

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY  
The Honorable William Jeffrey Young, Circuit Court Judge

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On Petition for Writ of Certiorari to the Court of Appeals  
Appellate Case No. 2016-001083 (Ct. App. Case No. 2013-000700)  
Opinion No. 5382 (S.C. Ct. App. filed 2/24/2016)

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THE STATE

RESPONDENT,

V.

MARC ANTHONY PALMER,

PETITIONER.

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RETURN TO PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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### PETITIONER'S QUESTIONS PRESENTED

- I. Did the Court of Appeals error in finding that the trial court properly granted the State's Batson v. Kentucky motion and quashing the original jury?
- II. Did the Court of Appeals error in finding that the trial court properly denied the petitioner's motion for a mistrial and motion for a new trial after a witness testified that he took and passed a polygraph test, clearing the witness of the murder for which the petitioner was on trial?
- III. Did the Court of Appeals error in finding that the trial court properly denied the petitioner's motion for a speedy trial?
- IV. Did the Court of Appeals error in finding that the trial court properly admitted into evidence the petitioner's statement to law enforcement after he invoked his right to counsel?

### RESPONDENT'S RESTATEMENT OF QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in finding the trial court did not abuse its discretion in granting the State's Batson motion when it employed the proper procedure in analyzing the motion, the trial court's findings of pretext were supported by the record, and any error in granting the motion was harmless?
- II. Whether the Court of Appeals erred in finding the trial court did not abuse its discretion in denying a motion for a mistrial and a motion for a new trial after allowing the solicitor to ask a defense witness about a polygraph examination when the question was not improper and any error in allowing the question was harmless?
- III. Whether the Court of Appeals erred in finding the trial court properly denied Palmer's motion for a speedy trial?
- IV. Whether the Court of Appeals erred in finding the trial court did not abuse its discretion in admitting Palmer's statement to law enforcement when the statement was voluntary and the record supports the trial court's determination that the initial possible invocation of Palmer's right to have counsel present was ambiguous, and it was clarified that he was not requesting counsel to be present after further clarification questions?

### STATEMENT OF THE CASE

On March 11-14, 2013, Petitioner Marc Anthony Palmer ("Palmer") was tried by a jury for the murder of Therris Keels and possession of a weapon during the commission of a violent crime. Palmer was tried in the Williamsburg County Court of General Sessions before the Honorable William Jeffrey Young, Circuit Court Judge. Guy Ballinger, represented Palmer.

The State was represented by Assistant Solicitor Kimberly V. Barr of the Solicitor's Office for the Third Judicial Circuit. Palmer was convicted of murder and possession of a weapon during the commission of a violent crime on March 14, 2013. (R. p. 518). He was sentenced to life imprisonment for the murder conviction and five years confinement for the possession of a firearm during the commission of a violent crime conviction, to be served concurrently. (R. pp. 530-31).

Palmer timely filed a notice of appeal. After full briefing and oral argument, the South Carolina Court of Appeals issued a published opinion affirming Palmer's convictions. State v. Palmer, Op. No. 5382 (S.C.Ct.App. filed February 24, 2016). (App. pp. 1-16). Palmer filed a Petition for Rehearing on March 8, 2016. (App. pp. 17-27). Respondent filed a Return to Petition for Rehearing on April 4, 2016. (App. 28-38). The Court of Appeals denied the petition on April 21, 2016. (App. pp. 39). Palmer now seeks review of the South Carolina Court of Appeals' opinion in this Court.

### ARGUMENT

**I. Certiorari should be denied upon Palmer's claim that the trial court improperly granted the State's Batson motion. As correctly determined by the Court of Appeals, the trial court's grant of the motion was proper in light of the record.**

Palmer first contends the Court of Appeals erred in finding the trial court properly granted the State's Batson motion. Certiorari should be denied because the trial court's grant of the Batson motion was supported by the record.

In finding no error by the trial court, the Court of Appeals stated,

We acknowledge that Palmer's stated concerns that Jurors 46, 178, 31, and 97 were government employees who interacted regularly with law enforcement were race neutral reasons to strike. Id. at 510, 682 S.E.2d at 823 (stating petitioners' stated concern that juror 131 was a state employee who interacted regularly with law enforcement was a race neutral reason to strike). Palmer's concerns about Jurors 136, 173, and 29's jobs also were race-neutral reasons to strike. Id.

("Employment is a well-understood and recognized consideration in the exercise of peremptory challenges."); State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999) (holding place of employment is a race-neutral reason for a strike); State v. Adams, 322 S.C. 114, 125, 470 S.E.2d 366, 372 (1996) (finding type of employment is a race-neutral reason for a strike). However, the State demonstrated the explanations were pretextual by showing Palmer did not strike similarly-situated members of another race. See Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (providing an opponent of a strike must show the race or gender-neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly-situated member of another race or gender). Therefore, we find the trial court did not err in granting the State's Batson motion.

State v. Palmer, 415 S.C. 502, 515-16, 783 S.E.2d 823, 830 (Ct. App. 2016).

The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a venire person on the basis of race or gender. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007).

The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. See Purkett v. Elem, 514 U.S. 765, 767-68, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995). First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the [party opposing the Batson] challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. The ultimate burden always rests with the [party asserting the Batson challenge] to prove purposeful discrimination.

State v. Inman, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014), reh'g denied (July 24, 2014).

"An explanation for a jury strike will be deemed race-neutral **unless a discriminatory intent is inherent.**" Robinson v. Bon Secours St. Francis Health Sys., Inc., 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009) (citing Purkett v. Elem, 514 U.S. 765, 768, 115 S.Ct. 1769, 131 L.Ed.2d 834, (1995); State v. Adams, 322 S.C. 114, 123, 470 S.E.2d 366, 371 (1996) (emphasis in original). "Whether a Batson violation has occurred must be determined by examining the

totality of the facts and circumstances in the record.” State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Edwards, 384 S.C. at 509, 682 S.E.2d at 823.

“Typically, the decisive question becomes whether counsel’s race-neutral explanation for a peremptory challenge should be believed.... [T]here is seldom much evidence in the record bearing on that issue, and the trial court’s findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.”

Evins, 373 S.C. at 415-16, 645 S.E.2d at 909-10 (quoting State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct.App.2006)). See Hernandez v. New York, 500 U.S. 352, 365, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991); State v. Taylor, 396 S.C. 193, 720 S.E.2d 522, 525 (Ct. App. 2011).

The trial court did not err in granting the State’s Batson motion. Palmer’s reliance upon this Court’s opinion in State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014), in contending the Court of Appeals erred is misplaced. In Inman, this Court found the circuit court erred in granting the State’s Batson motion because the circuit court failed to shift the burden upon the State to show the race-neutral reasons proffered by the defense were pretextual. Id. at 28, 760 S.E.2d at 109. It was clear that such an error was made; during the motion hearing, the State made a very conclusory argument that the strikes were pretextual. In fact, this Court noted “[i]n light of the facially race-neutral explanation for striking Juror 60, the State's conclusory statement that striking Juror 60 was pretextual failed to carry its burden of persuasion.” Id.

This case is clearly distinguishable from the scenario presented in Inman. First, the trial court utilized the proper procedure for the Batson hearing. The State identified the jurors against whom it asserted the defense improperly struck based on race. (R. p. 33). The trial court then

moved to step two of the process and allowed the proponent of the strikes, the defense, to provide race-neutral explanations for the peremptory strikes. (R. pp. 34-7). After the race neutral explanations were provided (step two), the trial court moved on to step three of the process and allowed the State to present argument as to why the racially neutral reasons given by the defense were mere pretext. (R. pp. 37-9). Unlike the argument presented at the hearing in Inman, the State here presented several specific reasons why the purported race-neutral bases for Palmer's strikes were pretextual. The trial court's ruling reflects that, after hearing argument from the State, it felt the State met its burden of showing that the explanations for the use of the peremptory strikes were pretextual.

The trial court's findings that the defense's use of some of its peremptory strikes was improperly racially motivated are supported by the record. As noted by the solicitor, Palmer's strikes of two jurors based upon their connection to the medical field were pretextual. Palmer did not strike another witness who was similarly situated, a certified nursing assistant who was seated.<sup>1</sup> (R. pp. 38-9). Further, the explanation given for the strike of Juror 5 was especially tenuous because the juror was not an operating room nurse; his wife was one. (R. pp. 37, 38). As to the remainder of the strikes challenged, Respondent would note "[t]he trial judge's findings of purposeful discrimination rest largely on his evaluation of demeanor and credibility, and the reviewing court should give the findings great deference on appeal." State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 503 (1999) (citing Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994);

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<sup>1</sup> Respondent would note that Palmer's contention that there was a distinction between a certified nursing assistant and an operating room nurse or a paramedic was not one made during the Batson hearing, and was thus not preserved for review. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal).

State v. Green, 306 S.C. 94, 409 S.E.2d 785 (1991)). In light of the arguments asserted by the solicitor regarding the pretextual nature of some of the strikes utilized by Palmer in jury selection, the trial court's grant of the Batson motion should be affirmed.

Any error in granting the State's Batson motion was harmless. Palmer contends that prejudice should be presumed because Juror 173, who was initially struck in the first jury, was allowed to sit in the second jury. Palmer further contends the strike of Juror 173 was one of the challenged strikes. Palmer's reliance on the seating of Juror 173 on the second jury is misplaced. While the strike of Juror 173 was initially listed by the State as one of the peremptory strikes being challenged in step one of the process, the State did not assert that the argument given for Juror 173 was not race neutral or pretextual in step three. By not asserting the reason given for the strike of Juror 173 was pretext, the State withdrew its challenge to that strike. This withdrawal is reflected in the argument presented by the solicitor in response to the race-neutral reasons given by the defense for its strikes. The solicitor specifically challenged the explanations given for the jurors who were struck because of their government related employment, the jurors who were struck because of their relation to the medical field, and the juror who was struck because it was from Hemingway. (R. pp. 38-9). The solicitor further stated "Judge we would take the position obviously **some of the reasons** that were advanced by the defense are in fact pretextual that they applied those to white to strike the jurors but at the same time similarly situated black jurors were seated. . . ." (R. p. 39, ll 9-13).

Since the State withdrew its challenge to Juror 173 before the trial court ruled upon the Batson motion, the fact Juror 173 was seated on the second jury does not warrant a presumption of prejudice.

If a trial court improperly grants the State's Batson motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is

harmless because a defendant is not entitled to the jury of her choice. State v. Rayfield, 369 S.C. 106, 114, 631 S.E.2d 244, 248 (2006). However, if one of the disputed jurors is seated on the jury, then the erroneous Batson ruling has tainted the jury and prejudice is presumed in such cases “because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged.” Id. at 114, 631 S.E.2d at 248. The proper remedy in such cases is the granting of a new trial.

State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009). Since Juror 173 was not, in the end, a disputed juror, any error the trial court may have made in granting the State’s Batson motion as to any other juror was harmless. Certiorari upon this claim should therefore be denied, and Palmer’s convictions should be affirmed.

**II. Certiorari should be denied upon Palmer’s claim the trial court erred in denying his motion for a mistrial and motion for a new trial. The Court of Appeals properly affirmed the trial court’s denial of relief upon these motions; Palmer was not prejudiced by any error that may have resulted from the question of a defense witness regarding whether he took a polygraph.**

At issue in the second claim in the petition is whether the trial court erred in denying motions for a mistrial and a new trial based upon a question by the solicitor during cross-examination of Michael Montgomery. Montgomery had testified that testified that on the night before the shooting, he went to Frank Conyer’s club in Greeleyville. (R. pp. 425-26). Montgomery also testified that he slept at Conyer’s house that night. (R. p. 426). Montgomery indicated that he went to the victim’s mother’s house the next day. (R. p. 427). He further testified that he demanded that he wanted his money. (R. p. 427). Montgomery stated that the next day, he was at his home. (R. p. 427). He also acknowledged that he owned a 12 gauge firearm. (R. pp. 427-28). During cross-examination, Montgomery stated he was not at the scene when the victim was murdered, and he cooperated with law enforcement. He also indicated that he provided a DNA sample. He was asked by the State if he submitted to a polygraph examination, which led to an objection. After admitting that he had, Montgomery went on to

testify that he did everything law enforcement requested, and law enforcement cleared him of being involved. (R. p. 430). Palmer moved for a mistrial based on the reference to a polygraph examination. (R. p. 467). The trial court denied the motion, and later denied a motion for a new trial that was based on the same objection. (R. pp. 468, 524). On appeal, the Court of Appeals affirmed.

To receive a mistrial, Palmer was required to show error and resulting prejudice. See Council, 335 S.C. at 13, 515 S.E.2d at 514. We find the trial court's decision not to grant a mistrial is supported by the evidence. First, the evidence admitted was simply that the witness took a polygraph test. The results of this test were not indicated at trial and are not mentioned anywhere in the record. While the jury could have inferred, as claimed by Palmer, that the witness passed the polygraph test and was no longer a suspect, and Palmer did not take a polygraph test because he could not pass one, an equally plausible inference is that Palmer was not asked to take a polygraph because there was no mention of Palmer being asked to take one. Because there was no evidence regarding the results of the witness' polygraph test, Palmer failed to meet his burden of establishing the prejudicial impact of this evidence. Further, the one reference to the witness taking a polygraph test was an isolated comment. Therefore, we find the trial court did not err in denying his motions.

Palmer, 415 S.C. at 518, 783 S.E.2d at 831.

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct.App.1999). Appellate courts have favored the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." State v. Key, 256 S.C. 90, 94, 180 S.E.2d 888, 890 (1971). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Patterson, 337 S.C. at 227, 522 S.E.2d at 851; see also State v. Wasson, 299 S.C. 508, 386 S.E.2d 255

(1989); State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) (“The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes.”).

“[A] mistrial should not be ordered in every case in which incompetent evidence is improperly admitted.” State v. White, 371 S.C. 439, 444, 639 S.E.2d 160, 162 (Ct.App.2006)(citing State v. Johnson, 334 S.C. 78, 89, 512 S.E.2d 795, 801 (1999) and Patterson, 337 S.C. at 227, 522 S.E.2d at 851). “[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice.” State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (internal citation omitted). “In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion.” State v. Scott, 405 S.C. 489, 497, 748 S.E.2d 236, 241 (Ct.App.2013) (citing State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866 (citation omitted).

“This Court [the South Carolina Supreme Court] has consistently held the results of polygraph examinations are generally not admissible because the reliability of the tests is questionable.” State v. Council, 335 S.C. 1, 23, 515 S.E.2d 508, 519 (1999), cert. denied, 528 U.S. 1050, 120 S.Ct. 588, 145 L.Ed.2d 489 (1999). Although this Court in Council declined to recognize a per se rule against the admission of polygraph evidence, it indicated that the “admissibility of this type of scientific evidence should be analyzed under Rules 702 and 403, SCRE and the Jones factors.” Id. at 24, 515 S.E.2d at 520.

Lorenzen v. State, 376 S.C. 521, 533, 657 S.E.2d 771, 778 (2008). “The general rule is that no mention of a polygraph test should be placed before the jury. It is thus incumbent upon the trial

judge to ensure that should such a reference be made, no improper inference be drawn therefrom.” State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (citing State v. McGuire, 272 S.C. 547, 551, 253 S.E.2d 103, 105 (1979)).

Neither a mistrial nor a new trial was warranted by the solicitor’s single question about whether Montgomery submitted to a polygraph examination. The transcript reflects that the question was intended solely to show that Montgomery had cooperated with law enforcement during their investigation. Unlike the case in Johnson, no mention of the results of the polygraph was made. There was no mention of whether Palmer was subjected or offered a polygraph.

Palmer suffered no prejudice from the question regarding the polygraph examination. While Montgomery was asked if he had voluntarily submitted to a polygraph, the results of the polygraph were never discussed at trial. See Bruno v. State, 347 S.C. 446, 452, 556 S.E.2d 393, 396 (2001) (finding that a defendant could not establish he was prejudiced by counsel’s failure to object to mention of a polygraph examination when the results of the exam were not presented in any form). Further, the one question during Montgomery’s cross-examination was the only reference to a polygraph throughout Palmer’s trial. The solicitor did not attempt to use the testimony about the polygraph in any way throughout the rest of the trial. Further, Montgomery’s testimony was neither inculpatory nor exculpatory. Montgomery was not a witness to the shooting, and nothing in his testimony reflected on the credibility of any other witness involved in the case. The single mention of a polygraph examination for a witness who provided no information that implicated Palmer in the crime did not render Palmer’s case unfair.<sup>2</sup>

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<sup>2</sup> Respondent would also note that Palmer’s contention that the results were discussed is both not supported by the record and not preserved for review by this Court. This particular argument was not presented at trial (see R. p. 467), and was not raised to the Court of Appeals until the Petition for Rehearing. Nelson v. QHG of S. Carolina, Inc., 362 S.C. 421, 427, 608 S.E.2d 855, 858 (2005)(finding argument not preserved for review because the argument was not raised until

The distinctions between Palmer's trial and the scenario presented in Bruno further support for the trial court's determination that any error was harmless. In Bruno, the witness who testified about taking a polygraph examination was vital to the State's case. He provided law enforcement with information that established the defendant committed the murder, and his testimony was corroborated by evidence recovered. Bruno, 347 S.C. at 449, 556 S.E.2d at 394. Here, the witness at issue was not at the scene, and he provided no inculpatory or exculpatory information at trial. In Bruno, the polygraphed witness' credibility was an important issue. His testimony was corroborated by other evidence. Bruno, 347 S.C. at 452, 556 S.E.2d at 396. Here, the polygraphed witness' credibility was not an important issue. Again, he provided no inculpatory or exculpatory information at trial. Further, outside of Montgomery's testimony regarding visiting the victim's mother, there was no other evidence presented at trial that linked Montgomery to the case at all. Altogether, the single reference to the fact Montgomery took a polygraph did not prejudice Palmer. Since Palmer was not prejudiced by the single mention of a polygraph examination in Montgomery's cross-examination, the trial court did not abuse its discretion in denying Palmer's motion for a mistrial and motion for a new trial. Certiorari should therefore be denied, and Palmer's convictions should be affirmed.

**III. Certiorari should be denied upon Palmer's claim that his motion for a speedy trial was improperly denied.**

In his third claim in the petition, Palmer asserts the Court of Appeals erred in affirming the trial court's denial of his speedy trial motion. Certiorari should be denied because the Court of Appeals was reasonable in affirming the trial court's denial of the motion for a speedy trial.

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the petition for rehearing with the Court of Appeals)(citing Rule 226(d)(2), SCACR); see also State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In affirming the trial court's denial of the motion, the Court of Appeals stated,

Palmer's trial was held just shy of two years from the date of his first motion for a speedy trial. We find this delay was sufficient to trigger further review of his right to speedy trial, and he asserted his right three times. See Waites, 270 S.C. at 108, 240 S.E.2d at 653 (determining a two-year-and-four-month delay was sufficient to trigger further review). As for the reason for the delay, at the July 21, 2011 hearing, the solicitor noted Palmer's case would not be able to be tried until Spring 2012 because of other matters already scheduled. An additional reason for the delay was due to Palmer having four attorneys prior to trial. See State v. Kennedy, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct.App.2000) (finding no violation of the defendant's right to a speedy trial, even though the delay was two years and two months, when the case was clearly complicated and required substantial time to investigate and prepare and there was no evidence the State purposefully delayed the trial); State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct.App.1992) (holding the burden was on the defendant to show the delay was due to the neglect and willfulness of the State's prosecution). As for prejudice to Palmer, he contended he was prejudiced because his case hinged on eyewitness testimony, and they may have difficulty in recalling. Palmer was able to challenge some witness' credibility by using their prior statements. See Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 (noting the three-year-and-five-month delay was negated by the lack of prejudice to the defense); Kennedy, 339 S.C. at 251, 528 S.E.2d at 704 ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."); Langford, 400 S.C. at 445, 735 S.E.2d at 484 (finding a two-year delay in bringing the case to trial did not amount to a constitutional violation in the absence of any actual prejudice to the defendant's case). Furthermore, the death of the one witness was not raised at trial; therefore, it is not preserved. Accordingly, we find the trial court properly weighed the four Barker factors, and the evidence supported its decision.

Palmer, 415 S.C. at 521-22, 783 S.E.2d at 833.

"A criminal defendant is guaranteed the right to a speedy trial." State v. Cooper, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct.App.2009), citing U.S. Const. amend. VI; S.C. Const. art. I, § 14; State v. Pittman, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). However, "[t]here is no universal test to determine whether a defendant's right to a speedy trial has been violated." Cooper, 386 S.C. at 216, 687 S.E.2d at 66 (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). "[T]he determination that a defendant has been deprived of this right is not

based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.” Pittman, 373 S.C. at 549, 647 S.E.2d at 155; see Cooper, 386 S.C. at 217, 687 S.E.2d at 66.

A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). These four factors are related and must be considered together with any other relevant circumstances. Barker, 407 U.S. at 533, 92 S.Ct. 2182.

Cooper, 386 S.C. at 216-17, 687 S.E.2d at 66. In reviewing the factors to be considered in determining whether Palmer was deprived of his right to a speedy trial, the trial court’s denial of Palmer’s motion was reasonable.

In reviewing a speedy trial claim, analysis begins “with the ‘triggering mechanism’ of a speedy trial claim, which is the length of the delay.” State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012).<sup>3</sup>

The clock starts running on a defendant's speedy trial right when he is “indicted, arrested, or otherwise officially accused,” and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982). The Supreme Court was quick to remind in Barker, however, that even the length of time necessary to trigger the full inquiry “is necessarily dependent upon the peculiar circumstances of the case.” 407 U.S. at 530–31, 92 S.Ct. 2182. Thus, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. Id. at 531, 92 S.Ct. 2182; see also id. at 531 n. 31, 92 S.Ct. 2182 (suggesting that a delay of nine months could have been presumptively prejudicial in a case that depended on eyewitness testimony (citing United States v. Butler, 426 F.2d 1275, 1277 (1st Cir.1970))).

Langford, 400 S.C. 421 at 442, 735 S.E.2d 471 at 482.

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<sup>3</sup> In Langford, this Court noted the other factors should not be examined until there was some delay that was presumptively prejudicial. Id. at 442, 735 S.E.2d at 482 (quoting Barker).

In Palmer's case, nearly twenty-eight months elapsed between the date of Palmer's arrest and his trial. While this time was lengthy, it was not outside the parameters of cases in which a lengthy delay was not considered to constitute a violation of the right to a speedy trial.<sup>4</sup>

Barker provides not only should the reason for the delay be considered, but also that those reasons should be examined as to relative justification:

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker v. Wingo, 407 U.S. at 531.

Several concerns factored in the delay in Palmer's trial. First, as noted at the initial consideration of the speedy trial motion was the trial docket. At the July 21, 2011 hearing, the solicitor noted that Palmer's case would not have been able to be tried until, at the earliest the Spring of 2012 because of other matters already scheduled. (R. p. 40). Second, Palmer had three attorneys relieved during the period between his arrest and trial. In fact, on two separate occasions, Palmer had an attorney relieved at the hearing where the speedy trial motion was

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<sup>4</sup> See Langford, *supra* (twenty-three month delay reviewed in armed robbery, first degree burglary and kidnapping case); Pittman, *supra* (reviewing three year delay between arrest and trial in murder case); Waites, *supra* (reviewing two year four month delay in assault and battery of a high and aggravated nature and pointing and presenting a firearm); Cooper, *supra* (reviewing forty-four month delay on murder re-trial). See also State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997) (reviewing three years and five months delay in aimed robbery and murder case); State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct.App. 2000), affirmed by State v. Kennedy, 348 S.C. 32, 558 S.E.2d 527 (2002) (reviewing two year and two month delay in grand larceny, first degree burglary and financial transaction card fraud case); State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct.App. 1992) (reviewing three year delay in murder case).

considered. The delay caused by the time needed for each new attorney to prepare for trial was properly weighted by the trial court against Palmer.

“[T]he defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right.” Barker, 407 U.S. at 528. Multiple assertions of the right will weigh heavily in a defendant's favor. See, for example, United States v. Bass, 460 F.3d 830, 837 (6<sup>th</sup> Cir. 2006)(“Between his arraignment and trial, Bass filed three motions to dismiss based upon speedy trial grounds: (1) in January 1999, two months after the arraignment; (2) in March 2000; and (3) in March 2002. Accordingly, Bass asserted his right to a speedy trial, and this factor weighs in his favor.”).

Here, Palmer did assert his right early by filing a motion on March 24, 2011. Palmer also asserted his right to a speedy trial on more than one occasion. Altogether, he filed three motions with the trial court, and he made oral motions at multiple hearings. Thus, this factor weighs in favor of Palmer.

As already noted, the delay itself is not dispositive of whether a violation has occurred. Neither is the time at issue dispositive of prejudice. Pittman, 373 S.C. at 551, 647 S.E.2d at 156) (rejecting Pittman's argument “that the delay of his trial was so lengthy that it not only meets the requisite finding of delay, but also that the delay is presumptively prejudicial”). Other courts have examined similar delays and declined to find presumptive prejudice.<sup>5</sup> The Supreme Court in Barker specifically noted the damage that may very well be done to the prosecution's case:

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<sup>5</sup> See United States v. Blanco, 861 F.2d 773, 778 (2nd Cir. 1988) (rejecting general assertion of prejudice in ten year delay between indictment and trial where defendant at fault in delay and where “delay can just as easily hurt the government's case”); United States v. Tchibassa, 452 F.3d 918, 925-927 (D.C.Cir. 2006) (finding no presumptive prejudice where defendant more at fault than government in eleven year delay). Accord United States v. Mendoza, 530 F.3d 758, 764-765 (9<sup>th</sup> Cir. 2008) (noting that if government had “exercised due diligence,” for speedy trial

A second difference between the right to speedy trial and the accused's other constitutional rights is that deprivation of the right may work to the accused's advantage. Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof. Thus, unlike the right to counsel or the right to be free from compelled self-in-crimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself.

Barker, 407 U.S. at 521.

In contending that he was prejudiced during the last pre-trial hearing on the motion before the trial court, Palmer only contended that he would be prejudiced because his case hinged on eyewitness testimony, and they may have difficulty recalling. (R. p. 54). The trial court noted that the concern could very well work in Palmer's favor. (R. p. 54). The trial court's finding that Palmer did not suffer any prejudice from the delay is supported by the record. The trial transcript reflects that Palmer was able to challenge some witnesses' credibility with the use of their prior statements. (See R. pp. 134-36, 137-38, 209-11, 248-50). Palmer's assertion on appeal that he was prejudiced by the unavailability of Elijah Kennedy was not an argument raised at trial. Thus, to the extent he relies upon that contention as a source of prejudice, his argument is not preserved for appellate review. Adams, 354 S.C. at 380, 580 S.E.2d at 795; see Perez, 334 S.C. at 565-66, 514 S.E.2d at 755; see also Tucker, 319 S.C. at 428, 462 S.E.2d at 265. Furthermore, the transcript reflects that Kennedy's testimony was likely more favorable to the State. (See R. pp. 301-04).

In reviewing all of the factors together, it was not unreasonable for the trial court to deny Palmer's motion to dismiss the charges because of the speedy trial claim. While Palmer did assert his right to a speedy trial early and consistently, a substantial portion of the delay was due

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claim on delay of eight years, defendant would have had to have shown "specific prejudice to his defense" rather than assessing presumptive prejudice).

to Palmer's actions and continual attempts to have counsel replaced. Each new attorney had to be afforded adequate time to properly prepare a defense. Further, there was no evidence the delay was the result of any attempt from the State to hinder Palmer's ability to present a defense. In light of the very limited, if any, prejudice Palmer may have suffered, in balance with the other factors, dismissal of Palmer's case was not warranted. Certiorari should therefore be denied.

**IV. Certiorari should be denied on Palmer's claim that his statement to law enforcement was inadmissible. The Court of Appeals properly affirmed the admission of the statement, and the record supported the trial court's determination that Palmer waived his right to counsel before giving the statement.**

In the fourth claim raised in the petition, Palmer contends that his statement to law enforcement was improperly admitted because he invoked his right to counsel before the statement was given. The trial court disagreed, finding that any invocation of his right to counsel was equivocal. Certiorari should be denied upon this claim because the Court of Appeals correctly found Palmer was not entitled to relief upon this claim.

At the pretrial hearing, SLED Agent John Mark Creech testified he read Palmer his Miranda rights. (R. pp. 56-8). Palmer did not appear to be under the influence of drugs or alcohol, he gave responses that were appropriate to the questions regarding the Miranda warnings, and Creech did not have any concerns about Palmer's competency. (R. p. 58). During the interview, Palmer stated that he would talk with the investigators, but he wanted them to call Charles Barr, an attorney. (R. pp. 59-60). Creech asked Palmer if he wanted Mr. Barr there, and Palmer indicated that he would like for Mr. Barr to come. (R. p. 60). Creech then asked if Palmer wanted Mr. Barr to be present before he would talk with law enforcement. (R. p. 60). Creech stated that "[h]e said no I'm going to talk to you." (R. p. 60, l 15). Creech noted that the response did not appear in the transcript of the tape recording. (R. p. 61). Creech indicated that he asked Palmer for further clarification. (R. p. 62). At the hearing, Creech testified that "that's

when I asked him again the question on the form. Are you willing to talk with us and he said yes sir and then I read the waiver paragraph at the bottom of the form. And I asked him to sign if he was, if he understood that and he signed it.” (R. p. 62, ll 11-5). Creech did not promise Palmer anything in order to get him to speak with him. (R. p. 64). Creech believed that Palmer understood all of his rights as he was advised. (R. p. 64).

During cross-examination, Creech noted that he was not sure when Palmer asked for Barr if he meant that he wanted a lawyer. (R. p. 66). That was why Creech asked Palmer the follow up question. (R. p. 66). Creech noted that Palmer asked for an attorney toward the end of the statement. (R. p. 67). After giving his statement, he said that he was not going to say anything else and that he wanted to talk to a lawyer. At that point, Creech ended the interview. (R. p. 68). He noted that this exchange occurred after Palmer was asked if he would take a polygraph examination. (R. pp. 68-9).

At the hearing, Palmer indicated he kept asking for Charles Barr and told them that his mom had told him to speak to Charles Barr before talking with anybody. (R. p. 72). He claimed Investigator Collins had taken away his cell phone, and he could not call Charles Barr himself because he did not have his phone. (R. p. 72). Palmer asserted that he was scared when they started questioning him. (R. pp. 72-3). Palmer testified as follows:

So finally when I was like well alright alright you know. They bring me the waiver and then Investigator McFadden he brings out the recorder the recorder and he turns it on then and then after I signed it everything and they read it to me again and I'm think and I'm like you know hold up I want you to call Charles Barr you know and they asked me will you talk to me I'm like well I want you to call Charles Barr too because I'm suppose to have an attorney present before I talk to anybody. Then you know I guess I was just kind of scared because you know they telling me that they trying to blame me for killing somebody so then he's like and basically it made me look like I can't go nowhere. So he asked me you know well are you willing to talk to us and I was yeah I'll be willing but I just wanted a lawyer present but he was like so will you talk to us and I told him yeah. Then I guessed without an attorney present and I was like well look I'll talk to you.

(R. p. 73, ll 4-21). He further noted that he told the investigator that he would talk with him when he wanted a lawyer present because he was scared and he had never been involved in a situation like that before. (R. p. 73). Palmer also testified that before the tape recorder was started, Agent Creech said that Palmer would not really be waiving his right. (R. p. 74). During cross-examination, Palmer testified that he was scared the entire time. (R. pp. 75-6). He further acknowledged that he understood his Miranda warnings and that he could have told law enforcement that he would not talk with them. (R. p. 79).

The transcript of the interview recording reflects as follows:

Investigator Creech: I want to give you your rights. Anything you say can and will be used against in a court of law as evidence against you. You have the right to talk to a lawyer now and have him present with you now and at anytime during questioning. If you cannot afford an attorney, one will be appointed for you without any cost to you. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering questions at anytime. You also have the right to stop answering questions at anytime until you talk to lawyer. Do you understand that?

Marc Palmer Yes, sir.

(From this point forward questions will be posed by Investigator Mark Creech, and answers will be given by Marc Palmer, unless otherwise noted.)

Q: Do you wish to talk to us?

A: I wish to talk to you, but I need for you to call Charles Barr too.

Q: You want him here?

A: I want him to come, yes.

Q: Before you talk with us?

A: I'll talk to you.<sup>6</sup>

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<sup>6</sup> State's Exhibit 2, the audio recording of the interview, is not consistent with the transcript of the recording. In response to the question, the audio indicates Palmer states, "No, I'm a talk to you."

Q: That's what I'm asking.

A: Okay, what do you want to know?

Q: Are you willing to talk to us?

A: Yes.

Q: Do you understand your rights and do you understand what your rights are, and you want to talk to us? You want to talk to us without a lawyer present?

A: Yes.

Q: You understand and know what you're doing, and we haven't promised you any tiling or threatened you in anyway.

A: No.

Q: And no pressure or coercion of any kind has been used against you by anyone?

A: No.

Q: Sign right there.

(State's Exhibit 2; R. p. 576, l 1 – p. 577, l 15).

The trial court denied the motion to suppress admission of the statement. (R. p. 83).

Alright I've listened to the audio, I've read the transcript and I read this waiver. It certainly seems to me that he cave it freely and voluntarily. He re-instituted the conversation with the officer and it really matches up better when you listen to it because you see the pace of the conversation. In the transcript you don't know what pace is but when you listen to it. It's clear that the officer is just getting a clarification as to whether he wanted him to call Mr. Barr or whether he was actually invoking his right to have an attorney present even if he had. He still he started the conversation back. He said he wanted to talk he said I'll talk to you and then he goes on for twenty something more pages talking with him. I don't know how much clearer it could be that he waived his right and started talking again.

(R. p. 83, ll 5-19).

The Court of Appeals affirmed the trial court's denial of the motion to suppress the statement.

In Davis v. United States, 512 U.S. 452, 461, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), the Supreme Court of the United States held that, "after a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney." "Of course, when a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney." Id.

Here, Palmer stated he would talk to the officers, but he also wanted his attorney. Because Palmer did not unambiguously invoke his right to counsel, the officers were allowed to ask a few questions for clarification. Palmer indicated he wanted to continue talking to the officers after being advised of his Miranda rights, and he voluntarily waived his rights before his statement was taken. Therefore, we find the trial court correctly denied the motion to suppress Palmer's statement.

Palmer, 415 S.C. at 524-25, 783 S.E.2d at 834.

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct.App.2007) (citing State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977)). "If admitted, the jury determines whether the statement was freely and voluntarily given beyond a reasonable doubt." Arrowood, 375 S.C. at 365, 652 S.E.2d at 441.

A waiver of Miranda<sup>7</sup> rights is determined from the totality of the circumstances. State v. Moultrie, 273 S.C. 60, 254 S.E.2d 294 (1979). On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal

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<sup>7</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

unless so manifestly erroneous as to show an abuse of discretion. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996); Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct.App.1999). “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support.” Arrowood, 375 S.C. at 366, 652 S.E.2d at 442; State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct.App.2005). Accordingly, the appellate courts are “bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.” Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). When reviewing a trial judge’s ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge’s ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

An express waiver is unnecessary to support a finding that the defendant has waived the right to remain silent or the right to counsel guaranteed by Miranda. North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). Statements elicited during interrogation are admissible if the prosecution can establish that the suspect “knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.” Miranda, 384 U.S. at 475, 86 S.Ct. at 1628.

Once an accused requests counsel, police interrogation must cease unless the accused himself “initiates further communication, exchanges, or conversations with the police.” Edwards v. Arizona, 451 U.S. 477, 485, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981). Interrogation is the express questioning, or its functional equivalent which includes “words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response.” State v. Sims, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991) (citing

Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690, 64 L.Ed.2d 297, 308 (1980)).

State v. Kennedy, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998).

However, the United States Supreme Court has declined to extend Edwards to situations where a suspect makes an ambiguous or equivocal reference to an attorney. Davis v. United States, 512 U.S. 452, 459, 114 S. Ct. 2350, 2355 (1994).

[A]fter a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney. Of course, when a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney. ... Clarifying questions help protect the rights of the suspect by ensuring that he gets an attorney if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel. But we decline to adopt a rule requiring officers to ask clarifying questions. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.

Davis, 512 U.S. at 461-62, 114 S.Ct. at 2356.

The trial court did not err in admitting Palmer's statement into evidence; the record supports the trial court's determination that the statement was freely and voluntarily given. Contrary to Palmer's assertions, the record does not support a finding that Palmer unambiguously invoked his right to counsel. To be clear, the transcript of the interview reflects that when Palmer indicated he was willing to talk with law enforcement, he also requested they call Charles Barr, a local defense attorney. (R. p. 576). Not being sure of whether Palmer was invoking his right to have counsel present for the interview, the SLED agent asked a few questions for clarification. The record supports the trial court's finding that Palmer's alleged invocation of his right to counsel was not clear, and that the SLED agent properly sought clarification regarding whether Palmer was invoking his right to have counsel present for the interview.

As noted by the trial court, the audio better and clearly reflects the ambiguity of Palmer's response and the need for the clarification questions. (State's Exhibit 2). Since Palmer's request that law enforcement call Charles Barr was not an unambiguous invocation of his right to counsel, Agent Creech was not required to cease questioning Palmer, and it was not improper for Agent Creech to ask clarifying questions to determine whether Palmer was invoking his right to have counsel present. Even if Palmer's statement constituted an unambiguous request for counsel, both the audio recording of the statement and the transcript reflected that Palmer re-instituted the interview. The trial court's finding is supported by State's Exhibit 2 and State's Exhibit 3. Palmer clearly stated that he was going to talk to the investigators, and he asked the investigators what they wanted to know. Respondent submits Palmer's statements were analogous to those made in Kennedy, 333 S.C. at 430-31, 510 S.E.2d at 715-16. As was the case in Kennedy, Palmer here indicated he wanted to continue talking with law enforcement after being advised of his Miranda rights. Palmer voluntarily waived his rights before a statement was taken. None of the questions asked of Palmer prior to the waiver were reasonably likely to elicit an incriminating response. In viewing the colloquy under the totality of the circumstances, the trial court correctly found the waiver of Palmer's right to counsel was voluntary, and the statement was freely and voluntarily given. Thus, certiorari should be denied, and Palmer's convictions should be affirmed.

#### CONCLUSION

Petitioner has failed to show that there is a special and important reason for this Court to grant his Petition. It raises no novel question of law. There is no conflict between the Court of Appeals' opinion and any prior decision of this Court. The Court of Appeals was correct in its findings. As a result, Petitioner's Petition for a Writ of Certiorari should be dismissed.

Respectfully submitted,

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Attorney General

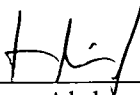
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July 1, 2016.

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**SC SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM WILLIAMSBURG COUNTY  
The Honorable William Jeffrey Young, Circuit Court Judge

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On Petition for Writ of Certiorari to the Court of Appeals  
Appellate Case No. 2016-001083 (Ct. App. Case No. 2013-000700)  
Opinion No. 5382 (S.C. Ct. App. filed 2/24/2016)

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THE STATE

RESPONDENT,

v.

MARC ANTHONY PALMER,

PETITIONER.

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**PROOF OF SERVICE**

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I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the Return to Petition for Writ of Certiorari on Appellant by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201, and to Ryan L. Beasley, Esq., 650 E. Washington Street, Greenville, SC 29601.

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

This 1<sup>st</sup> day of July, 2016.



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