RECEIVED
MAR 23 2016
SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Edgar J. Dickson, Circuit Court Judge
Appellate Case No. 2016-000590

THE STATE,

Respondent,

vs.

DARIUS RANSOM-WILLIAMS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUES ON APPEAL

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, Petitioner is not entitled to a new trial on mere speculation an objection was made during closing argument.

II.

Petitioner's statement to law enforcement was freely and voluntarily provided. Although Petitioner 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.

STATEMENT OF THE CASE

Petitioner Darius Ransom-Williams was indicted for burglary in the first degree and attempted murder. Ransom-Williams was tried by jury before the Honorable Edgar J. Dickson on July 16-18, 2012. Ransom-Williams 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. Ransom-Willaims appealed.

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.

The appeal resumed and the Court of Appeals affirmed the conviction and sentence. State v. Williams, Op. No. 2016-UP-021 (S.C. Ct. App. filed January 20, 2016). The subsequent petition for rehearing was denied and Ransom-Williams filed a petition for writ of certiorari to this Court. This Appeal follows.

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 Petitioner Ransom-Williams.

Harrison was returning from the store and opened the door. 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 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,

---

[1] See ROA. p. 112.
[2] Ransom-Williams was twenty-one years old, about 6'1" and weighed 150-160 pounds. ROA. p. 281.

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-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 found an axe handle with blood on it in Harrison's residence. ROA. pp. 182-184. Thorpe transported Ransom-Williams after he was arrested. 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

---

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

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, Petitioner 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 on United States v. Selva, 559 F.2d 1303 (5th Cir. 1977) to argue he

[4] Ransom-Williams' co-counsel did not recall much of the closing argument, per defense counsel. Reconstruction ROA. p. 563, line 21 – p. 564, line 4.

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 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-

[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

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 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.

---

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.

Petitioner's statement to law enforcement was freely and voluntarily provided. Although Petitioner 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 he did not have any problems communicating with Ransom-Williams who 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.

Edwards does not apply because Petitioner 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

---

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

(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).

The Court of Appeals 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, the Court of Appeals 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. The Court of Appeals found 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. The Court of Appeals concluded 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 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,

[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 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.

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 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 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 a paucity of evidence without the confession, but in actuality, there was plenty of evidence, including physical evidence, linking Ransom-Williams to the crime without the confession. 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 petition for writ of certiorari should be denied. Should this Court see fit to grant the petition, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 23, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Edgar J. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DARIUS RANSOM-WILLIAMS,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing party by mailing two (2) copies in the United States mail, postage prepaid:

Sheila M. Bias, Esquire
1900 Barnwell St.
Columbia, SC 29201

Robert M. Dudek, Esquire
Chief Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

This 23RD day of March, 2016

NORMA BIGBEE
LEGAL ASSISTANT