appellant also testified at the hearing, stating he did not ask Mother to contact Shumpert on his behalf. (R.p.95, lines 10-15; p.70, lines 18-23). Appellant further testified that when he was brought to speak to Shumpert, his mother and another officer were present, and that Mother told him to tell Shumpert the truth—begging him to tell the truth. (R.p.66, lines 7-17). Appellant further testified he was never asked again if he wanted a lawyer and that he initially told Shumpert he did not wish to speak with him. (R.p.72, lines 1-23). With regard to Statement 3, Appellant testified Shumpert forced him to write the statement by telling him what to say. (R.p.74, line 13-p.75, line 19). He said Shumpert told him to include the health conditions to help him get a more reasonable bond. (Id.)

Based on the testimony, the Court found Appellant received his Miranda rights and that his statements were voluntary and admissible. (R.p.77, lines 6-10; p.91, lines 5-21). With regard to whether the statements complied with the mandates of Edwards v. Arizona, 451 U.S. 477 (1981), the trial court found there was no police-initiated interrogation after Appellant invoked his right to counsel in the matter. (R.p.90, lines 7-25). Rather, the Court found, *the interrogation was initiated by Mother* and "affirmed and voluntarily reopened by dialogue with the [Appellant]." (R.p.91, lines 1-4) (emphasis added).

The trial court's admission of the confession was improper and in violation of Appellant's Constitutional rights. "A confession is like no other evidence." Arizona v. Fulminante, 499 U.S. 279, 296 (1991). A confession is often the most probative and

damaging evidence that can be admitted against a defendant. Id. Therefore, "[a] criminal defendant is deprived of due process if his conviction is founded, in whole, or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964)).

In this case, Appellant's confession was the single and strongest piece of evidence from which the jury could determine his guilt. Without the confession, the State had little evidence to establish Appellant's guilt. Specifically, Victim's testimony surrounding the incident was undercut by his inaccurate recollection of the events after suffering severe head injuries and forensic evidence which strongly contradicted his story, and Jenkins' testimony was merely speculation as to what he thought may have happened. Without Appellant's confession, the jury had little evidence on which to convict Appellant. The confession here, taken in violation of Appellant's constitutional rights, discloses motive and means and profoundly impacted the jury. See Fulminante at 296 ("While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision. In the case of a coerced confession such as that given by Fulminante to Sarivola, the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless."); U.S. v. Johnson, 400 F.3d 187 (4th Cir. 2005) (after finding a statement was improperly admitted, the Fourth Circuit reasoned the admission was harmless error because the confession was not a full confession in which the defendant

disclosed the motive for and means of the crime).

Additionally, this issue further illustrates the devastating impact of not having a true transcript of the closing arguments because this Court cannot accurately determine how much the State's case rested on the confession and the weight the State afforded to the confession when arguing its case to the jury.

a. The trial court erred in admitting Appellant's confession because it was obtained in violation of the mandates of Edwards v. Arizona.

The Fifth Amendment's privilege against self-incrimination, made applicable to the States via the Fourteenth Amendment, provides an individual who has been accused of a crime the right to consult with an attorney and to have the attorney present during a custodial interrogation. In re Tracy B., 391 S.C. 51, 60-61, 704 S.E.2d 71, 75 (Ct. App. 2010). Therefore, "[a]n accused having expressed his desire to deal with the police only through counsel is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication*, exchanges, or conversations with the police." Edwards 451 U.S. at 484-85 (emphasis added); State v. Henderson, 286 S.C. 465, 334 S.E.2d 519 (Ct. App. 1985) (recognizing that once the right to counsel has been asserted, questioning of the suspect must cease until counsel is either obtained for the suspect or retained by him; only in instances when the suspect initiates subsequent conversations or communications with the investigating authority is a waiver of the right to counsel possible).

> If the police do subsequently initiate an encounter in the absence of counsel (assuming there has been no break in custody), the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional circumstances.

McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). "Police officers simply cannot continue to question a suspect despite his request for counsel 'in the hope that he might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.'" Johnson, 400 F.3d at 194 (citing Smith v. Illinois, 469 U.S. 91 (1984)). The United States Supreme Court has determined that two elements be examined to determine whether the police have obtained a statement in violation of Edwards. Johnson at 193.

> A court must determine whether the accused actually invoked his right to counsel. If he did, the court must determine who initiated the further discussion that yielded the eventual statement. If an accused, after invoking his right to counsel did not initiate further discussions with the police or knowingly and intelligently waive the right he had invoked, any statement procured by the police is inadmissible at trial.

Id. (citing Smith at 95).

After Edwards and Smith, some jurisdictions have recognized "that defendants can, after invoking their Fifth Amendment right to counsel, reinitiate contact with the police via a third party." Tracy at 63; 704 S.E.2d at 77; see e.g. VanHook v. Anderson, 488 F.3d 411, 428 (6th Cir. 2007) (holding when police receive information from a third party which might evince a willingness and a desire to talk by the suspect, this is enough to justify a limited inquiry with the suspect to confirm or disaffirm that belief); United States v. Michaud, 268 F.3d 728 (9th Cir. 2001) (holding that defendant initiated communication with police where defendant's cellmate told police that defendant wanted to speak to someone "about a murder"); Ex parte Williams, 31 So.3d 670, 683 (Ala. 2009) (holding that under Edwards an accused can initiate further interrogation through a third party). The United States Supreme Court and the Fourth Circuit have not addressed

this issue, so this issue is arguably unsettled. However, this Court addressed a similar situation in Tracy; however, the circumstances of Tracy are distinguishable from the case *sub judice*.

In Tracy, this Court found the Edwards rule did not mandate suppression of the appellant's statements to the police. Tracy at 51,704 S.E.2d. at 71. The appellant in Tracy was picked up for questioning related to a shooting. Id. After appellant was advised of his rights he informed the detective he wished to speak to a lawyer. Id. The detective ceased conversation and left the appellant alone. Id. The detective returned to escort the appellant to change from his football clothes to more comfortable attire and the appellate subsequently asked to speak with his mother. Id. Thereafter, the appellant's mother went to the interview room, spoke to the appellant for five to ten minutes, and as she left the room she told police her son "wanted to talk to [them]." Id. When police re-entered the room, police told the appellant his mother told him he wanted to speak to him, and asked the appellant if he wanted to talk. Id. The appellant stated he did want to talk and proceeded to ask the police questions related to the incident. Id. Eventually, the appellant gave a formal statement implicating himself in the shooting. Id. At trial, the appellant moved to suppress the inculpatory statement, contending the statement was not voluntarily made, emphasizing appellant's age and educational level, and that he had invoked his right to counsel prior to making his statement. Id. The trial court disagreed, and allowed the statement to be admitted and considered by the jury. Id.

This Court analyzed the issue under Edwards and its progeny, as well as distinguishing the case from State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (Ct. App. 2004), where this Court found a police officer's contact with a defendant after he had

invoked his right to counsel violated his Sixth Amendment right to counsel. Id. Although analyzing different rights—the Fifth and Sixth Amendments—this Court concluded that Edwards' protections extend to both rights, the facts of Anderson were closely related to the facts of Tracy, and that the reasoning was instructive on the issue. Id.

In Anderson, the defendant was arraigned for murder and completed documentation requesting the services of a public defender. Anderson at 518, 593 S.E.2d at 822. Later that day, the defendant's aunt visited him at the police station and after the visit the aunt suggested to the investigating police officer that he go talk to the defendant again. Id. The officer went to talk to the defendant, read him his Miranda warnings, asked him if anything had changed, and the defendant subsequently made a self-incriminating statement. Id. This Court distinguished Anderson from Tracy, finding that in Anderson the aunt merely suggested to police that they go talk to the defendant, not that the defendant himself wanted to talk to them. Tracy at 63, 704 S.E.2d at 77. In contrast, this Court reasoned, after speaking with Appellant, the mother in Tracy informed police the appellant wanted to talk to them. Id. Thus, this court held that "while Anderson arguably did not reinitiate contact via his aunt, [the appellant in Tracy] did reinitiate contact through his mother." Id.

This Court further found its conclusion was supported by the purposes of the Edwards rule—which is not necessarily a constitutional mandate, but a judicially prescribed prophylaxis. Id. (citing Maryland v. Shatzer, 559 U.S. 98 (2010)). "As such, it is justified only by reference to its prophylactic purpose." Id. Indeed, the purpose behind the Edwards rule is to prevent the police from badgering a defendant into waiving his previously asserted Miranda rights; "the rule ensures that any statement made in

subsequent interrogation is not the result of coercive pressures." Tracy at 65; 704 S.E.2d at 78 (citing Michigan v. Harvey, 494 U.S. 344 (1990); Minnick v. Mississippi, 498 U.S. 146 (1990)). Therefore, this Court reasoned the actions by police could not be characterized as "coercive." Tracy at 65. Specifically, this Court noted that the police asked the appellant if he wished to speak to the police after his mother told the police he wanted to talk to them. There was no evidence that the police pressured the appellant into implicating himself, the police allowed the appellant to change clothes and gave him a drink, the appellant was advised of his Miranda rights before any further questioning, and the investigating officer testified he did not make the appellant any promises to tell the family court judge about the appellant's cooperation. See Tracy at 65-66; 704 S.E.2d at 78.

The facts and circumstances herein clearly demonstrate the trial court erred in finding the confession was obtained in accordance with Edwards and its progeny. The trial court specifically found that the police contact was reinitiated by Mother and not Appellant. Consequently, the trial court then abused its discretion in allowing the confession to be admitted because the law clearly states that the contact has to be reinitiated by the defendant himself. See Brockmeyer, at 340, 751 S.E.2d at 653 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."). Even if the contact comes through a third-party, the contact must be at the behest of the defendant. Appellant, Mother, and Shumpert testified that Mother told the police to speak with Appellant.

The facts herein more closely resemble the Anderson case rather than Tracy. A crucial factor in this analysis is that it is undisputed, and found by the trial court, that

Appellant did not reinitiate the interrogation by police. Mother's actions of telling Appellant to tell Shumpert the truth and telling Shumpert to get the truth out of Appellant are more closely akin to the aunt in Anderson rather than the mother in Tracy. Mother testified that when Shumpert approached Appellant regarding a statement, Appellant indicated he did not want to speak to Shumpert and Mother told Appellant he had to speak to Shumpert. There is overwhelming evidence Mother initiated the subsequent interrogation. The trial court correctly made this finding. However, having found Mother reinitiated the contact, the trial court committed reversible error by finding the statement was admissible. A finding that anyone but Appellant reinitiated the contact with police forecloses any possibility that the statements were admissible. See Johnson, at 194 ("Police officers simply cannot continue to question a suspect despite his request for counsel 'in the hope that he might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.'") (citing Smith, 469 U.S. at 91).

Additionally, there was no break in custody or any other circumstances authorizing police to interrogate Appellant without the presence of his requested attorney. See Id., McNeil, 501 U.S. at 77. During Appellant's first encounter with Shumpert, he requested an attorney. Appellant should have been constitutionally protected from subsequent police interrogation without the presence of his attorney. Instead, Mother's interference was inappropriate and it was improper of police to rely on her statements to serve as a waiver of Appellant's constitutional rights. It is impermissible for Mother or any third-party to waive Appellant's constitutional rights. However, because police acted on Mother's purported waiver of Appellant's rights, the police violated Appellant's rights

when they obtained Statements 2 and 3. Anything obtained after the impermissible re-initiation of the interrogation was inadmissible at trial. As argued by trial counsel, if Shumpert had any issues or concerns about whether Appellant wished to speak to him, such an inquiry should have been addressed to Appellant's requested attorney.

Further, there is evidence of police coercion in this case. The interaction between Shumpert and Mother, who was recently released from the hospital, in the presence of Appellant created a tense, charged, coercive environment for Appellant. Appellant testified to the stress he felt, especially seeing his mother standing before him crying and her admonishing him to tell the truth. Appellant was also told the police did not believe him.

The trial court abused its discretion by improperly admitting Appellant's confession.

b. The trial court erred in admitting Appellant's confession because the confession was not voluntary.

The statements were also inadmissible because they were not freely and voluntarily given. "A statement obtained as a result of a custodial interrogation is inadmissible unless the subject is advised of and voluntarily waived his rights." State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007) (citing Miranda v. Arizona, 384 U.S. 439, 498-500, (1966)). If a suspect is advised of his Miranda rights, but makes a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived. Id.

The voluntariness is in addition to the intelligent waiver mandate of Miranda. Miller at 380, 652 S.E.2d at 449. A statement is not admissible unless it is voluntary. Id. Courts have reasoned that, "when a State compels testimony by threatening to inflict

potent sanctions unless the constitutional privilege [against self-incrimination] is surrendered, that testimony is obtained in violation of the Fifth Amendment and cannot be used against the declarant in a subsequent criminal prosecution." Lefkowitz v. Cunningham, 431 U.S. 801, (1977).

> It is now inescapably clear that the Fourteenth Amendment forbids the use of involuntary [statements] not only because of the probable unreliability of [statements] that are obtained in a manner deemed coercive, but also because of the "strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a [statement] out of an accused against his will," and because of "the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.

Jackson, at 65-66.

The trial judge must examine the totality of the circumstances surrounding the statement to determine whether the State carried its burden in showing the statement was made voluntarily. Miller at 389, 652 S.E.2d at 450. "The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement." Id. (internal citations omitted). "The due process test takes into consideration the totality of the circumstances—both the characteristics of the accused and the details of the interrogation." Id. (citing Dickerson v. United States, 530 U.S. 428, 434, (2000)). Some factors which may be considered in the totality of the circumstances analysis include police coercion, length of the interrogation, its location, its continuity, and the defendant's maturity, education, physical condition, and mental health. See Withrow v. Williams, 507 U.S. 680, (1993). Additionally, it is proper to consider the presence of third-parties in examining whether a defendant's will has been overborne. See e.g. Spano

v. New York, 360 U.S. 315 (1959) ("The use of Bruno, characterized in this Court by counsel for the State as a 'childhood friend' of petitioner's is another factor which deserves mention in the totality of the situation. Bruno was the one face visible to petitioner in which he could put some trust. There was a bond of friendship between them going back a decade to adolescence. It was with this material that the officers felt that they could overcome petitioner's will.").

Here, the record is devoid of any consideration of the above factors by the trial judge. The trial judge's finding was limited to stating Appellant received his Miranda rights; that he understood those rights, and that he voluntarily made the statements. (R.p. 77, lines 6-10; p. 91, lines 12-15). The trial judge's ruling is not based on the evidence in the record. Had the Court accurately considered the relevant factors, the court would have determined Appellant's statement was not voluntary and was the result of coercive police activity. Moreover, Mother's presence and insistence that Appellant speak to the police was not appropriately weighed by the trial court in analyzing the totality of the circumstances. Much like the police in Spano, the police used the bond of mother and child to improperly overcome petitioner's will.

"Coercive police activity is a necessary predicate to finding a statement is not voluntary." Colorado v. Connelly, 479 U.S. 157 (1986). "Coercion is determined from the perspective of the suspect." Illinois v. Perkins, 496 U.S. 292, (1990). "A statement may not be extracted by any sort of threats or violence, [or] obtained by an direct or implied promises, however slight, [or] *obtained by the exertion of improper influence.*" Miller at 386, 652 S.E.2d at 452 (citing State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)) (emphasis added).

As noted above, the presence of Mother and her actions are evidence of improper exertion over Appellant to get him to confess. Unlike in Tracy, there is "evidence to suggest the police used Appellant's mother as an agent to obtain her son's confession." Further, Shumpert testified he never inquired into Appellant's educational background, nor did the State present any evidence of Appellant's educational background. Given the numerous spelling, grammatical, and contextual errors in Statements 2 and 3, it is not far-fetched that Appellant's educational background may be limited.

c. The trial judge's error in admitting the statements was not harmless.

The trial judge's error in admitting the statements was not harmless. See Henderson, 286 S.C. at 470, 334 S.E.2d at 522 ("Having determined that Edwards barred the admissibility of the defendant's confession, we now consider whether the error was harmless beyond a reasonable doubt. . . . If it was not, reversal is required."). "An alleged error is harmless if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict." Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000) (citing State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)). As noted above, the admission of the confession was crucial to the jury verdict. Without the confession, the State's evidence included testimony from Victim, who had extensive head trauma and whose testimony was not born out by the forensic evidence, and Jenkins' assumptions. There is no physical evidence linking Appellant to the crime. Further, the inconclusiveness of the State's witnesses' testimony, without the confessions, leaves a large cavity of reasonable doubt as to Appellant's guilt.

CONCLUSION

Based on the foregoing, Appellant respectfully requests this Court find the trial court erred in finding the record was sufficient for appellate review and grant Appellant a new trial. In the alternative, Appellant respectfully requests this Court find the trial court erred in admitting the confessions and such confessions were not harmless error—entitling Appellant to a reversal of his convictions.

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Apr. 16th, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State ..... Respondent

vs.

Darius Ransom-Williams.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

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vs.

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Darius Ransom Williams, do hereby certify that I have this date served the foregoing **Appellant's Final Brief** by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

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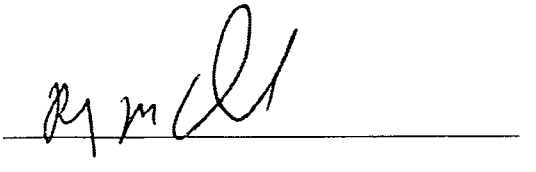

Dated: April 16th, 2015

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar J. Dickson, Circuit Court Judge
Appellate Case No. 2012-212566

THE STATE,

Respondent,

vs.

DARIUS RASEAN RANSOM

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant Darius Ransom-Williams was indicted for burglary in the first degree and attempted murder. Appellant was tried by jury before the Honorable Edgar J. Dickson on July 16-18, 2012. Appellant was convicted of first degree burglary and assault and battery of a high an aggravated nature (ABHAN). Judge Dickson sentenced Ransom-Williams to thirty years' imprisonment.

There was a significant delay in the delivery of the trial transcript. The court reporter present at trial retired and the court reporter's tapes and notes were delivered to Court Administration. Some tapes proved to be inaudible and some tapes were missing, resulting in the case being remanded for reconstruction of the jury selection and motion under Batson v. Kentucky, 476 U.S. 79 (1986) and the closing arguments. The reconstruction hearing was held before Judge Dickson. Ransom-Williams' counsel, Mark Wise, Esquire, was present, as was Assistant Solicitor Donald N. Sorenson, who prosecuted the case. John Stroud, Esquire, who was Ransom-Williams' co-counsel was not present, but Mr. Wise indicated he had consulted with Stroud prior to the hearing. Judge Dickson issued an order finding the reconstructed proceedings should be included on the record on appeal and was sufficient for appellate review. Ransom-Williams filed a motion pursuant to Rule 59(e), SCRCP. This motion was denied by Judge Dickson by written order dated January 31, 2014.

STATEMENT OF FACTS

George Harrison, a sixty-two year old man who stood at 5'9" and weighed a scant hundred and thirty pounds[1] was beaten horribly by Appellant Ransom-Williams.

Harrison was returning from the store when he opened the door and saw a stick. That is when Ransom-Williams grabbed and beat Harrison. Harrison gave Ransom-Williams his money, twenty dollars, and his cell phone. Still, Ransom-Williams beat Harrison with an axe handle Harrison kept in his house for protection. ROA. pp. 115-116; p. 118; p. 167. When he was finally able to escape from his own house, Harrison went to a neighbor, Warren Jennings. ROA. pp. 120-121. The cell phone would prove to be a key piece of evidence at trial.

Harrison indicated the assailant was tall and thin, and he had seen the assailant before.[2] Harrison noted that "after he hit me, the mask slipped and I knew it was him." ROA. p. 117, lines 2-3. He recognized the assailant because he had seen him next door at his neighbor's house "off and on." ROA. p. 117, lines 4-10. On cross-examination he estimated seeing this assailant ten to twelve times over several months. ROA. pp. 125-126. When Harrison identified Ransom-Williams as the assailant, he indicated he had no doubt about his identification. ROA. pp. 117-118.

Harrison stayed in the hospital for fifty days. His skull was fractured. Harrison's jaw had to be wired shut. Harrison needed to carry wire cutters around with him just in case he needed to open his jaw to breathe. At the time of trial, Harrison still had problems with his right eye. ROA. pp. 121-122. Harrison admitted that since the assault, he sometimes gets

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[1] See ROA. p. 112.

[2] Ransom-Williams was twenty-one years old, about 6'1" and weighed about 150-160 pounds. ROA. p.

dizzy, but he denied he ever gets confused. ROA. p. 139.

Warren Jennings was the State's second witness at trial. He has known Harrison since 1961 and is a neighbor. ROA. p. 142. Jennings found Harrison on the steps of his house. At first, Jennings thought someone poured paint on Harrison because the top of his head was covered with blood. The skin of his scalp was peeled back. Jennings could see the teeth through Harrison's torn cheek. ROA. pp. 144-145.

Dr. Mark Zulkey treated Harrison. Harrison was conversant until he had a seizure. Dr. Zulkey then put Harrison on a breathing tube. Harrison suffered an epidural hematoma, and he had fractures on his head, jawbone, and mandible. Harrison needed to be transported to Richland County Memorial Hospital because the unit did not have the neurosurgery equipment necessary. Harrison would have died if not treated for his injuries. Dr. Zulkey testified Harrison needed to have his jaw wired shut and needed to carry wire cutters with him at all times in case of emergency. ROA. pp. 150-152.

Wendy Britt is an EMS responder who arrived at the incident scene. Britt testified Harrison was conscious and explained what happened to him. Britt testified that because of the head injury, EMS did not give Harrison any painkillers. ROA. pp. 156-161.

Derrell Jenkins is a hairstylist by profession. He knows Ransom-Williams and met him through mutual friends. Jenkins testified that Ransom-Williams stayed with Travis, Harrison's neighbor, at the time of the incident. Jenkins testified that on the evening of July 25, he received a call from Ransom-Williams. Ransom-Williams frantically told Jenkins he hit someone and "left him leaking." He told Jenkins he had to "fuck them up."[3] Ransom-

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281.
[3] ROA. p. 165, lines 12-14.

Williams asked Jenkins to borrow gas money so he could get back home to St. George. Jenkins told him he was on his way to Denmark and could give him the money when he returned. Jenkins got mad at him and told him he was stupid for doing that. Jenkins ultimately hung up on Ransom-Williams. ROA. pp. 164-165. After having his memory refreshed with his statement to the police, Jenkins further explained: "He didn't tell my why but I kind of figured it was because he needed money to get home, because he had been trying to get home for a couple of days, to his mama's house." ROA. p. 166, lines 6-11. Jenkins also gave further details of the crime: "I remember him saying – he said the guy usually had about two or three hundred dollars on him but then that day he only had like thirty bucks or something like that on him." ROA. p. 166, lines 14-19.

Jenkins contemplated whether he should become involved and after returning from Denmark, decided to go to Travis' house to see what was going on. He saw blue lights at Travis' house and found out that Harrison was assaulted. Jenkins figured out what happened and despite hesitancy about becoming involved, he told law enforcement about the phone call. Jenkins called Ransom-Williams and told him to meet at Lil' Cricket. Ransom-Williams told him not to tell police. When Jenkins arrived at Lil' Cricket, Ransom-Williams walked up and got in the car. After they pulled away, the vehicle was stopped by police, who arrested Ransom-Williams. ROA. pp. 167-171.

Later at the police station, after talking with police, Ransom-Williams wanted to talk to Jenkins. At that point, Ransom-Williams tried to back-pedal on what he had already told Jenkins. Jenkins testified Ransom-Williams claimed to have told Jenkins that he committed a robbery "because he wanted me to come so he could get home, and he figured if he told me

that story then I would come faster to get him." ROA. pp. 170-171.

Deputy James Thorpe was pulling out of the parking lot of the law complex when a neighbor approached his patrol vehicle and told Deputy Thorpe about Harrison. Deputy Thorpe arrived at the scene and found Harrison bleeding profusely. Thorpe went into Harrison's residence and found an axe handle with blood on it. ROA. pp. 182-184. When Ransom-Williams was arrested, Thorpe transported him to the jail. Ransom-Williams was in the back seat of the car. Thorpe testified that Ransom-Williams was the only person in the back of his patrol car that day. Later, Thorpe found a busted cell phone in the back of the patrol car. ROA. pp. 186-18. There was blood on the cell phone. ROA. p. 220. Harrison was the major contributor to the DNA found on the cell phone. ROA. pp. 241-243. Harrison identified this phone as his. ROA. p. 124.

Lieutenant Shumpert testified he advised Ransom-Williams of his rights and started to question him at the Orangeburg County Jail that night. Ransom-Williams said he did not know what Lieutenant Shumpert was talking about when Lieutenant Shumpert asked what Ransom-Williams knew about the assault on Harrison. Ransom-Williams asked for a lawyer and asked to talk to Jenkins. So Lieutenant Shumpert ceased questioning, and he let Ransom-Williams speak with Jenkins. Lieutenant Shumpert left the jail. ROA. pp. 265-268.

Ransom-Williams was transferred to the Bamberg County jail the next day. Also the next day, Ransom-Williams' mother called Lieutenant Shumpert. She worked at the Orangeburg jail and knew Lieutenant Shumpert. She told Lieutenant Shumpert that Ransom-Williams wanted to speak to him. So Lieutenant Shumpert went to the Bamberg County jail. Lieutenant Shumpert met with Ransom-Williams and asked him: "Are you sure you want to

talk to me?" Ransom-Williams indicated he did. Lieutenant Shumpert went through his rights again. ROA. pp. 268-271. One of the follow-up questions in State's Exhibit #2 was whether Ransom-Williams asked to speak to Lieutenant Shumpert, and Ransom Williams answered "yes." State's Exhibit #2.

Then Ransom-Williams wrote out a statement in which he claimed he was at Travis' residence when Harrison came up to him and asked him to call 911. Ransom-Williams told Harrison to go to the neighbor's house because the phone was not working. Ransom-Williams claimed he then went to his aunt's house for two hours. He claimed three guys who he said were named Tre, Dez, and Scrap likely committed the assault. ROA. pp. 275-277; State's Exhibit #2.

Lieutenant Shumpert told Ransom-Williams that he was not telling the truth. So Ransom-Williams wrote out a second statement. He became emotional. Ransom-Williams admitted he "just flipped" in the following statement that was published for the jury:

> I have high blood pressure, an enlarged heart, a cyst and a tumor on my right kidney.
>
> I went through a bad situation. I just flipped. I never a day in my life put my hands on anyone. I am truly sorry and I ask for your forgiveness.
>
> I went in Mr. George's house. I waited for him to . . . use his phone again and all of a sudden I hit him four to five times. . . .
>
> All I was trying to do was trying to get home to my girls. I went through the back door and that was that. I'm sorry for the pain and suffering I have put Mr. George in – Mr. George and my family.

ROA. p. 279, line 18 – p. 280, line 9; State's Exhibit #3.

ARGUMENT

I.

The reconstruction of the record was sufficient for review, and where three attorneys and the trial court did not recall any objections during closing argument, Appellant is not entitled to a new trial on mere speculation an objection was made.

Portions of the trial record were not transcribed, so a reconstruction hearing was held. Ransom-Williams does not challenge the reconstruction of the Batson hearing. However, Ransom-Williams argues the reconstruction of closing arguments is insufficient and he should receive a new trial.

Ransom-Williams argues he is prejudiced because of the mere possibility there was an objection made during closing argument. See State v. Wilkins, 310 S.C. 81, 89-90, 425 S.E.2d 68, 73 (Ct. App. 1992) (holding defendant lost right to challenge propriety of prosecutor's opening argument by failing to contemporaneously object). However, there is a complete absence of any evidence that an objectionable argument was made or challenged. Ransom-Williams seeks a new trial on pure speculation.

Where a transcript has been lost or destroyed, a court may remand to have the record reconstructed. Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456,460 (2004) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The reconstructed record must be sufficient to allow for meaningful appellate review. Adams v. H.R. Allen, Inc., 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012). However, "[t]he authority of the trial court in South Carolina to reconstruct the record for appellate purposes aligns our state with the majority of jurisdictions that hold the inability to prepare a complete verbatim

transcript, in and of itself, does not necessarily present a sufficient ground for reversal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (internal quotation marks and citation omitted). "South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." Id. The trial court has discretion to determine how to reconstruct missing portions of the transcript provided the procedure abides with procedural due process. H.R. Allen, at 358, 726 S.E.2d at 13 (finding hybrid nature of proceeding that was neither a true rehearing on merits nor a straight forward reconstruction failed to comport with due process).

In the instant case, the trial court conducted a straight-forward reconstruction hearing where counsel for both parties offered their best recollection as to what occurred during closing arguments based on their notes. Neither party offered or requested to present testimony. Ransom-Williams does not argue that the procedure for the reconstruction hearing was improper.

Instead, Ransom-Williams seeks reversal on speculation that reversible error could have occurred during closing arguments even though three attorneys[4] and the trial court have no recollection of objections or objectionable arguments occurring during the solicitor's closing arguments. "Most jurisdictions require an appellant to demonstrate specific prejudice flowing from an incomplete or reconstructed record." Ladson, at 324, 644 S.E.2d at 273. Ransom-Williams relies heavily on United States v. Selva, 559 F.2d 1303 (5th Cir. 1977) to argue he should not have to demonstrate prejudice. The case concerned applicability of the Court Reporter Act, 28 U.S.C. § 753 (1970) rather than any constitutional issue. The Fifth

[4] Ransom-Williams' co-counsel did not recall much of the closing argument, per defense counsel.

Circuit Court of Appeals ultimately held a defendant is not required to show specific prejudice to obtain relief for a violation of the Court Reporter Act when the defendant is represented on appeal by a different attorney than the trial attorney. Selva.

This holding has been rejected by most of the other circuits, including the Fourth Circuit Court of Appeals. See United States v. Huggins, 191 F.3d 532 (4th Cir. 1999). In Huggins, the Fourth Circuit noted Selva "has not been widely followed." Id. at 537. Huggins noted: "The majority of circuits have maintained that to obtain a new trial, whether or not appellate counsel is new, the defendant must show that the transcript errors specifically prejudiced his ability to perfect an appeal." Id.

In the instant case, the trial judge took detailed notes as exhibited by his notes concerning jury selection. ROA. pp. 515-519. However, his notes did not indicate any objections made during the solicitor's closing argument. ROA. pp. 562-563. The solicitor likewise noted he did not recall any objections during his closing argument and did not have any objections recorded in his notes. ROA. p. 564, lines 15-22. The solicitor had a thorough outline of his argument and defense counsel was given the opportunity to comment on his recollections of closing argument. Further, defense counsel also had no recollection of making any objections. ROA. p. 562, lines 10-24.[5] Defense counsel indicated that his co-counsel, who was not present at the hearing, was unable to recall much about closing argument. ROA. p. 563, line 21 – p. 564, line 4. Certainly if an objectionable statement

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Reconstruction ROA. p. 563, line 21 – p. 564, line 4.

[5] Ransom-Williams' counsel testified that "he understood" he made objections during the State's closing argument but could not recall what the objection would be. He did not claim to recall objecting and he did not ask to present any witness who might have been able to testify about whether he made an objection. ROA. p. 40. After the State recited its recollection of the argument based on its notes, trial counsel noted some

occurred during closing argument that counsel thought was so prejudicial as to amount to the denial of a fair trial, one would expect that part of the argument and his objection to be memorable. Quite simply, Ransom-Williams failed to show he was prejudiced by any deficiencies in reconstructing the record in the instant case.

Accordingly, the trial court did not abuse its discretion in the reconstruction of closing arguments, and Ransom-Williams was not denied the opportunity for meaningful appellate review.

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additional discussion about lesser included offenses, but indicated he was unaware of any other discrepancies and he did not offer his recollection of any objections he might have made. ROA. p. 52.

II.

Appellant's statement to law enforcement was freely and voluntarily provided. Although Appellant initially indicated he wanted an attorney, he reinitiated contact with law enforcement through his mother, and therefore, law enforcement properly continued questioning. Further, the remaining arguments against admission of the statement are not preserved for review, and the statement was admissible under the totality of the circumstances. Finally, any error was harmless beyond a reasonable doubt.

During the pre-trial hearing, Ransom-Williams argued law enforcement improperly continued questioning after Ransom-Williams' mother contacted law enforcement and told Lieutenant Shumpert that Ransom-Williams wanted to talk to him. Ransom-Williams also argues on appeal that under the totality of circumstances, his statement should not have been admitted into evidence. The evidence in the record indicates that Ransom-Williams initiated contact with law enforcement. The additional arguments presented for the first time on appeal are not preserved for review. However, evidence supports a finding that the statement to law enforcement was freely and voluntarily provided. Even without the statement, evidence of guilt was overwhelming. Therefore, any error was harmless beyond a reasonable doubt.

Pre-trial hearing testimony and arguments

Lieutenant Shumpert first interviewed Ransom-Williams the night of July 25, 2011. Lieutenant Shumpert went through Ransom-Williams' rights that were printed on an affidavit. Ransom-Williams initialed each right after Lieutenant Shumpert went over the rights with Ransom-Williams. ROA. pp. 29-31. Lieutenant Shumpert testified he did not

threaten, coerce, or force Ransom-Williams to talk to Lieutenant Shumpert or to give a statement. Lieutenant Shumpert testified that he did not have any problems communicating with Ransom-Williams and he appeared to understand his rights. ROA. p. 31.

Lieutenant Shumpert asked Ransom-Williams what he knew, and Ransom-Williams denied any knowledge of the assault. Ransom-Williams indicated he wanted a lawyer and to talk to his friend, Jenkins. Lieutenant Shumpert ceased questioning and arranged for Ransom-Williams to talk to Jenkins. ROA. pp. 31-32.

Ransom-Williams was transported from the Orangeburg County Jail to the Bamberg County Jail that night due to his mother being a jail employee in Orangeburg. ROA. p. 33, lines 1-7. Lieutenant Shumpert was then contacted by Ransom-Williams' mother. Lieutenant Shumpert testified: "His mom had contacted me and said the Defendant wanted to talk with me." ROA. p. 33, lines 11-12. The State verified again that Ransom-Williams' mother told him that Ransom-Williams wanted to talk to him. ROA. p. 33, lines 18-20. On cross-examination during the hearing, Lieutenant Shumpert again verified that Ransom-Williams' mother called him "and told me he wanted to speak to me . . . ." ROA. p. 40, lines 18-23. Defense counsel did not like the answer to that question, so he further questioned Lieutenant Shumpert, as follows:

> Q: And it's my understanding that you don't remember if Darius' mother told you that Darius wanted to speak to you, or if she told you she wanted you to speak to Darius?
>
> A: No, on the phone that day she said that Darius wanted to speak to me. So when I got over there – that's why I asked him was he sure that he wanted to speak to me.
>
> Q: So you have no recollection of her telling you that, in fact,

Darius did not want to speak to you?

A: That's not true.

Q: Okay, so she never told you that?

A: No, she never told me that.

ROA. p. 42, lines 1-5.

So Lieutenant Shumpert and Investigator Lakeesha Gillard went to the Bamberg County Jail to speak to Ransom-Williams. ROA. p. 33, lines 21-24. Ransom-Williams' mother met them at the jail. ROA. p. 42, line 25 – p. 43, line 1. Lieutenant Shumpert went through Ransom-Williams' rights with him again. The four rights were initialed by Ransom. ROA. pp. 33-34. Lieutenant Shumpert read directly from his notes that he asked Ransom-Williams if he was sure he wanted to speak to Lieutenant Shumpert. Ransom-Williams indicated he did. ROA. p. 35, lines 14-16. Ransom-Williams wrote a paragraph about his involvement in the incident, and then some questions and answers followed. One of the questions was whether Ransom-Williams asked to speak to Lieutenant Shumpert, and Ransom-Williams indicated that he did. ROA. pp. 35-36; pp. 45-46; State's Exhibit #2. Lieutenant Shumpert testified that Ransom-Williams appeared to understand his rights when read to him again in Bamberg. Lieutenant Shumpert testified that he did not force or threaten Ransom-Williams to get him to talk. He testified that Ransom-Williams appeared to be freely and voluntarily talking with Lieutenant Shumpert. ROA. p. 36. This time, Ransom-Williams did not indicate he wanted a lawyer. Lieutenant Shumpert testified that if Ransom-Williams had done so, Lieutenant Shumpert would have ceased questioning just like he did before. ROA. p. 36.

After Ransom-Williams gave a statement denying involvement, Lieutenant Shumpert told Ransom-Williams and his mom that "he wasn't being honest. From the evidence we had collected – actually when we came out, I talked to his mom and told her that he was still refusing to be straight-forward. I told him that he needed to tell the truth." ROA. p. 37, lines 10-14. After that, Ransom-Williams provided another statement, which became State's Exhibit #3 at trial. ROA. p. 37, lines 15-21. The statement was written and signed by Ransom-Williams. Lieutenant Shumpert did not coerce or force Ransom-Williams to give this statement. ROA. p. 38, lines 2-7. Ransom-Williams did not appear to be under the influence of "anything." ROA. p. 39, lines 16-17.

At the conclusion of the testimony presented for the Jackson v. Denno hearing,[6] the trial court made the initial ruling, prior to argument from any party, that Ransom-Williams received his Miranda warnings, understood the warnings, and voluntarily made his statements. ROA. p. 77, lines 6-11. At that point, Ransom-Williams' counsel made an argument that Lieutenant Shumpert violated Edwards v. Arizona, 451 U.S. 477 (1981), by reinitiating contact with Lieutenant Shumpert. ROA. pp. 78-82. Ransom-Williams never argued the statement was involuntary due to third party involvement or the more generalized argument presented on appeal that the statement should not have been admitted under the totality of circumstances. Instead, Ransom-Williams' counsel expressly waived any issue outside of the Edwards argument when he explained to the trial court: "The only issue we really have about the statements is whether or not they complied with the mandates of the Edwards case." ROA. p. 77, lines 14-16.

[6] See Jackson v. Denno, 378 U.S. 368 (1964).

Edwards does not apply because Appellant initiated contact through his mother.

Ransom-Williams complains his statement to law enforcement was involuntary because it was made after he invoked his right to counsel. Ransom-Williams relies heavily on his own view of the facts to make this argument. However, facts support the trial court's finding the statement is voluntary as evidence supports a finding that he initiated contact with law enforcement through contact with his mother.

The Fifth Amendment's privilege against self-incrimination provides an individual accused of a crime the right to consult with an attorney or to have an attorney present during custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 478-79 (1966). Police must inform criminal suspects of their right to have an attorney present during custodial interrogation before the interrogation commences. Id. at 473-74 (1966). Once the warnings are given, if the suspect states he wants an attorney, the interrogation must cease until an attorney is present. Id. "Once an accused has invoked his right to have an attorney present during custodial interrogation, he may not be subjected to further police interrogation 'unless the accused himself initiates further communication, exchanges, or conversations with the police.'" In re Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010) (quoting Edwards v. Arizona, 451 U.S. 477, 484-85 (1981)) *cert dismissed as improvidently granted* 400 S.C. 502, 735 S.E.2d 504 (S.C. Sup.Ct. filed December 12, 2012).

The United States Supreme Court has noted the Edwards rule "is not a constitutional mandate, but judicially prescribed prophylaxis." Maryland v. Shatzer, 559 U.S. 98, 105 (2010). Therefore, the Supreme Court noted, it is a "judicially crafted rule" that is "justified only by reference to its prophylactic purpose." Id. at 106 (internal quotation marks and

citation omitted). "Its fundamental purpose, however, is to preserve the integrity of an accused's choice to communicate with police only through counsel . . . by preventing police from badgering a defendant into waiving his previously asserted Miranda rights." Id. (internal quotation marks and citation omitted). "Thus, the benefits of the rule are measured by the number of coerced confessions it suppresses that otherwise would have been admitted." Id. In contrast, the Shatzer court noted that extending the Edwards rule increases the costs that voluntary confessions will be excluded from trial or law enforcement may not even try to obtain one. Id. at 108. "Voluntary confessions are not merely a proper element in law enforcement, . . . they are an unmitigated good." Id. (internal quotation marks and citation omitted).

This Court observed that "[m]ost other jurisdictions addressing the issue have held that defendants can, after invoking their Fifth Amendment right to counsel, reinitiate contact with police via a third party." In re Tracy B. at 63, 704 S.E.2d at 77. As in the present case, Tracy B. initiated contact with the police through his mother after invoking his right to counsel. Specifically, this Court noted that after Tracy B.'s mother met with Tracy B., she informed law enforcement that Tracy B. wanted to speak to law enforcement. Shortly afterwards, the police officer asked Tracy B. if he still wanted to talk with police and Tracy B. indicated that he did. This Court found that the officer did not reinitiate contact with Tracy B., but was only confirming the accuracy of the information Tracy B.'s mother provided law enforcement. This Court found that Tracy B. reinitiated contact with law enforcement. In re Tracy B. at 64, 704 S.E.2d at 77-78.

This Court noted a similar case decided by the Georgia Supreme Court in Harvell v.

State, 562 S.E.2d 180, 182 (Ga. 2002). In that case, Harvell invoked his right to counsel, but a police officer was informed by Harvell's mother that Harvell wished to give a statement. Id. at 182. The officer asked Harvell if he had "changed his mind." Id. The defendant confirmed he did change his mind, signed a waiver form, and gave an inculpatory statement. Id. The Georgia Supreme Court concluded the Edwards rule was not violated by admission of Havell's statement. Id. at 182-83.

Like Harvell and Tracy B., Ransom-Williams initiated contact with law enforcement through his mother. Lieutenant Shumpert testified that the day after Ransom-Williams invoked his right to counsel, Ransom-Williams' mother contacted Lieutenant Shumpert and informed him that **Ransom-Williams wanted to speak with him.**[7] ROA. p. 33, lines 11-20.[8] Lieutenant Shumpert met with Ransom-Williams and his mother. Lieutenant Shumpert asked Ransom-Williams if he was sure he wanted to talk to Lieutenant Shumbert and **Ransom-Williams indicated he did.** ROA. p. 35, lines 8-16; p. 271, lines 4-9. On cross-examination during the pretrial motion, Lieutenant Shumpert testified "I reminded him he had asked to speak to an attorney, and I asked him if he was sure he wanted to speak to me, and he again stated he had nothing to do with the incident." ROA. p. 46, lines 10-13. Lieutenant Shumpert went through Ransom-Williams' Miranda rights. Ransom-Williams initialed the waiver of each right before providing a statement. ROA. p. 34, lines 2-24; p. 36. Ransom-Williams never asked for an attorney while Lieutenant Shumpert visited him at the

[7] Accordingly, this case differs from State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (Ct. App. 2004). In that case, Anderson's aunt suggested to law enforcement to speak to Anderson after he had applied for a public defender. There was no evidence that the aunt was contacting law enforcement at Anderson's request.

[8] Ransom-Williams' mother, Janet Williams, testified. She was equivocal about whether she told police that Ransom-Williams wanted to talk to them, admitting "it could have [happened]." ROA. p. 60, lines 5-10. Janet

Bamberg County jail. ROA. p. 47. A follow-up question in State's Exhibit #2 was whether Ransom-Williams asked to speak to Lieutenant Shumpert, and Ransom Williams answered "yes." State's Exhibit #2.

Although the issue in Shatzer was not whether the defendant reinitiated contact, but whether a substantial break in custody ends the application of Edwards, an observation by the Shatzer court serves as a parable applicable in the instant case:

> The fallacy here is that we are not talking about "reinterrogating" the suspect; we are talking about asking his permission to be interrogated. An officer has in no sense lied to a suspect when, after advising, as Miranda requires, "you have the right to remain silent, and if you choose to speak you have the right to the presence of an attorney," he promptly ends the attempted interrogation because the suspect declines to speak without counsel present, and then, two weeks later, reapproaches the suspect and asks, "Are you now willing to speak without a lawyer present?"

Shatzer, 559 U.S. at 115. In the instant case, not much time passed, but unlike Shatzer, Ransom-Williams initiated contact through his mother. He could have told Lieutenant Shumpert "no" when asked if he wanted to talk to the lieutenant. He could have invoked his right to counsel again when Lieutenant Shumpert advised him of Miranda again. The statement was voluntary.

"When reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of evidence, but simply determines whether the trial court's ruling is supported by any evidence." State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008) (internal quotation marks omitted). In

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Williams would claim that Ransom-Williams told her that he did not want to talk to Shumpert and she believed that Ransom-Williams told Shumpert that he did not want to talk. ROA. p. 60, lines 19-22.

the instant case, based on Lieutenant Shumpert's testimony, the trial court's ruling is supported by evidence that Ransom-Williams initiated contact with law enforcement through his mother. Ransom-Williams confirmed he wanted to speak with Lieutenant Shumpert and was provided his warnings again. Then he made up a story, but realizing the Lieutenant was not fooled, told the truth, voluntarily – the "unmitigated good" discussed in Shatzer occurred in the instant case. The conviction and sentence should be affirmed.

Ransom-Williams did not preserve his remaining argument regarding the voluntariness of his statement, and the statement was properly admitted into evidence.

Ransom-Williams follows up his argument regarding Edwards with a more generalized argument that the statement was involuntary because of his mother's involvement and the trial court should have not admitted the statement under the totality of circumstances. These arguments were not presented below and are not preserved. Further, the trial court's findings are supported by evidence.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). A party may not argue one ground at trial and another on appeal. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (to preserve for review an alleged error in admitting evidence, the objection must sufficiently bring into focus the precise nature of the alleged error so the error may be understood by the trial judge). In the instant case, the sole issue argued to the trial court was whether Ransom-Williams initiated contact with law enforcement after he formerly invoked his right to counsel.

Further, the evidence indicates that Ransom-Williams' statement was provided after being provided Miranda warnings twice and that law enforcement did not attempt to utilize Ransom-Williams' mother to secure a statement, but rather Ransom-Williams communicated with law enforcement through his mother.

Ransom-Williams points to the fact that Lieutenant Shumpert told Ransom-Williams he was not telling the truth after Ransom-Williams made his first statement. However, such a comment does not render a subsequent confession involuntary. State v. Rochester, 301 S.C. 196, 201, 391 S.E.2d 244, 247 (1990) (finding polygraph examiner's statement to defendant that it would be in his best interest to tell the truth was not improper).

A trial court's determination of voluntariness of a statement will not be reversed absent an abuse of discretion amounting to error of law. State v. McLeod, 303 S.C. 420, 423, 401 S.E.2d 175, 177 (1991), *overruled on other grounds by* State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992).

"In order to determine whether a statement is voluntary, the trial court must inquire whether under the totality of the circumstances the suspect's will was overborne." State v. Carmack, 388 S.C. 190, 199, 694 S.E.2d 224, 228 (Ct. App. 2010). "Our courts have recognized that the appropriate factors to consider in the totality of circumstances analysis include: background, experience, conduct of the accused, age, length of custody, police misrepresentations, **isolation of a minor from his or her parent**, threats of violence, and promises of leniency." State v. Dye, 384 S.C. 42, 47, 681 S.E.2d 23, 26 (Ct. App. 2009) (citations omitted) (emphasis added). A trial court's determination of the voluntariness of a statement will not be reversed absent an abuse of discretion. State v. Breeze, 379 S.C. 538,

543, 665 S.E.2d 247, 250 (Ct. App. 2008).

In the instant case, law enforcement allowed Ransom-Williams' mother to be present during the interview, although his mother chose to leave at some point during the interview. Lieutenant Shumpert confirmed he did not coerce or force Ransom-Williams to speak to him or give a statement. Lieutenant Shumpert testified that Ransom-Williams appeared to understand his rights and was able to communicate with Lieutenant Shumpert. Ransom-Williams showed his understanding of his rights when he invoked his right to counsel the previous night and was provided Miranda warnings in writing twice. Ransom-Williams indicated in his statement that he had wanted Lieutenant Shumpert to speak with him. The trial court's findings made at the conclusion of pre-trial testimony are supported by probative evidence.

Harmless error

Any conceivable error in admitting the statement is harmless beyond a reasonable doubt. Ransom-Williams claims "[w]ithout the confession, the State had little evidence to establish Appellant's guilt." Br. of Appellant p. 16. This is simply not true. Harrison recognized Ransom-Williams as his assailant; Harrison had seen Ransom-Williams several times before. Ransom-Williams admitted to his friend, Jenkins, that he committed the assault. Ransom-Williams was preparing to flee with Jenkins when he was arrested; he did not realize Jenkins was doing the right thing and helping law enforcement. Further, Harrison's busted cell phone with his blood was found in the patrol car used to transport Ransom-Williams to jail. This is more than a "little evidence." Evidence was more than sufficient to convict Ransom-Williams without his statements to law enforcement. Any error

was harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). Ransom-Williams' convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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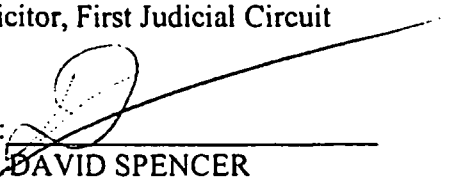
BY: 
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April 9, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
Edgar J. Dickson, Circuit Court Judge

THE STATE, Respondent,

v.

DARIUS RANSOM-WILLIAMS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, 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: Sheila M. Bias, Esquire, 1900 Barnwell St., Columbia, SC 29201 and Robert M. Dudek, Esquire, Chief Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211 .

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

This 9th day of April, 2015.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State .....Respondent,

vs.

Darius Ransom-Williams.....Appellant.

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ARGUMENT

I. The State fails to provide a compelling argument as to why Appellant is not entitled to a new trial based on the inadequacy of the Reconstruction Hearing.

Appellant is entitled to a new trial because he cannot raise any argument with regard to the propriety of the Solicitor's closing argument. The law on this issue is clear. A defendant complaining of a defective transcript is entitled to a new trial if the defendant "establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review." See Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) ("[T]he reconstructed record must allow for meaningful appellate review."). Therefore, "before a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a specific appellate claim that [an appellate court] would be unable to review effectively using the reconstructed record." Id. at 325, 644 S.E.2d at 273.

A defendant loses his right to challenge the propriety of a prosecutor's argument by failing to contemporaneously object. See State v. Hawkins, 310 S.C. 50, 62, 425 S.E.2d 50, 57 (Ct. App. 1992). On appeal, the appellate court must review the impropriety of a Solicitor's closing argument in the context of the entire record. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). The appellant has the burden of proving he did not receive a fair trial because of an alleged improper argument by the Solicitor. See Humphries v. State, 351 S.C. 362, 373, 570 S.E. 2d 160, 166 (2002). Indeed, the "relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v.

Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) Thus, the State is incorrect in that the Appellant should not be granted a new trial on "mere speculation" or that Appellant must show prejudice. Rather, the appropriate standard is whether the Appellant can identify the specific appellate claim that this Court would be unable to effectively review using the reconstructed record.

On this record, the reconstruction hearing was wholly inadequate as Appellant can never properly raise a challenge as to the propriety of the Solicitor's closing argument without the actual closing argument made before the trial judge. As conceded by the Solicitor during the reconstruction hearing, "I don't really see any way I can word-for-word attempt to come back and say what I said to the jury a year and a-half ago." (R.p. 533, lines 6-8). Nor can Appellant challenge whether any rulings on objections made during the closing argument were errors of law. It is paramount that the reconstruction record be sufficient to comport with Appellant's due process rights. Such is not the case here.

In addition, the fact that the solicitor, trial counsel, and the judge cannot recall what occurred during the actual closing arguments at trial is the *exact* reason why the reconstruction hearing is inadequate. That the relevant parties cannot recall what occurred at a trial taking place over four years ago (and almost two years prior to the reconstruction hearing) is the reason why trials are transcribed in the first place. Without the actual closing argument in this case, Appellant has lost the opportunity to challenge the propriety of the solicitor's closing argument and to question whether the trial judge accurately ruled on any objection to the solicitor's closing argument. The inability of this Court to review this information from trial is the specific right that Appellant has lost.

Thus, this is not a case, as the State has framed the issue, of whether Appellant is entitled to a new trial based on "mere speculation." Rather, the issue is whether Appellant is to spend the better part of his adult life in prison because he is unable to challenge the propriety of the Solicitor's closing argument at his trial which may well have so infected the trial that his conviction is a violation of his due process rights. Accordingly, this Court must order a new trial.

II. Alternatively, should this Court find the record is sufficient for appellate review, the trial court erred in admitting Appellant's statements.

a. Appellant's statements were inadmissible because they were obtained in violation of Appellant's constitutional rights.

As this Court is aware, "[a] confession is like no other evidence." Arizona v. Fulminante, 499 U.S. 279, 296 (1991). A confession is often the most probative and damaging evidence that can be admitted against a defendant. Id. Therefore, "[a] criminal defendant is deprived of due process if his conviction is founded, in whole, or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964)).

The State conveniently omits that the trial judge specifically found that Appellant's mother, not Appellant, reinitiated contact with police. See (R.p. 91, lines 1-4). Thus, it was an error of law for the trial judge to allow the admission of the statements. The jurisprudence on this issue requires that the *accused* himself reinitiate the contact. Thus, this is more like the situation presented in State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (Ct. App. 2004), rather than that of In re Tracy B, 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). This difference is significant and cannot be overlooked by this Court.

"An accused having expressed his desire to deal with the police only through counsel is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication*, exchanges, or conversations with the police." Edwards v. Arizona 451 U.S. 477, 484-85 (emphasis added); State v. Henderson, 286 S.C. 465, 334 S.E.2d 519 (Ct. App. 1985) (recognizing that once the right to counsel has been asserted, questioning of the suspect must cease until counsel is either obtained for the suspect or retained by him; only in instances when the suspect initiates subsequent conversations or communications with the investigating authority is a waiver of the right to counsel possible).

> If the police do subsequently initiate an encounter in the absence of counsel (assuming there has been no break in custody), the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional circumstances.

McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). "Police officers simply cannot continue to question a suspect despite his request for counsel 'in the hope that he might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.'" United States v. Johnson, 400 F.3d 187, 194 (4th Cir. 2005) (citing Smith v. Illinois, 469 U.S. 91 (1984)).

Contrary to the State's argument, Appellant's confession was the single and strongest piece of evidence from which the jury could determine his guilt. Without the confession, the State had little evidence to establish Appellant's guilt. Specifically, the victim's testimony surrounding the incident was undercut by his inaccurate recollection of the events after suffering severe head injuries and forensic evidence which strongly

contradicted his story, and a witness' testimony which was based on speculation and conjecture. Without Appellant's statements, the jury had little evidence on which to convict Appellant. The statements here, amounting to a confession, taken in violation of Appellant's constitutional rights, discloses motive, means, and profoundly impacted the jury. See Fulminante at 296 ("While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision. In the case of a coerced confession such as that given by Fulminante to Sarivola, the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless.").

Further, the fact that Appellant did not "ask again" for an attorney after he was transported from one facility to another is of no impact on this analysis. The jurisprudence is clear. Once an accused has invoked his right to counsel, police are not to initiate any further contact with him. Appellant should have been constitutionally protected from subsequent police interrogation without the presence of his attorney.

The facts and circumstances herein clearly demonstrate the trial court erred in finding the confession was obtained in accordance with Edwards and its progeny. The trial court specifically found that the police contact was reinitiated by Appellant's mother and not Appellant. Most similar to the facts of Anderson, Appellant's mother suggested that the police interrogate Appellant a second time. Unlike Tracy, Appellant's mother did not speak with Appellant and then immediately after inform law enforcement that her son

was prepared to talk. The actions of Appellant's mother amount to coercion and give no indication of the Appellant himself reinitiating contact with law enforcement. Consequently, the trial court abused its discretion in allowing the confession to be admitted because the law clearly states that the contact has to be reinitiated by the defendant himself.

Therefore, the trial court abused its discretion in allowing the confession to be admitted because the law clearly states that the contact has to be reinitiated by the defendant himself. See State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."). Even if the contact comes through a third-party, the contact must be at the behest of the defendant. Appellant, his mother, and Officer Shumpert testified that Appellant's mother told police to speak with Appellant.

b. Appellant's statement was not voluntary.

As an initial matter, the State is incorrect in its assertion that this issue is not preserved for appellate review. The argument that Appellant's statements were involuntary was presented to and ruled upon by the trial judge. See R.p. 91, lines 12-20 ("I find that [Appellant] received his Miranda [sic] Rights; that he understood those rights; that he voluntarily made the statements") (emphasis added). Therefore, this topic is preserved for appellate review.

Due Process compels that the voluntariness inquiry require the trial judge to examine the totality of the circumstances—which did not occur here. State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007). "The test of voluntariness is

whether a defendant's will was overborne by the circumstances surrounding the given statement." Id. (internal citations omitted). "The due process test takes into consideration the totality of the circumstances—both the characteristics of the accused and the details of the interrogation." Id. (citing Dickerson v. United States, 530 U.S. 428, 434, (2000)). Some factors which may be considered in the totality of the circumstances analysis include police coercion, length of the interrogation, its location, its continuity, and the defendant's maturity, education, physical condition, and mental health. See Withrow v. Williams, 507 U.S. 680, (1993). Additionally, it is proper to consider the presence of third-parties in examining whether a defendant's will has been overborne. See e.g. Spano v. New York, 360 U.S. 315 (1959) ("The use of Bruno, characterized in this Court by counsel for the State as a 'childhood friend' of petitioner's is another factor which deserves mention in the totality of the situation. Bruno was the one face visible to petitioner in which he could put some trust. There was a bond of friendship between them going back a decade to adolescence. It was with this material that the officers felt that they could overcome petitioner's will.").

Here, the record is devoid of any consideration of the above factors by the trial judge. The trial judge's finding was limited to stating Appellant received his Miranda rights; that he understood those rights, and that he voluntarily made the statements. (R.p.77, lines 6-10; p. 91, lines 12-15). Had the Court accurately considered the relevant factors, the court would have determined Appellant's statement was not voluntary.

III. The admission of the statements was not harmless error.

The trial judge's error in admitting the statements was not harmless. See Henderson, 286 S.C. at 470, 334 S.E.2d at 522 ("Having determined that Edwards barred

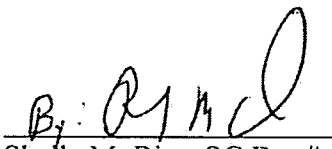
the admissibility of the defendant's confession, we now consider whether the error was harmless beyond a reasonable doubt. . . . If it was not, reversal is required."). "An alleged error is harmless if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict." Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000) (citing State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)). Importantly, however, "no definite rule of law governs [this finding]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011). The admission of the confession was crucial to the jury verdict because without the confession, only circumstantial evidence was available. The State's evidence included testimony from the victim, who had extensive head trauma and whose testimony was not born out by the forensic evidence, and a witness' assumptions. There is no physical evidence linking Appellant to the crime. Further, the inconclusiveness of the State's witnesses' testimony, without the confessions, leaves a large cavity of reasonable doubt as to Appellant's guilt.

As this Court stated in State v. White, "harmless error rules... serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial." 410 S.C. 56, 59, 762 S.E.2d 726, 729 (Ct. App. 2014). Impliedly, holdings of harmless error should be reserved for situations in which errors are small and insignificant. The admission of a confession is no small matter. Moreover, in this situation, such a confession is far from insignificant. A confession in the minds of a juror will be *the only thing* considered once admitted. Once a confession is admitted, it is the most significant piece of evidence and

all other evidence becomes completely *insignificant*. Furthermore, in order for an insignificant error to be considered harmless, guilt must have been "conclusively proven by competent evidence such that no other rational conclusion can be reached." Byers, 392 S.C. at 447, 710 S.E. 2d at 60. Here, there are multiple other rational conclusions that could be reached by reviewing all other trial evidence. Many times, the testimony was inconclusive and contradictory, and it would have been rational for a juror to find the circumstantial evidence unconvincing. For these reasons, admission of Appellant's confession was in error and this error was not harmless.

CONCLUSION

Based on the foregoing, Appellant respectfully requests this Court find the trial court erred in finding the record was sufficient for appellate review and grant Appellant a new trial. In the alternative, Appellant respectfully requests this Court find the trial court erred in admitting the confessions and such confessions were not harmless error—entitling Appellant to a reversal of his convictions.

By: 

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April 16th, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State ..... Respondent

vs.

Darius Ransom-Williams..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

By: [signature]

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Darius Ransom Williams, do hereby certify that I have this date served the foregoing **Appellant's Final Reply Brief** by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

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By: _____

Dated: April 16th, 2015